IMPLEMENTATIONS OF TEMPORARY PROTECTION REGULATION IN TURKEY: STRUCTURAL CAUSES OF RIGHTS ACCESSION DEFICITS

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ABSTRACT

IMPLEMENTATIONS OF TEMPORARY PROTECTION REGULATION IN TURKEY: STRUCTURAL CAUSES OF RIGHTS ACCESSION DEFICITS

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With the social and political turbulence brought about by the unprecedented amount of immigration influx into Turkey, considerable academic attention has been directed to the issue. Even though the informative content gave way to recommending ends and thereby yielded in gradually better versions of the foreigners' law in Turkey, the right accession problems have persisted in varying extent. This is why this study tackles with the reasons of the migrants' rights accession deficiencies arising out of de-facto implementations of the legislations and regulations related to the Temporary Protection Regulation. In this study, these de facto implementations are discussed in relation to the socio-historic structural reasons. In that regard, for identification of de facto implementations, field research is carried out in Gaziantep, one of the cities where the migrant population is highly dense. Out of the field research, three kinds of implementation practices are specified. And throughout the thesis, their specific relevances with the structural causes and the right accession deficiencies are discussed.

Keywords: Syrian Migrants, Temporary Protection Regulation, Rights Accession Problems, de Facto Implementation, Turkish Bureaucracy

ÖZ

GEÇİCİ KORUMA YÖNETMELİĞİ'NİN UYGULANMASI: HAK ERİŞİM SORUNLARININ YAPISAL NEDENLERİ

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Türkiye son yıllarda daha önce benzerine rastlanmamış bir oranda Suriye'den gelen kitlesel bir akım ile karşılaştı. Doğal olarak önemli ölçüde bir akademik çaba bu akımın doğurduğu sosyal ve politik türbülansı anlamlandırmaya yönelmiş ve özelikle politika tavsiyeleri açısından değerli bulgular elde etmiştir. Bu şekilde geçmişten günümüze Türkiye'nin benimsemiş olduğu Yabancılar Hukuku'nun ve göçmen politikasının haklara erişim açısından göz ardı edilemeyecek yollar katettiği söylenebilir. Ancak pratiğe baktığımızda, göçmenlerin kendilerine tanınan haklara ulaşmak konusunda ciddi problemler yaşadığını ve tanınan haklardan faydalanan kesimin çok kısıtlı düzeylerde kaldığını gözlemlemekteyiz. Bu nedenledir ki bu çalışma göçmenlerin haklarına erişim sorunlarını ele almakta ve bunu yaparken de hukuksal düzenlemeler ve yasal çerçevelere odaklanmak yerine fiili uygulama pratiklerine bakmaktadır. Fiili uygulama pratiklerini ve bunların ol açtığı hak erişim sorunlarını ortaya koyabilmek

için bu çalışma, göçmenlerin yoğun olarak yaşadığı kentlerden biri olan Gaziantep'te bir saha araştırması gerçekleştirmiştir. Bunun sonucu olarak ise üç temel tipte fiili uygulama pratiği saptamış ve bunları Türkiye bürokrasisinin yapısal sorunları ile ilişkilendirerek tartışmıştır.

Anahtar Kelimeler: Suriyeli Göçmenler, Geçici Koruma Yönetmeliği, Hak Erişim Sorunları, Türkiye Bürokrasisi, Fiili Uygulama

Tugşi kardeşime….

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LIST OF ABBREVIATIONS

AFAD	Afet ve Acil Durum Yönetimi Başkanlığı / Prime Ministry Disaster & Emergency Management Authority
CSO	Civil Society Organizations
ÇİM	Directorate of General Migration Management
ÇODEM	Çocuk İzlem Merkezi / Child Oversight Center
DGMM	Directorate of General Migration Management
ESSN	The Emergency Social Safety Net
EU	European Union
I/NGO	International/Non-Governmental Organizations
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ILO	International Labor Organization
LFIP	Law on Foreigners and International Protection
MoFES	Ministry of Family, Employment and Social Service
MoNE	Ministry of National Education

PDMM	Provincial Directorate of Migration Management
PTSD	Post-Traumatic Stress Disorder
RSD	Refugee Status Determination
SGBV	Sexual and Gender Based Violation
SYDV	Sosyal Yardımlaşma ve Dayanışma Vakfı / Social Assistance and Solidarity Association
ŞÖNİM	Şiddet Öneleme ve İzmele Merkezleri / Women Shelter
TEC	Temporary Education Centers
TMA	Turkish Medical Association /Türk Tabipler Birliği
TP	Temporary Protection
TPR	Temporary Protection Regulation
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's emergency Fund
WFP	World Food Programme
WHO	World Healt Organization

CHAPTER

1. INTRODUCTION

1.1 Thesis Focus

The bureaucratic proceedings have never been perfectly smooth in Turkey. Many people are probably quite familiar with "go today, come tomorrow" kind of phrases as a sign of negligent, deferring attitudes of the civil servants in the government bureaus. Even though these are quite unnerving for anyone, this probably did not cause any serious right accession deficits in the lives of many. However, this is not the case for the migrant population in Turkey. As the exceptional nature of the Foreigners' Law dictates in every corner of the world, to be able to avail of even the very basic rights, everyone who claims asylum has to go through an array of bureaucratic processes. This would have been unbearably tedious even in an imaginative world where the most rational bureaucratic ideal type comes true. However, as Weber (1946) argues, in the countries with strong patrimonial tradition, the field of bureaucracy can diverge more and more from its ideal types. This is why, as being one of these countries, Turkey's bureaucracy becomes a stage for the Kafkaesque nightmares, particularly for the migrants in the country.

Weber's emphasis on the relationship between the patrimonial past and the bureaucratic proceedings draws our attention to the political and social structural realities behind the work routines of the bureaucrats. In that sense, the purpose of this thesis is to trace the connection between these socio-historic structural realities and the rights accession deficits /difficulties of the Syrian migrants in Turkey. To be clearer, in

this thesis the implementation practices of the legislations, rules, and circulars associated with Temporary Protection Regulation[1] will be examined in order to identify what kind of rights accession deficiencies are arising out during the processes of implementation. Moreover, by so doing, the structural reasons peculiar to the Turkish context giving way to specific types of implementation practices will be discussed as well. Therefore, one of the two stilts of this thesis stands on the recently surged literature body on the international migrants in Turkey in terms of migrants' rights accession, and the other is on literature body of the Turkish politics and Turkish bureaucracy.

1.2 Problematization and Significance

After 2011, when the Syrian crises get ever escalated, there has been a quantitative boom in the literature on international migration to Turkey. In accordance with the unprecedented amounts of immigrants; unprecedented amounts of papers, academic works, governmental or non-governmental reports, countless numbers of statistics, factsheets have been produced and still continuing to be produced on the international immigration in Turkey. The current literature mainly focuses on the descriptive analyses of the rights accession problems (For example, Kirişçi, 2014; İçduygu & Diker, 2017; UN Women, 2018). And by so doing, it produces policy recommendations for further progress on the protection law (Öztürk, 2017a:192).In that regard, it would not be wrong to argue that the current literature on the Syrian migrants seeks the answer to the question of the gap between the recognized and realized rights exclusively in the legal and legislative framework of the protection regime in Turkey. This approach is caused by the underlying assumption that when a policy is adopted or enforced, the outcomes will be exactly as it is designed, as though there is a perfectly transparent, well-working machinery of execution (Smith, 1973). However, this thesis argues that in Turkey, there is a kind of "attrition" between what is designed and what

[1] National Legislative Bodies / National Authorities, Turkey: Temporary Protection Regulation, 22 October 2014 (TPR, thereafter)

is got, due to de facto implementation practices. Therefore, this thesis intends to identify implementation practices, along with the structural causes behind them, which also give way to rights accession deficiencies. This is first because of the fact that even though Turkey has posed a good example of a protection regime with mixed policies of public services and humanitarian aid (Yılmaz, 2017; Saleh, Aydın & Koçak, 2018, Öztürk, 2017a; 2017b), the accession problems have remained quite striking. Second, I, personally, had the chance to observe the ridiculousness of the implementation practices which could even cost a life for the immigrants, during my work in UNHCR. Here, it is also important to note the fact that understandings of the term 'rights' also differ between the current literature on Syrians and this thesis. While the former conduct the evaluation of the rights accession on the basis of what is defined by the Temporary Protection Regulation, I will avail myself of the concept of basic (also referred to as minimal) rights[2]. For example, the current literature examines to what extent the right to education or health is accessible for Syrians, I wanted to look at to what extent what is called basic rights are respected during the de facto implementation of the legislation and procedures.

In that regard, three ways of implementation practices are pinpointed: Inconsistent implementation, prolongation, and conditional implementation. These patterned implementation practices are discussed in relation to the rights accession deficits and the structural problems of the Turkish bureaucracy. Here it can be argued that the well-rooted features of the Turkish bureaucracy have long before been noted. However, this thesis argues that as a set of agency, Turkish bureaucracy encounters for the first time with this unprecedented *amount* of "new subjects of humanitarianism" and develops such a response. Therefore, having been inspired by the dynamic and temporal conceptualizations of the structural theories of Giddens (1979), Bourdieu (1977), this study claims that the structure of the Turkish bureaucracy in service provision is evolving continuously within time. And today, by the impacts of Syrian immigrants,

[2] Conceptual specification of the term will be elaborated in the Chapter 3

reconfigurations at institutional, legal and practical levels have also occurred. Thus, one of the purposes of this thesis is to see whether the nascent *structuration* of the service provision and bureaucratic processes runs in a right-respecting way or not. Lastly, by so doing, this study can also shed light on the perplexing query as to whether the government is simply being reluctant to efficiently deal with the migration issue or it is incapable of doing so.

1.3 Thesis Plan

Having clarified the thesis focus and the significance, the first chapter continues with the discussion on the method of the thesis. There, the reason why the qualitative method is preferred to carry out this research is clarified. Afterward, a small discussion on the protection measures taken by the I/NGOs working in the field takes place on the basis of its relevance to the method of the study. There, the purpose is to clarify the NGO employees position as the data source who mediates between the migrant population and the bureaucratic field. Later, what kind of data is sought for and through what kind of sampling method was taken is specified. In connection with that, at the end of the chapter, the limitations of the study are shared.

In Chapter 2, Turkey's background in terms of having international migration is explained. To be able to make better sense of the contemporary immigration regime on Syrians, a small discussion about Turkey's past with international migration is elaborated. In that regard, how Turkey has adopted the Temporary Protection Regulation (TPR), while its past with the non-European refugees is not that bright in terms of the granted rights (Bill, 1997; İçduygu & Keyman, 2000; Krişçi, 1996; 2007; Soykan, 2012; Okyayuz & Angliss, 2014) is specified. Following that, the most important rights conferred on the beneficiaries of TPR is detailed. This is because is to lay the ground on which a comparison between recognized and realized rights is possible and meaningful. The most important rights, in that sense, are chosen in alignment with the basic rights of which conceptualization will be discussed in Chapter 3.

That said, Chapter 3 is the one where the theoretical and conceptual framework of this thesis is laid out. Firstly the concepts of structure and rights are clarified in what sense they are used along with the following discussions. Additionally, a discussion on the structural problems of Turkish politics, bureaucracy and state-society relations is carried out. Thereby, the possible structural reasons behind the particular ways of implementing practices came fore.

In Chapter 4, the findings from the field research are analyzed. Before sequencing the three ways of implementation practices, the I/NGOs role and the problems and importance of the ID obtaining in Turkey are elaborated. The reason for the former is to shed light on the differences between Civil Society Organizations (CSOs) and the I/NGOs. While the former refers to the grass-roots voluntary organizations, the latter is the appearance of the top-down globalization in the field. The importance of this distinction later implies that by working in the humanitarian sector, NGOs do not have the ability to apply bottom-up pressure to create more accountable, participatory and transparent state-society relations. But rather they turned out to be articulated in the inefficient service provision. On the other hand, the ID obtaining process is discussed to put as straightforward as possible the fact that the problems with the ID obtaining directly result in the deactivation of all the recognized and thus all the basic rights. That said, this chapter continues with the analysis of the three different and most common types of implementation practices (inconsistent, conditional, and prolonging implementation) in relation to the structural causes behind them and to the right accession deficiencies they cause.

In the concluding chapter, the arguments in each chapter are put together in relation to the research question defined in the first chapter.

1.4 Method

Since this study aims to unveil how the legislations relevant to the Law on Foreigners and International Protection[3] and Temporary Protection Regulation are de facto implemented, it is designated as a qualitative study. Here it is important to emphasize the fact that LFIP and TPR are promulgated as the law and the regulation as a bigger frame. There are the legislations, rules, and circulars directing the undertaking proceedings in relation to this law and regulation in the work context. Therefore, in this thesis, by de facto implementation, the bureaucratic practices carried out with reference to the relevant legislations, rules, and circulars is meant. And the divergences of these two reference points from each other are intended to identify. Unlike most of the qualitative studies, this study does not focus on the experiences and the meaning world of the respondents. However, it still targets to go beyond what is visible on the papers with the purposes of pinpointing the very mundane, routinized, habited, daily implementation practices of the government officers. This is why observation of the NGO employees working in the field of protection vis a vis the government staff constituted the main sources of information used in this study along with a limited extent of participant observation, small group discussions, and field notes.

The main reason behind looking at the very detailed, 'boring' daily work routines of the government officers is the persuasion that the seemingly unimportant but repetitive practices are exactly what mediates the reproduction of the social structure. And also they are the very outcome of the same structure as well. This is why while examining the implementation practices within the bureaucratic field, this study also aims to discover the relationship of these practices with the age-old structured problems of Turkish bureaucracy. Moreover, these daily work practices of the government officers can also be the causes of the right accession deficits as well since they corresponds to service provision whereby the migrants access to their basic rights. In other words, by

[3] Law No. 6458, Published in Official Gazzette on 11 April, 2013 (issue: 28615). Thereafter Foreigners' Law or LFIP

giving references to the theories of practice such as Bourdieu and Giddens, this study examines the relationship of the implementation practices; and first, the bigger structural realities behind them; and second, the right accession deficiencies. In that regard, to be able to have a comprehensive picture as to the work routines of the government officers, which are mostly found not worthy to talk about, in-depth interviews have been carried out by the "protection employees" of the I/NGOs since they work vis a vis the government officers.

To elabore more, the term "protection" has been used as the umbrella term encompassing many activities bridging the right-holders to their rights. What is to be understood by the term is defined on the basis of the adjective before it. In other words, on the basis of whether it is a temporary, secondary, conditional, subsidiary or international protection, the rights to be entitled on an immigrant differ. However, what overlaps out of the intersection of these definitions and what precipitates as the skeleton of the term is the same as the baseline of human rights. "*Human rights law is a prime source of existing refugee protection principles and structures; at the same time, it works to complement them*" notes the Executive Committee of UNHCR in 1998 on International Protection Note[4]. Therefore, in many conceptualizations, the term is used as *legal protection* (Goodwin-Gill, 2006; Sztucki, 1989). In that sense, protection is a *protection of an individual (or group of individuals) against any violation of his/her/their rights*. This is why protection at first is the responsibility of the individual nation-states towards their citizens[5]. In case of any failure to fulfill that duty due to the circumstances such as armed conflict or obvert discrimination, the responsibility falls upon the shoulders of the international community (Jaeger, 2001).

[4] UN Doc ref: A/AC/96/98 of 3 July 1998 (Recited from Steiner, Gibney, Loescher (2012). *Problems of Protection: The UNHCR, Refugees, and Human Rights.* London, New York: Rotledge (Notes, p.292).

[5] Establishing the states as the duty-bearer towards the rightholder agent is criticized for being too state-centric and the duty-bearer role is distributed upon the other agents as well. However, fort he time being, in this chapter it is used in the sense how the international community accepts.

That said, without providing a determinate set of rights in the case of violation of which the international protection intervention will take place, there are some safeguards formed on the basis of human rights. The supervision of these rights has left to the non-state actors. This means that these non-governmental actors can assist immigrants in the accession processes to their rights, or can take intervening action in case of any right violations, or well perform advocacy of the refugee rights as the circumstances necessitate. To wit, protection activities do not run in positive terms. This means that only if a case comes up with right accession deficits or a blatant right violation such as child prostitution or human trafficking and the like, the protection intervention enters into the play. Therefore, in this study to be able to identify the right violations or accession deficits arising out of the de facto implementations of the Foreigners' Law and way of practicing service provision, the area to be focused has been chosen as the protection activities delivered by the non-governmental actors. This is because, as indicated above, protection by virtue of its nature presupposes the already existing problems with accession, exercise, and enjoyment of the recognized rights.

Another important point of working in the field of protection is that protection activities do not specify one particular right violation or accession deficit. Rather it creates a kind of comprehensive cluster under which the vulnerabilities of the specific risk groups can fit. To illustrate, a protection provision could be specified on children, women, elderly, and disabled persons and the like. Thereby, a case of child employment, say, can imply accession deficits to education and security. This is why a protection employee comes to work with lots of government officers and civil servants from a variety of different bureaus such as hospitals to school managers, to women shelter officers to DGMM[6] specialists so on and so forth.

As stated, the primary aim of this study is to have the data as to the NGO employees' observation of de facto implementations and work practices of the government officers.

[6] Directorate of General Migration Management (Known as DGMM), an executive body formed in 2013 to deal with the international migration in Turkey. DGMM Works under the authorization of Ministry of Interior Affairs.

A purposive sampling method is employed as a non-probability selection technique. Since I previously employed in the humanitarian sector before, it was not difficult for me to reach out to the people whose data is needed. After the first few connections, I was able to expand my sample via the snowball technique.

In that regard, 21 in-depth interviews have been carried out with the voluntary participants from more than 10 different I/NGOs' protection employees. Gaziantep has taken as the field to carry out the research. Though, some employees shared their experiences from other cities such as Şanlıurfa, Ankara, Niğde, Konya, İzmir, and İstanbul. The reason for Gaziantep was preferred as the field is that the city has one of the most crowded refugee populations with the number of 447,921 people[7] under the status of Temporary Protection. Also, the city managed to organize and coordinate a comprehensive and successful relief response. This makes it one of the most vivid protection hubs in Turkey. Along with that, due to my previous professional experiences in the Gaziantep Office of UNHCR, I had relatively easy access to the field as well. To be able to have a very detailed picture of the practices employed in the field of service provision, I talked to those who mostly accompany to the beneficiaries through the processes in the government offices, and thereby, who come to function as the "eyes and ears, arms and legs of the beneficiaries". In that regard, even though the official titles of the positions vary, the educational background of the interviewees was more or less similar. 20 out of 21 respondents were university graduate from the fields of social work, international relations, sociology, law, nursing, and rehabilitation. Field of protection is related with their educational background. To be clearer, for example, those who are graduated from the health sciences was working on the protection of disabled persons. Moreover, the number of female respondents outweights that of males (3 male, 19 female interviewee). This because during the protection activities the gender-related sensitivities are quite likely to come across. Therefore, the NGOs mostly prefer to employ female specialists. And lastly, since the Syrian crises in general, and

[7] Received from the official website of DGMM, available at https://www.goc.gov.tr/gecici-koruma5638, in 7 September, 2019

the concomitant burgeoining of the "protection sector" in specific have a relatively recent past in Turkey, work experience of the protection officers in the field of protection do not exceed 6 years max. It is 2,8 avaregely.

The interviews are carried out via a semi-structured interview questionnaire and lasted approximately one hour, each. During the interview, questions about the interviewee are also asked such as work experience, sectorial experience, education and the other demographic data. But most importantly the questions were focused on the issues of bureaucratic processes, de facto implementations of the laws, legislations, and regulations[8] in order to establish their connections with the structured problems of Turkish bureaucracy and public administration. The unspoken but well-seated ways of conduct in the service provision and legislative implementations are thereby intended to be identified. As the sensitive nature of the issue requires, all data has been taken as anonym and beheld 100% confidentially.

Apart from its prospective contributions to the aforementioned literature bodies, this study has some methodological limitations too. Above all, the data used is not immediate data from the very de facto implementers of the procedures. Rather, the data has been received by the mediation of the NGO employees working vis-à-vis both the beneficiaries as well as the government officers. In other words, the data as to how the procedure is de facto implemented, is not collected from the very practitioners themselves. Therefore, the deductions as to the reasons of these implementations have to rely, to an important extent, on the interpretations of both the author of the thesis and of the interviewees. On the other hand, this is also intentionally chosen, as the other two parties (beneficiaries and the government officers) would lack the information of either how the practice differs from the law or how the practical implementation would have an impact on the beneficiaries' lives. This is why to avert from these problems I consolidated the data with the interviews with the other two parties inasmuch as my

[8] The questionnaire is available at APPENDIX A

capacity allows me.

Lastly, it is also important to note that since the study aims at reaching the data as to how the written rules and legislations are de facto implemented, and thereby it causes rights accession deficits, I deliberately focused on problematic examples. This means that despite there are good-intended actions of the civil servants from varieties of the position ranks, these stories are not taken under examination. This is because I wanted to discuss the structural frame paving the way for the ossified, implementation practices leading up to rights accession problems, not the particular examples of the individual benevolences of the civil servants. Therefore, the extreme edges are excluded in order for the sake of thesis' argument to be put as straightforward as possible. Moreover, as it will be detailed at the last chapter, this thesis argues that there is a tendency allowed by the socio-historic structural causes towards the problematic implementation. And this is what makes the positive examples the exceptional cases.

CHAPTER 2

2. BACKGROUND TO TURKEY'S CONTEMPORARY MIGRATION ISSUES

2.1 The Background of Migrants' Rights in Turkey

Since 2011, Turkey continues to win the approval of the global community as it is pursuant to open border policy for those who flee from the armed conflict in Syria. Apart from welcoming those who are in the most desperate circumstances, the open-border policy also ensures full respect for the principle of non-refoulement if there is any possibility of persecution in the country of origin. Moreover, as the country which hosts the most crowded Syrian migrant population in the world[9], thanks to the Temporary Protection Regulation (TPR) and theForeigner's Law, Turkey comes to recognize a set of rights in allingment with the international humanitarian principles for the Syrian immigrants formally.

Although the legal framework seems benevolent for immigrants in Turkey, it was not that rights-respecting all along. Before Turkey's participation in the 1951 Geneva Convention as one of the original signatory countries, only the individuals of 'Turkish descent and culture' were lawfully able to avail of the refugee status and its colleteral rights. Even after the introduction of the 1951 Geneva Convention and its 1967 Protocol, it is difficult to argue that the practice to grant refugee status and recognize its collateral rights has rectified in the way that it includes the groups who are not favorable for the Turkish nation-state composition (Kirişçi, 1991; 2000; İçduygu &

[9] The current figure is 3 million 657, 694. According to the commonly-accepted data of UNHCR, no other country holds more than that number of Syrian migrant. Available at https://data2.unhcr.org/en/situations/syria#_ga=2.80533075.51513504.1567860749-99817132.1555166215, received in 7 Spetember, 2019.

Keyman, 2006, Sert, 2014). With 1951 Geneva Convention Turkey come to accept one of the internationally recognized de jure definition of refugee status. However, according to this original document, the refugees exclusively consist of those who flee from Europe due to the Second World War[10]. Over time, the fact that this definition has become obsolete is revealed. In order to lift the time ("due to the Second World War" expression), and space ("from Europe" expression) limitations, 1967 Protocol has been signed by many countries. However, Turkey has agreed with the removal of the time dimension, but pursued its reservation in the geographical constraint in 1967 Protocol. This is why in Turkey only those who flee from Europe has been granted refugee status.

Refugee status is important because it entails a rights-set which is close to that of citizenship, and also which is aimed at naturalization in the long run. Therefore, the rights accorded on *de jure* refugees happens to temporally unlimited[11]. However, by not granting refugee status, Turkey has deprived those who have fled from the countries other than Europe from these rights. Even it is not the refugee status, Turkey could have recognized a substituting rights-set for the migrants from the other countries just as she does now for the Syrians. Yet this was not quite the case until 1994. In 1994, a regulation has passed. Accordingly, even though the definition of the Refugee status has remained precisely the same as the one in the 1951 Convention except for the temporal dimension, the content of the status of an asylum seeker has been extended in a way that it applies to the non-Europeans as well. This is how the non-European people seeking refuge in Turkey come to hold "temporary asylum seeker" status, until a durable solution is concluded for them by the international community. In addition to

[10] UN High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, available at: https://www.refworld.org/docid/5cb474b27.html [accessed 8 September 2019]

[11] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), 10 February 2003, HCR/GIP/03/03, available at: https://www.refworld.org/docid/3e50de6b4.html [accessed 8 September 2019]

that, other statuses such as secondary protection, temporary protection and the like also have been defined legally.

Still, 1994 Regulation was under the salvo of criticisms that the legal procedures whereby refugees access to their rights were not applicable. To elaborate more, under the administration of 1994 Regulation, asylum seekers had to go to the police station within five days after they step into the Turkish side of the border. And also within the same period they had to make an application to UNHCR so as to be recognized as de jure refugees internationally, and thus, to access to international protection[12]. However, more often than not, this was not the case. The irregular migrants were mostly missing the time frame even though they receive the refugee status by UNHCR. Unfortunately, this often caused their deportation (Frelick, 1997, Kirişçi, 1996b; 2007, Öztürk, 2017a). They might even be "caught" at the airport when they were about to fly to a resettlement country. Hence, even the non-refoulement right which is respected as almost a norm today used to be violated highly frequently, let alone health, education, or access to labor market rights (Ibid. 1997, 1996a). Apart from displaying Turkey's indexterity about international migration and border control in the eyes of European states (Kirişçi, 1996a), this raised eyebrows of the international community about any possible collusiveness between Iran and Turkey as well (Frelick, 1997). Therefore, the five days rule, residence permit fee, deportations was the few around which the criticisms are constellated (Frelick, 1997; Krişçi, 1996; 2007; Soykan, 2012; Okyayuz & Angliss, 2014).

On the other hand, even after the introduction of the 1994 Regulation, both the government and the refugees themselves counted merely on the UNHCR's conclusion on the asylum applications. The government's motivation was to reach a legitimate ground, on the basis of UNHCR's conclusion, to take the immigrants out of the country

[12] Before 1994 Regulation the Refugee Status Determination (Thereafter RSD) is used to operationalized only by UNHCR on behalf of the international community. With 1994 Regulation Turkey also started to conduct RSD operation as well. This is why the RSD operation in Turkey has been named as two-tier. For further discussion, see Frelick, 1997, Kirişçi, 1996b; 2007, Soykan, 2012

by either their resettlement into a third country or their deportation. This is why the remark that the Turkish government has passed this regulation with rather a concern of "national security" than respect for international humanitarian principles has been voiced frequently (Frelick, 1997; İçduygu & Keyman, 2000; Öztürk, 2017). The refugees, on the other hand, were desperately depending on the decision of UNHCR about their status. Since processing the applicants' claims by UNHCR can take years, the immigrants are doomed to tormenting suspension in their life in Turkey (Biehl, 2015). Even after their status is concluded as "refugee", they enter into an indefinite time of waiting to be admitted by a resettlement country. This is due to the fact that in order to realize what their refugee status entails under the international protection regime they needed to find another resettlement country via UNHCR. However, apparently, their resettlement was not happening any time soon. And this is how, in practice, the migrants' lives in Turkey turned into a "protracted uncertainty" which amounts to a limbo where right accession is highly confined (Biehl, 2015).

Naturally and rightfully, the literature on the international migrants in Turkey was focused on the legal and legislative framework while researching about the rights-accession cases of the migrants (For example, Bill, 1997; Krişçi, 1996; 2007; Soykan, 2012; Okyayuz & Angliss, 2014). Fortunatelly, the regulation has changed over time. Among other things, the EU accession negotiation was the main engine driving Turkey to make comprehensive amendments in the asylum and refugee regulation. In 2000 and 2003 Accession Partnership strategies has been prepared for Turkey by the EU. To keep up with the asylum and refugee standards of the EU, Turkey has introduced an array of regulations during the 2000s (Kirişçi, 2004; Tolay, 2012; Kaya, 2009; Ozcurumez & Şenses, 2011). With this incentive, Turkey amended the law on the work permit, the law on citizenship, and started off efficient combat with the human smuggling and trafficking (Kirişçi, 2004; Tolay, 2012; Kaya, 2009; İçduygu, 2015). Also, in 2008, in line with the National Action Plans, Turkey embarked on establishing a task force to regulate the implementations of the law and to create a neat division of labor for the asylum and migration-related issues. These developments are noted at the

positive side of Turkey's test with international immigration (Kirişçi, 2004; 2012; Kaya, 2009; Ozcurumez & Şenses, 2011; Tolay, 2012).

Although the inapplicable residues of the previous regulation have retained to a lesser extent especially for those who are not able to be entitled to the TP status, some non-negligible developments such as the formation of a separate, centralized legal and executive body for the international migration has taken place. This paved the way for the brittle point in the legal framework, which indeed has brought by the unprecedented amount of Syrian refugee influx into Turkey. The already inefficient migration regulation which saw maximum half a million Iraqi refugee at once was strained by the yoke of the six times more crowded Syrians' exodus. Unsurprisingly, this became what made the enforcement of the Temporary Protection Regulation inevitable.

As indicated, TPR has been appreciated mostly owing to its compatibility with international protection principles. In alignment with the directive of the EU[13], Turkey also has conferred the right to health, education, shelter, accession to the labor market, mobility, etc (Öztürk, 2017b; İneli-Ciger, 2018). The only diverging point in Turkey's version of TPR is that, in Turkey, accession to international protection has almost been blocked[14] for the non-European immigrants (Öztürk, 2017b) especially after the termination of UNHCR's operation of Refugee Status Determination (RSD) in Turkey[15]. Even though there is an exception for those who previously partied to the armed conflict in Syria can access to international protection, this raised the further question as to the nature of the TPR on the basis of its respect to equality principle. Additionally, as echoed countlessly in the critical voices of the pertinent literature, the other most pronounced severe problem has remained as Turkey's adamant stance in

[13] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L212/12.

[14] Temporary Protecton Regulation, Art.16(1)

[15] For more information see https://www.unhcr.org/tr/wp-content/uploads/sites/14/2018/09/03.-UNHCR-Turkey-Strengthening-a-Quality-Asylum-System-Fact-sheet-Au....pdf, accessed in 8 September, 2019

pursuing the geographical limitation in its *de jure* definition of the refugee status (Soykan, 2012; Kibar, 2013; Kirişçi, 2012). In today's particular context, this has been conceptualized as the Turkish government's reluctance towards adopting more integrative policies and giving up the rhetoric of "guests" (İçduygu & Şimşek, 2016). In other words, reservation of geographical limitation practically tantamounts to keeping non-European immigrants from accession to a durable solution, including their permanent settlement into Turkey. This is because the two of the three internationally acknowledged durable solutions[16] are already almost opted out due to the ever diminished resettlement quotas of the Western countries and the still unstable political circumstances of Syria. Therefore, in the literature, it is indirectly stated many times that while Turkey protects Syrians temporarily, it also condemns them to an uncertainty permanently.

These two main lines of criticisms which sometimes substitute for sometimes overlap onto one and another has constituted the fundamental answer given to almost every question. This is also true for the question of the gap between recognized and realized rights as well. However, before beginning to discuss what widens the angle between what *is supposed to be* according to the paper and what *is* indeed on the ground, we should have a detailed picture of the recognized rights.

2.2 Temporary Protection Regulation and Its Colleteral Rights

As indicated above, the developments taken place during the 2000s in the area of the legal framework for the migrants in Turkey, paved the way for adoption of the

[16] According to UNHCR there are three possible durable solutions:

i. Voluntary repatriation
ii. Resettlement into a third country
iii. Settlement into the asylum country

For more information see UN High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, available at: https://www.refworld.org/docid/5cb474b27.html [accessed 8 September 2019]

Temporary Protection Regulation (TPR). TPR is based on the Art.91 or the LFIP[17]. Still, it is important to lay an emphasis on the exceptional character of the Temporary Protection Regulations all around the World (Mandal, 2005; Edwards, 2012; Öztürk, 2017a; 2017b). Temporary Protection Regulation has a relatively nascent past within the global conjecture. It has been brought into the international agenda during 1990s in the cases where the conventional protection mechanisms fall short to respond. In that regard, even though there is no any legal definition or ground for the TPR to be based[18], it is concluded that there must *be en masse* influx or outflow of the people, which render their situation difficult to undertake an eligibility evaluation for granting the refugee status (UNHCR, 2014; Mandal, 2005). In the *UNHCR's 1994 Note on International Protection* describes the predicates of the TPR as follows[19]:

> a means, in situations of mass outflow, for providing refuge to groups or categories of persons recognized to be in need of international protection, without recourse, at least initially, to individual refugee status determination. It includes respect for basic human rights but, since it is conceived as an emergency protection measure of hopefully short duration, a more limited range of rights and benefits offered in the initial stage than would customarily be accorded to refugees granted asylum under the 1951 Convention and the 1967 Protocol.

Although under which circumstances massive outflow comes to term has remained slightly eclectical, during the Kosova and Yugoslavia crisis the first examples of what might massive influx mean is observed. In that regard, mass influx is to be understood in relation to both rapid rate of arrival and as well as inadequacy of absorbtion and response capacity of the host states (Edwards, 2012: 9). From that point of view Turkey's experience with the Syrian migrants' influx is in perfect alignment with these premises to put in force a framework of Temporary Protection. Moreover, what is attention-grabbing in relation to the exceptional nature of the TP Regimes is that since

[17] TPR Art.2(1)

[18] Except fort he EU Directive, which has never been enforced.

[19] Note on International Protection 1994, UN Doc A/AC.96/830

it falls outside of the category or cusytomary protection regime, it has a derogatory nature in terms of providing an urgent but a small set of rights. What is encompassed in these rights are first and foremost admission to safety, protection against refoulement, respect for basic human rights and safe return -or accession to other durable solutions (Edwards, 2012:8). However, since Turkey adopted its framework of TPR with reference to the EU Directive[20], put forth after the Kosova experience with the purposes of bringing an EU-scope standardization, apart from these minimal grounds, there are broader definition of recognized rights[21]. During the following section, some of the recognized rights and accession figures will be detailed for the purpose of laying out the rights-set upon which the evaluation of the respect for basic rights are possible.

Here it is also important to note the fact that one of the other reasons which renders the TPR exceptional is the global conjecture. By the end of 2016, Europe has received 5.6 million de facto refugees[22]. Throughtout the years the European countries continued to receive rapid arrivals of the migrants especially in relation to the escalation of the Syrian crises. For example, during 2018, the 28 member states of the EU has received, 581 thousand asylum application[23]. However, only %46 of them granted with the refugee status. This poses a stark contrast with the case of Turkey who undertakes evaluation on a *prima facie* basis.

Before detailing the recognized rights it is also important to put the demographic picture of the Syrians in Turkey. As of Semptember it is officially seen that

[20] Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof [2001] OJ L 212/12, art 2(a) ('EU TP Directive')

[21] With only exception to the accession to the durable solutions, as discussed above.

[22] 22 Received from https://www.unrefugees.org/emergencies/refugee-crisis-in-europe/, in September 8, 2019

[23] Received from https://ec.europa.eu/eurostat/statisticsexplained/index.php/Asylum_statistics#Number_of_asylum_applicants:_drop_in_2018, in September 8, 2019

approximately 3,658,250 Syrians are registered under the Temporary Protection[24]. Of that, 63.434 is accommodated within the cams setting[25]. Moreover, it is also attention grabbing that most of the registered people is composed of thaose who are at the age of 15 or below. And the gender breakdown seems in favor of the males with the number of 1,982, 443 males; and 1,675,807 females. These figures brought first and foremost the question of education on the table. Therefore, it is important to read the following statements on the gap between the recognized and realized rights over the general demographic profile of the Syrian beneficiaries of the Temporary Protection.

2.2.1 Right to Admission, Stay and Leave the Country of Asylum

By adopting TPR for the Syrian influx, Turkey first and foremost came to grant three fundamental rights: First, protection from punishment for illegal entry; second, protection from refoulement, and third, the right to legal stay in Turkey for a temporary but an indefinite period of time. This means that the visa and valid-documents required for a legal entry will not be sought in order for those who flee from Syria to be admitted in Turkey. However, as of January 2016, this was revised in the way that it will be applied only to those who flee from Syrian conflict by land, not by air or sea from a third country (Aida Report, 2018). After the admission of the people came to Turkey by land, the immigrants are registered by the Directorate of General Migration Management in their provinces (PDMM). If the immigrants do not have any relatives or acquaintances to go by when they first enter to the country, they can be accommodated in the referral centers so as to be settled in one of the urban areas or in the camps later. In the camps, there is the provision of education and health services along with catering three square meals in a day. Additionally, unlike the previous versions of Foreigner's Law, Turkey does not implement any fine for the TP

[24] Received from the official website of DGMM, available at https://www.goc.gov.tr/gecici-koruma5638, received in September 8, 2019.

[25] The government changed its policy on the issue in the way that it closes the camps and directs people who used to stay there into the urban settings.

beneficiaries who leave the country as their stay at first place is free from illegal charges.

Even though the procedure is neat on the paper, its implementation is full of doubts. According to Amnesty International's reports on Turkey, there are non-negligible instances of mass returns and denial of admissions. For the data on the issue is strictly protected as confidential, it is impossible to reach the real figures. Yet, there are here-and-there allegations and reports of Turkey undertaking proceedings for deportation, refoulement as well as denial of admission and accession to asylum claims[26]. Moreover, a correlation of these practices with the political turn of events such as the proclamation of the State of Emergency and EU-Turkey deal is observable as well[27]. Additionally, since the registration process is taken away from UNHCR's area of responsibility, there is no other source to compare the efficiency of the registration processes. In other words, only the figures provided by the government are available. This obscures the numbers of unregistered people.

Apart from that, the stay of immigrants in Turkey is not free from trouble, neither. Even though in camp conditions, under AFAD's coordination many basic needs are catered, most are left unmet. According to the UN Women's Report (2018), especially women have great difficulties in re-establishing their lives in the camp setting. In this report, it is indicated that most people are suffering from a lack of private space and extremely constrained possibilities for pursuing their lives. In addition to these, the unbearable crowd in the camps makes even worse the living conditions. However, when it comes to the outside of the camp areas, the situation does not get any better.

[26] Retrived from https://www.amnesty.org/en/documents/eur44/018/2014/en/, https://www.amnesty.org/en/documents/eur44/2521/2015/en/, https://www.amnesty.org/en/documents/eur44/2915/2015/en/ in July 4, 2019

[27] Retrived from https://www.amnesty.org/en/documents/eur44/2915/2015/en/, https://www.amnesty.org/en/latest/news/2015/12/turkey-eu-refugees-detention-deportation/, https://www.amnesty.org/en/latest/news/2016/02/injured-syrians-fleeing-aleppo-onslaught-among-thousands-denied-entry-to-turkey/, https://www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/https://www.amnesty.org/en/latest/news/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/, in July 4, 2019

The high demand in the shelter opportunities within the big cities puts the shelter supply under unbearable strain. This directly results in the unaffordable rents and inhuman quality of housing.

2.2.2 Right to Health

In the international arena, the right to health has been enshrined in several covenants to many of which Turkey also parties[28]. While the substantive content of these covenants varies according to the political conjecture in which they are signed and ratified, what is underlined in all is the indiscriminate recognition of the right to health for different groups of the society (Mardin, 2017; Turkish Medical Association; 2016).

In tune with this, those who are covered by Temporary Protection are entitled to General Health Insurance irrespective of whether they are settled in temporary accommodation centers or living in an urban setting. Thanks to their health insurance, the beneficiaries of temporary protection have gained full access to the primary and secondary, and partial access to tertiary health services. This means that the beneficiaries of the temporary protection can reach to the family planning centers, mother and infant care centers, and tuberculosis dispensaries as the primary health facility and the public hospitals as the secondary one in their provinces. However, they cannot spontaneously approach to the university, research and training hospitals which are counted under tertiary health services unless they are referred from a public hospital in cases of emergency (Turkish Medical Association, 2016). Moreover, for the health insurance reimburses medical expenses with the assistance of the Prime Ministry Disaster & Emergency Management Authority (AFAD) and DGMM, the beneficiaries are not required to pay burdensome money for medical treatment.

[28]International Covenant on Economic, Social and Cultural Right (ICESCR) Art.12
International Covenant on Civil and Political Rights (ICCPR) Art.2, Art.26
nternational Convention on Elimination of All Forms of Racial Discrimination (ICERD)
Convention on Elimination of All Forms of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
Convention on Rights of the Child (CRC)

Additionally, the quality standards of the health services are checked by, and under control of the Ministry of Health, and the coordination is carried out by AFAD in collaboration with the other relevant ministries. Thus, other than the public health services, no other private or non-governmental institutions are allowed to provide healthcare services. However, there few exceptions: In the camps, there are Temporary Health Centers, which can be administered by non-governmental actors. Also, recently, to be able to ease the referral mechanisms and communication with the patients 187 Migrant Health Centers in 28 provinces are established, which mainly employ Syrian nurses and doctors. Besides, the government collaborates with the "support-solution partners" in psycho-social service provision[29]. In other words, for mental health services, the non-governmental organization can undertake responsibility too as long as they are in cooperation with the government authorities.

However, despite the free healthcare provision and other supportive services, the accession problems continue in practice. It is challenging to have specific data about the access to health services as it is swinging from time to time and from place to place. For example, in the early reports of the Turkish Medical Association (Turkish Medical Association, 2014) there are severe problems with the health conditions of the Syrian immigrants as well as their accession to the health services for the standardization of the service provision and registration was not accomplished. According to the same report, the out-of-camp migrants have had life-threatening difficulties in accession to the hospitals, family health centers, and other primary and secondary healthcare provisions. As a reason for this, language incapability, lack of information, misinformation, registration problems, cultural differences, and the like has been pointed out. Moreover, in that sense, the plight of the women and girls occupies an essential space as their accession to medical care is restricted more and they are more vulnerable to the health risks because of unwanted pregnancies and exposition to the sexual and gender-based violence (SGBV) under war circumstances. In that regard, in

[29] TPR, Art.27(5)

the same report (Turkish Medical Association, 2014), it is indicated that there are deadlocks concerning Syrian women's accession to the preventive healthcare services, even there is a case of early marriage. Also, the situation even gets worse if the health problem occurs in a single-headed family. In addition to these, as a result of the unbridled worsening circumstances of the intersection of the vulnerabilities, the risk of the prostitution, short-term marriages and the like increases as a last resort to which Syrian women had to appeal (Mazlumder, 2014). Furthermore, Şimşek et al. in 2015[30] put forth some striking statistical facts as to the accession of the Syrian women and girls to the medical services in Şanlıurfa. According to their data, 26.7% of women never consulted any healthcare facility or staff while they are pregnant, and 47.7% experienced a miscarriage or stillbirth (Re-cited from Turkish Medical Association, 2016).

Apart from these, it is many times reported that the psychological well-being of migrants is also alarming. Even though there is no compiled data on the issue, many academic sources indicate that the victims of violent conflict in their home countries are much more likely to suffer from psychological disorders, particularly from Post-Traumatic Stress Disorder (PTSD). For the Syrians in Turkey, the reports, as well as academic studies, confirm this too (CONFLICT, 2015; Saleh, Aydın & Koçak, 2018). For example, to have a glimpse of the seriousness of the situation, Şimşek et al. (2015)[31] state that one in every ten women has a record of attempting suicide.

On the other hand, it is important to note that, as the more updated data proves, over time the accession to healthcare services gets better. However, it is still far from meeting the excessive demand. According to the AFAD report (2017), 46.5% of female and 35.3% male Syrians living outside of the camp settings did not benefit from the

[30] Şimşek Z, Doğan F, Hilali NG, Özek B (2015a) Reproductive Health Indicators among 15-49 Years Old Married Syrian Women Living in a City Center and Their Needs for Healthcare Services. The Book of Proceedings of 18th National Public Health 2Congress. Konya. http://uhsk.org/uhsk18/ocs/index.php/uhsk18/uhsk/paper/view/387

[31] TPR, Art.27(5)

health services at all. The striking contrast between urban and camp refugees who used health services (respectively around 58% and 97%) also increases the concerns on the issue. As a reason, a considerable part of the population put forward financial difficulties (13.6%), and disinformation (44.4%) for not going to healthcare centers. Moreover, the most recent report of the World Health Organization (WHO, 2019) is also in line with these statistics. According to WHO's report (2019), the biggest problem distinguishes as the language problem for most of the patients state that they are not able to understand neither the doctors nor the instructions on the medicines. Again, women continue to follow the indicators one step behind. The Needs Assessment Report of UN Women (2018), points out the fact that the access of women to health services lags behind men, especially for specialized services such as women health or family planning. In the UN Women's data, it is put forth that approximately only 29% of women can access to family planning services and 43.3% to the women health care. It is indicated that in all host countries, only one in three Syrian women in average are aware of the family planning services and this reflected as a plummet in the use of contraceptive measures (Saleh, Aydın & Koçak, 2018). Also, benefiting rate from the psychosocial consulting services remains highly restricted invariably the cities where Syrian immigrants' population concentrated.

In the relevant literature, the problems with accession to the health service is mostly noted as the language inproficiency and the institutional incapacity ever strained by the Syrians' influx (Among others, TMA, 2014; 2016, AFAD, 2017; Refugee Rights Sub-Commission, 2017; UN Women, 2018; WHO, 2019).

2.2.3 Right to Access to Labor Market

The right to work is regarded as one of the human rights since the self-sufficiency of human beings is directly connected with human dignity grounding for the Universal Declaration of Human Rights (Donelly, 2013)[32]. Also, the International Covenant on

[32] The discussion on the foundations of human rights will be elaborated in Chapter 3.

Economic, Social, and Cultural Rights (ICESCR) safeguards individuals to make their livings through employment and provide their families financially[33]. Nevertheless, the right to work of migrants has always posed a severe problem in Turkey. Before the amendment in 2016, even the beneficiaries of temporary protection were unable to access to the labor market. In that regard, Turkey has been highly criticized.

After 2016, when the Regulation Concerning the Work Permits of Temporary Protection Beneficiaries passed, the legal ways to access to the labor market opened for the beneficiaries of the Temporary Protection. Six months after the beneficiary is granted with the status of Temporary Protection, s/he can start the process for obtaining a work permit. However, the application can only be carried out by the employer over the *e-devlet* online system[34]. Moreover, there are specific cities that the migrants are not allowed to work, thus the work permit application can only be made in the allowed cities[35]. Otherwise, Ministry of Family, Employment, Social Security, the responsible agency from assessing and issuing the work permits, has to seek the opinion from the Ministry of Internal Affairs, as there are cities where legal labor of the immigrants can pose a threat to public order or security[36]. Along with these, there is also a quota system developed with the purpose of protecting the Turkish citizens in the relevant Regulation. The employers are not allowed to hire foreigners more than one-tenth of the overall employee number in the work-place. If the total population does not exceed ten people, then the employer can only hire one foreigner person[37]. There are also exceptions to this rule as well. Lastly, for seasonal agricultural workers, a work permit exception is applied. There can also be province and quota constriction for those who are excepted from work permit[38]. This means that even though those who are not

[33] ICESCR supra note 88, Art. 6, Art.7 (Cited from Bindinger, 2015:240)

[34] Regulation Concerning Work Permits of Temporary Protection Beneficiaries, Law no 8575, Art.5(2)

[35] TPR Art (24)

[36] Ibid. Art.7(1)(2)

[37] Ibid. Art.8(1)(2)

supposed to obtain a work permit to have a job are subjected to the same quotas.

Even though the government opened the way to obtain legal work permit the actual number of people who are employed formally remained drastically low. According to the latest figures of the Family, Employment, and Social Policy Ministry (2017), there are only 20.966 people who are granted work permit since 2011. This number corresponds roughly to 1% of the Syrians at the working-age populations (İçduygu & Diker, 2017). Moreover given the gender breakdown with the figures of 1.641 women and 19.335 men, the ridiculousness of the picture becomes readily apparent. With a rough accounting, it can be said that in 2017 the number of work permit holder males are 8 times more than the work permit holder females.

As it stands, among the Syrians under Temporary Protection, participation to the informal labor market is extensive. This has serious repercussions both on the lives of Syrians and also Turkish citizens as well. The inhuman and unacceptable working conditions of the uncontrolled informal sectors to which Syrians had to bow now is about to turn into the new norms of working conditions in Turkey. To have a general idea of the working conditions, some statistical facts can be dropped: For example, according to field research carried out by the International Youth Foundation in İstanbul (2018), 87.7% of the employed Syrians work 10-12 hours a day and earn around 1.400 TL, which is 20 percent less than a Turkish citizen averagely would make under the same conditions. Additionally, women even make lesser than this amount. The physical circumstances of the working environment are also unbearable. People mostly work within overcrowded small ateliers by exposing dangerous chemicals or hazardous physical activities. Moreover, Baban, Ilcan & Rygiel (2017) laid emphasis on the fact that especially the informal sectors have become more and more marked by precarity as time passes. They also point out that there are notably numerous cases where the employer finds a way to evade or blatantly refuses to pay the salary. The

[38] Ibid. Art. 5(4)(5)

International Labor Organization (ILO) purports the same picture as to the working conditions of the beneficiaries of TPR[39], though without statistical corroboration. Besides long working hours and low wages even beneath the minimal baseline, ILO draws attention to child employment as well. Especially in the agricultural sector where the immigrants' labor is highly dense and abused, there are also worst forms of child labor cases observed, ILO indicates[40].

In the relevant literature, the most notable reason of the strikingly low formal labor employment is noted as the quota system as well as the burdensome application procedure thrown upon the shoulders of the employers (İçduygu & Şimşek, 2017; İneli-Ciger, 2018). Apart from making the application, the employers also have to pay an extra amount of money for initiating the procedure of receiving the work permit for the TP beneficiaries. This being the case, naturally, the reasons for the low labor participation have been sought in the legal framework and government's unwilling attitudes for employing integrative policies.

2.2.4 Right to Education

According to the Temporary Protection Regulation, the beneficiary children holding their ID can avail of the free public education. In other words, without any restriction, they can attend the public schools, and continue their education in the equivalent grade according to the previous level of education that they brought. In other words, for the children whose education has been interrupted due to the war circumstances, the government employs an equivalency system. According to this system, children whose competency is deemed to proceed can resume their education from the grade where they left off. The children's level is recognized by the individual teachers or provincial and district level of Ministry of National Education (MoNE) Directorates. If the children's registration process with DGMM is not completed at the time when the

[39] Retrivet from https://www.ilo.org/ankara/projects/WCMS_702144/lang--tr/index.htm in June 2019

[40] Ibid.

children are needed to enroll in a school, they can be guest students until their official registration is done. The content of education and the curricula followed in public schools does not consider any difference across the Turkish and the foreigner students. This means that the beneficiary children are also subject to the same line of education, with one hundred percent Turkish curricula.

On the other hand, there is also another body of educational institutions specialized for the Syrian children: Temporary Education Centers (TEC). Syrian Charities and other non-governmental institutions use to run this Temporary Education Centers as a UNICEF project. In these centers, the students can follow a different version of the Syrian curriculum in Arabic. Temporary Education Centers are mainly located in the refugee camps in Turkey and target the children who intend to turn back to Syria soon. Before long, the government officially recognized these centers with the circular 2014/21, and thereby they are added under the supervision of the MoNE and changed into 'Transitionary Education Centers'. Moreover, in mid-2018, the government launched the Accelerated Education Program, a tailored program for the children who fell aloof from formal education for a while. This program targets to a 10-18 age group who missed at least three years of schooling.

In addition to these primary and elementary education provisions, Turkey also allows undergraduate, master, and doctorate level of studies for the beneficiaries. Those who are willing to pursue a university-level degree are subject to the administration of the Council of Higher Education, as is every other higher education student in Turkey. In that regard, for the beneficiaries who already enrolled in a school, there can be an equivalence proceeding for their grades deemed appropriate. Moreover, there can be other vocational and language training courses for the people including the adults on the basis of their request.

According to the Parliament Report of Migration and Integration (Göç ve Uyum) prepared by the Human Rights Commission, refugee rights sub-commission (2018), there are 976.200 children at school-age as of December 2017. 333,000 of these

children attended public schools, and 305,000 go to Transitionary Education Centers (TEC). The total number of children who are undergoing an education regardless of whether they are in the TECs or public schools could only reach to 638,000. This corresponds to 62 percent of all school-aged children. Moreover, in the same report, the highest participation rate in schools among the beneficiary children is marked as the primary school level with a downward proclivity towards the higher grades. Also, 19,000 students are registered with an undergraduate, master, or doctorate levels of studies, according to the same report. This number again corresponds to a very small section of the people whose university-level education has been interrupted (approximately 1%).

Even though the numbers are from 2017 in the government's report, more updated data from UNICEF's Humanitarian Situation Report (March 2019, n31) demonstrates similar results. According to the UNICEF Report, the number of beneficiary children enrolled in schools has risen to 643,058 as of 2019 March with balanced gender breakdown. Yet, as the number of children in total has also increased, the percentage of children receiving formal education has remained the same as 62%. This means that 400,000 children out of 1,148,358 are estimated to be out of school. Considering that, it can be said that almost 40% of school-age children seem ossified as out of school for two years. Also, in these figures, half of the children enrolled in formal education are composed of those attending in TECs. Given the very low ratios of the student who could be transferred from TECs later on to the public schools (around only 6.5%, Aras & Yasun, 2016), the numbers do not seem bright at all. Having been well aware of the situation, the government showed its intention to close the TECs gradually and integrate all children into public schools (Refugee Rights Sub-Commission Report, 2018: 240). In addition to these, it is indicated that the dropout rates are considerably alarming, particularly among the female students. According to UN Women Needs Assessment Report (2018), 62% of the children in the schools cease their education at some point. As the reason for this, female students express their own or their families' unwillingness along with financial impossibilities.

The studies that tackle the education problems of migrant children have common points in underlying the same issues. The language proficiency first and foremost (Kirişçi, 2014; Ineli-Ciger, 2018; Woods et al., 2016; Dedeoğlu &Ergin, 2016); poverty following that are the most glaring obstacles blocking the ways of Syrians' accession to education. Apart from these, the poor psychological condition and apathy, academic lag (Akbaşlı & Mavi, 2019; Aydın & Kaya, 2017; 2019), disinformation about schooling processes (Aras & Yasun, 2016), and the temporal duration of the immigrant children in Turkey (Kirişçi, 2014; Aras & Yasun, 2016; Aydın & Kaya, 2017; 2019) rise as the other most important problems. In addition to these, the troubles of the higher education students are also marshaled along with the aforementioned ones. In higher education, likewise, the psychological problems, financial impossibilities, inadequate secondary education (especially for those living in the camps), equivalency complexities and the like outweigh (Hohberger, 2017; Çopur &Demirel, 2017; Akbaşlı & Mavi, 2019).

Other than the problems pointed out about the Syrian children's schooling problems, the literature reaches consensus on that these are all related to the integration policies of the government. That the Ministry of Education (MoNE) should provide a supportive program specialized for the Syrian refugee children to help them catch up with their peers in terms of academic competence and language proficiency is frequently uttered. However, as of 2016, a supporting project named PICTES has been put in force by the collaborative effort of the EU and MoNE[41]. Within the scope of the project many activities including psychological counseling, financial assistance, awareness sessions, Turkish and Arabic language courses, academic remedial courses, among others have been provided. In addition to that, regardless of the nationality, the Ministry of Family, Employment and Social Service (MoFES) has other financial assistance programs offered to the families whose children are compelled to work[42]. According to the deal

[41] Received from https://pictes.meb.gov.tr/izleme/ in July 11, 2019

[42] Receiver from https://www.ailevecalisma.gov.tr/sygm/programlarimiz/sosyal-yardim-programlarimiz/ in July 11, 2019

offered by the MoFES, the families are proposed that approximately same amount of money that the children earn from his/her employment will be reimbursed by the ministry in exchange for the children's enrolment into the public school[43]. Considering the language courses reached out 390,000 children, financial aids, and psychological counseling service provisions to support the Syrian children's education; the commonly accepted accounting in the literature that the government does not effort for integration seemsnot exhausting the possible explanations for the low schooling. Along with the integrative policies, better efficiency during the implementation can be put as another recommendation as well.

As it is obvious, Turkish legislation on Temporary Protection has established on a right-respecting framework, for the time being, considering indiscriminate right to availing of the social services along with the legal entry and stay in Turkey. However, it is challenging to argue that all these recognized rights are fully enjoyed and realized by the beneficiaries. On the contrary, the data depictured by the governmental and non-governmental statistics, reports, and factsheets demonstrates that only a small portion of the targeted population is able to access to their rights unimpededly. For the rest, there are still severe problems keeping them off schools, hospitals, workplaces and the like.

Turkey's test with the international migration influx is relatively new. This is why in the relevant literature the differences between the recognized and realized rights have recently started to be discussed. Before the last amendments in the legislation, what is used to be uttered was the unavoidable necessity of these amendments (Frelick, 1997; Krişçi, 1996; 2007; Soykan, 2012; Okyayuz & Angliss, 2014). In 2012, with the advent of the new draft of Foreigners Law, the evaluation of the new changes has occupied a space in the relevant literature body (Among Others, Dardağan-Kibar, 2013; Ineli-Ciger, 2015; 2018; Öztürk, 2017). Over time, as the Syrians' presence becomes ever

[43] Ibid.

visible each day more, the descriptive studies, of official and unofficial reports, come to the fore.

However, these studies mostly go farthest to the abstraction level that the government is reluctant to put integrative migration policies into the act. In that sense, what hinders the immigrants from permanent protection and thereby naturalization is criticized mostly. Therefore, the geographical limitation in Turkey's de jure refugee definition in general, the work permit quota, the mandate fee of the employers in case they want to employ an immigrant, and unsolved language problem in specific are addressed as the most conspicuous culprits. Unquestionably true as these criticisms are in that they are the essential causes of systemic exclusion of the Syrians from societal life, it still cannot explain the unexpected failures such as still high numbers of unregistered people and thereby blocked ways of accessing the basic rights. This is because the formal regulation do not necessarily result in the precise and efficient implementation of itself. In other words, apart from the amendments on the paper, the efficient and effective implementation matter as well with regard to the wanted outcomes, in our case which is rights accession. For example, the TPR presumes the registration of all the Syrians. But still there are high numbers of unregistered people even though there is no legal impediment before it. Therefore, in this thesis I wanted to examine what are the problemlems of rights accession arising out of de facto implementations of the TPR and relevant legislations, and procedures.

2.3 Conclusion

In this chapter, Turkey's background with international migration is laid out to be able to better pose the problematization of the research question taken into hand in this study. In that regard, firstly Turkey past with the international migration from Middle East is briefed to show how the previous legal system has evolved into the contemporary Law on Foreigners and International Protection and as well as to Temporary Protection Regulation. Even though under TPR, Turkey conferred rights in line with the instruments to which she also parties; it can be said that until the Syrian

migration influx this was not the case.

During the 90's Turkey was receiving high numbers of international migration from the Middle East, especially Iraqis and Kurds. However, at those times neither admission into the country nor other collateral rights was granted upon them due to the geographical reservation in the 1951 Geneva Convention and its 1967 Protocol. This being the case, only those who flee from Europe was able avail of the rights which could have named as basic rights. However, towards the end of the 90's the migration influx escalated, so did the dim plight of the migrants as well. With this, Turkey started to grab the attention of the international community as well and exposed to some pressure especially from the EU. This is how during 2000s, Turkey endorsed a vital number of amendments in the Foreigners' Law.

However, the most important point has come with the Syrian exodus in that Turkey started to put in force the most rights-respecting version of the Foreigners' Law. Along with that, Turkey drafted a Temporary Protection Regime by consisting in the Directive prepared by the EU with regard to the Kosova experience at sight. Under TPR, Turkey conferred Temporary Protection status to the Syrians who flee from the armed conflict in Syria since 2013. Moreover, a specialized centralized office under the authorization of the Ministry of Internal Affairs has been established for migration management.

Having clarified this legal transformation, I continued by specifying the officially recognized rights for the beneficiaries of the TP status. Accordingly, contrary to the implementations taking place in the 90s, Turkey comes to lift the fine applied upon those who illegally entered the country. Moreover, Turkey started to follow the open-border policy for those who flee from Syria by land. These were big steps for the admission and legal stay rights of the migrants. Additionally, a set of social and economic rights are also accorded to the TP beneficiaries. Thereby, the labor market has opened to the Syrian migrants. Along with that, Turkey provided social security with the Syrians in order for them to go to the hospitals with the minimum expenses. And lastly, all public schools started to admit Syrian children, and this supported by

additional assistance from both the governmental and non-governmental institutions.

The reason for enlisting the rights legally recognized by the Turkish government was to make more salient the gulf between those rights and the ones that are actually accessed on the ground. According to the facts and figures provided by the NGOs as well as government reports the difference was quite striking. For the admission process, there was a considerable number of allegations about Turkey that it does not admit asylum seekers, even more than that Thurkey sends them back. In alignment with that, as it is stated openly in the reports of WHO, Turkish Medical Association, and UN Women, the access to right to health was alarming among the Syrians. Also, this was particularly true for the right to education and employment as well. For example, almost half of the Syrian children are not able to go to public schools. Likewise, almost one present of the Syrians who are able to and want to work has been employed since 2011.

The importance of these facts and figures for this thesis was that even though the gulf between the realized and recognized rights was that much wide, the literature on the Syrians was mostly on the legal amendments and integration policies expected from the government. As rightful this concern is, it does not complete the whole picture, but leaves out the rights accession deficits arising out of de facto implementation practices. When the problem is formulized from only angle already done in the above mentioned literature, it exclusively relys on the assumption that the legal amendments would result in the mirrored outcomes as if there is no any problem during the implementation processes. However, as it will be detailed in the following sections, there are structural problems such as inefficiency, incapacity, excessive dependency of Turkish public administration on the Turkish politics, and charity-based understanding intrinsic in the implementation processes. This is why in this thesis I wanted to put forth an illustrative field research which explains the implementation problems, along with the structural causes, which give way to rights accession problems. However, what is needed first is to clarify the terms.

CHAPTER 3

3. THEORETICAL AND CONCEPTUAL FRAMEWORK

In this chapter the theoretical and conceptual framework of the thesis will be clarified. In that regard first and foremost the therm social structure will be taken into hand. The concept of social structure is used in the sense that it is precipitated by the same or similar practices' repetition over time. Therefore, for the operational conceptualization of the term, theories of Bourideu and Giddens will be discussed. But before that, to make more sense of the these two theorization the early conceptualization of social structure will be given very briefly. Later on, the discussions will continue with the purpose of specification of the term rights. In that regard, the theoretical layout about the issue of human rights will be laid out. Afterward, the discussions will carry on up to the more contemporary debates of the constitutionalization of social and economic rights. Significance of this discussion for this thesis is that from that point a new conceptual recommendation of basic/minimal rights burgeons. And lastly, after calrifying the concepts of structure and rights, the theoretical overview will continue to specify what are the Turkish bureaucracy's and public administration's structural problems that may give way to rights accession deficits. In that regard, the literature on Turkish state and society will be put forth. This is because of the persuasion that the current problems in the Turkish bureaucracy and public administration has socio-historic structural causes such as lack of scientific-technical managerial system, and rights-based understanding paving the ground for a sweeping inefficiency that may result in rights accession deficits especially for the Syrian migrants.

3.1 Conceptualization of the Term Social Structure

The term social structre is almost coeval with the age of social sciences. However, the conceptualization of the term cannot be thought seperate from the intellectual contestation. In that regard it would not be wrong to argue that the conceptualization of the term 'social structure' has changed a lot over time. To be able to make a neat framework, in this thesis the conceptual journey of the term will be carried out over the distinction between the early and late conceptualizations.

3.1.1 Early Synchronic Conceptualization

The term social structure infused in the social sciences' agenda thoroughly by the Sassurian remark on the language that orchestrated a robust vein of supporters from various fields. His methodological intervention in the diachronic understanding of linguistic studies has constituted an inspirational onset for the ramification of the *structuralist échole* within the social sciences as well. As a linguistic scholar and an incontestable genius thinker, Saussure basically breaks off the conventional relationship between what is called *signifier* and *signified* in the chain of a language. This virtually simple contribution tied up to the rebuttal that the relationship between signifier and signified is rather an arbitrary one and not having been assigned intrinsically by the associations between the meaning and the phonetics of the word itself. This idea has been followed by the implication that digging back in time to reconstitute the meaning of a particular signifier within the historical context is in vain. Instead, a particule should and only be understandable through its synchronic relations to the other components within a given context (Saussure, 1959 [1893]).

3.1.2 Temporal Understanding of the Term Social Structure in Giddens and Bourdieu

Even though it had a ground-breaking impact, this methodological intervention portrays rather a stable and static description of the context. In other words, it takes the

temporality out of the spatio-temporal matrix. In the realm of political science, this gave way to an interpretation of the grand theories in the way that 'revealing the latent realities'. In sociology and anthropology, it rather conjoined with the functionalist understanding at the hands of the scholars like Durkheim, Marcel Mauss, Levi-Strauss, Parsons, Merton and the like before the post-structuralist trend took over. The examples of the qualifying impact of the structuralist inspiration in different branches of social science can be multiplied likewise. However, in every field, the presupposition of synchronicity in the structural understanding of the society brought the question of historicity to the table. This manifested itself as the question of social change especially for sociology, and the subject of that change for political science. To surmount this apparently amiss outcome of the structural mode of social ontology, some scholars cast a creative role upon the agency (in general theories of for example Gramschi, Arendt, Foucault). And some others stick to the structure itself and re-established it in a dynamic, continuing and alive manner. Thus, the concept turned into something where agency and the structure inextricably intertwined with each other and none of which ontologically precedes the other. Anthony Giddens named it as *structuration*, and Pierre Bourdieu availed himself of the notion of *habitus*.

To be clearer, according to Giddens, the original conceptualization of structuralism is not free from some vital flaws. He names five main criticisms for Saussure, in his book *Central Problems of Social Theory* (1979), among which for the sake of extent of this thesis the most important three are a) its proclivity for functionalism, b) its problem with the temporality, c) its derogative approach to the actor. For the first one, which bolstered by the 19th-century thinkers' adamant analogy of biological organisms, Giddens argues that functionalist mode of thought intrinsically marked by a methodological flaw driving the social scientist to apprehend a teleological stance. For Giddens, beginning analysis with an array of assumptions including that a "component must have a function for the survival of a bigger whole", leads the researcher to intentional and instrumental reading of a social phenomenon.

On the other hand, Giddens deals with the second problem of temporality, which also converges on the problem of derogation of the actor as well, by having been inspired by Heidegger's philosophy of time. He writes "*The point of view I advocate in these papers is strongly influenced by Heidegger's treatment of being and time: not so much as an ontology, but as a philosophical source for developing a conceptualization of the time-space constitution of social systems.*" (P.3). Giddens argues that the stable understanding of structuralist school is essentially "taking a snapshot of society" or "freezing it at an instant" (P. 62). This is how this school leaves the question of how this whole structure occurred at first place ever perplexing. He finds his way out by arguing that each and every moment of an instant is only a *coming-to-being* and a *passing-away* one (to wit, a *becoming*). For Giddens, this has the implication that social structure is not static as it is implied by the cleavage between the synchronic and diachronic methods, but rather a perpetuating process of becoming.

Its becomingness, on the other hand, is conditioned by the relentless repetition of the agencies' practices. By furnishing the concept of structure with the temporal dimension, and thereby turning it into *structuration*, Giddens also confronts the other problem of the derogation of the actor to the role of the sole "bearer of the mode of production". He says that the term structuration first and foremost arises in the lacunae of the theory of action (p.2). To fill the gap, he takes the intentionality out of the hitherto conceptualizations of the action (discussion of which roots back to Enlightenment thinkers such as Kant and Descartes). And he substitutes it for repetition of the human practices including conscious and unconscious divergences of it as the maker of the social structure. This is how the structure "manufactures" the actors and also being manufactured by it simultaneously. Hence, Giddens concludes by first, re-binding the cleavage between synchrony and diachrony; second, putting the actor as both the mediator and the outcome of the social structure; and third, adding a fundamentally recursive character to the formation of a social structure. From now on, in the language of Giddens, social structure amounts to recursive repetition of the social practices. And its property is a created memory of those practices translated as the

knowledge of how things are done (Giddens, 1979).

As for the issue of "how things are done", Bourdieu's conception of habitus can also be resorted to for the sake of the conceptual framing of the thesis. Following a similar line of reasoning, Bourdieu tries to overcome the agency/structure paradigm as well. As one of the remarkable haters of the binary oppositions, Bourdieu too dissolves the actor within the structure. His stance is even stricter on the issue. He leaves almost no room for any subjectivity can possibly cast a creative action upon the agency and adds that even the most unconscious objectives and purposes of an agent are transposed by a "yesterday's man" which predominates in the actors' mind (Bourdieu, 1977: 79). He roughly sums up that what is called unconscious is but forgetting of the history. The only thing he recognizes where actors' creativity, or rather subjectivity, takes over is their own improvisations. However, even these improvisations are regulated by what he calls habitus. In his terminology, habitus fundamentally amounts to spatio-temporal social context of which genesis owes to the "conductorless orchestration of social practices' regularity, unity, and systematicity" (Bourdieu, 1977: 80). The habitus then creates the common sense and it secures it by the consensus on the meaning of practices. Therefore, in the Bourdieusian mode of thought, the term habitus is associated more with the question of the knowledge pertaining to a field. In other words, habitus provides a kind of cognitive map for the actors, the layout of which is a ground where the meanings and the practices meet with each other.

What puts Bourdieu and Giddens together is their temporal, dynamic understanding of the social structure generated by nothing but the superimposition of the relentless reiteration of the actors' practices. This is the sense how I will use the term to put forth the "structural causes" of de facto implementations of the legislations, rules, and procedures associated with the TPR by the Turkish bureaucracy and civil servants. This means that the structural causes will not be discerned out of the examination of merely the synchronic relations of the other components of Turkish society. Rather, it will hold the meaning of the practices inherited over time by the reiteration of and inculcation to

the actors of the bureaucratic field in the way that it lays out a set of unwritten and unspoken rules of the conducts. These rules can also be understood as a culture/knowledge matrix of the know-hows in the ramified service provider institutions which are to be employed by the civil servants and the bureaucrats during the implementation processes. For the Bourdieusian analysis of a field and habitus requires more immediate data such as the ones only extricable by the ethnographic methodologies; I will not embark on an analysis of the "habitus" in the bureaucratic field. Yet, studies examining the issue from that angel can be found in the literature especially about the way of policing (For example, Chan, 1997). Instead of that, I may only avail myself of the term in identifying the practical processes where any legislation, official rules, or circulars do not define a procedure as to the details of the implementation, or where they are not taken into account at all simply because "this is just not the way how the things are done there".

Another concept which needs to be specified in terms of what sense it is used as the analytical tool along with the discussions in this thesis is the concept of rights. During the evaluation of how the civil servants' implementation practices give way to rights accession deficits, I relied on the concept of basic (also known as minimal) rights. However, to be able to specify what 'basic rights' exactly mean or how it differs from the more customary terms of human rights, we need to pave the historical ground upon which intellectual contestation on the concept of rights interplays. This is why in this section, I will briefly give a glimpse of the theoretical discussions on natural rights and human rights in order to lead up the conceptualization of 'basic rights'.

3.2 Conceptualization of the Term Rights

The concept of rights has a long past with the political contemplation of human history. In the jurisdictions of the early civilizations such as Ancient Greek and Roman Empire, an objective right in the sense that is vested upon the citizens in varying extents, closer to the meaning of the law, can be found (Tusk, 1979; Freeman, 2002:15). Moreover, some religious tenets which advice being fair in the distribution of wealth, to assist

those who are in need in the communal relationships of Christianity, Judaism, Buddhism, Confucianism have been evaluated as, what now would be called, human rights (Reichert, 2011; Donnelly, 1982). However, the modern sense of the word that which is used today in the literature of human rights is unexceptionally rooted back to the seventieth-century thinkers John Locke and Thomas Hobbes[44]. Unlike to objective rights and 'God's order', Locke and Hobbes based the term rights on the ground of nature. Despite the fact that nature here is still nature as it is created by the God, for they focused on the individual rather than the 'natural law', the conceptualization of the rights comes to be marked by the works of reason rather than divine power. Common both in their understanding, in the state of nature, human beings are absolutely equal and free. Yet, this absoluteness is inevitably harmful to their physical and social existence. To be able to receive protection and thereby to serve the common boon of the social entity, being subject to a sovereign has come to the fore. The protection here encapsulates the 'all men's life, liberty, and property'. Among these, the right to property is the one accompanied mostly to human history with the rights in the sense of '*Dominium'* (Tusk, 1979). However, the others i.e. the right to life and liberty, 'innate in the nature of men', are actualized inasmuch as the precondition of providing protection is served.

Even though in the earliest theorizations of the concept of (natural) rights presupposes a renunciation of at least a part of itself, there are certain commonalities which cast almost a linear, historical, and causal connection between the contemporary one where contrary to renunciation, making a claim constitutes the base[45]. The importance of utterance of the natural rights for the modern conceptualization of human rights is that the former belongs to *all, at all times, and in all places*. In that sense, it corresponds to the sine qua non premises of the human rights: *egalitarianism, universalism,*

[44] Even though Aristotle also comes up occasionally as the first one who mentioned natural law, over the distinction between the law and right, the modern conceptualization of the human rights are always established with reference to Locke and Hobbes.

[45] See also 'Justified Demand' from Shue, H., 1980, p.14

inalienability, and *indivisibility*. While 'belonging to all, all the time and in all places' overlaps the principles of equality and universality in terms of they all refer to contextless humanity in general, premises of inalienability and indivisibility has been appended to the term in the 20th century regarding the practical implementations in the international politics and law. The inalienability stands for expressing that no one can give up their rights for no reason as s/he can never stop being a human. Likewise, the notion indivisibility meets the meaning that human rights as an impervious set of rights cannot be divided for the sake of actualization of a subgroup over the rest. These premises of the modern notion of human rights are bluntly asserted by the UN after the Second World War. There is also an ironic connection between the term of natural rights and modern human rights: The former prerequisites protection from the sovereign. As a matter of fact, the whole *raison d'étre* behind the renunciations is to create such a tutelary power preventing any possible harm to natural rights. In that sense, the concept of natural rights can be thought as the positive one which requires an active provision of protection from a sovereign authority. Where the irony starts is the point that the rights of life and liberty which are regarded as the first generation of rights inherited through the centuries to constitute the civil and political rights have always been thought as the negative rights. Here the negative rights are that which are the fundamentally self-realizing, which do not require any positive action from any authority for actualization but only requires refraining from their transgressions (Among others, Donelly, 2013; Freeman, 2002; Reichert, 2011:20; Ife, 2012:33).

Furthermore, what holds the concept of natural rights still so alive in the 21st century is most importantly that there is a notable number of thinkers and scholars who legitimizes –in the sense of proving the human rights' existence- on the ground of a transcendental conceptualization of 'human nature'. In the literature, there are studies which allot the human rights' scholars on the layout of a theoretical matrix (Among others, see Beetham[46], 1995; Freeman 1994; Freeman, 2002; Langlois, 2003; Marie-

[46] In the cited work, Beetham (1995) is exclusively considered by the critical approaches to the Human rights

Bénéditcte, 2010). Having been inspired by these; it can be argued that there are three schools of approaches with regard to the theorization of the origin of human rights: Sceptics, Instrumentalists[47], and foundationalists. To these, the constructivist understanding that basically argues that human rights are a socio-historic or discursive construction accompanies. As the constructivist understanding may or may not adopt an affirmative stance towards human rights, it is distributed along with these three main approaches. During the following pages these approaches will be summarized to constitute a ground where their contestation lead to the conceptual recommendation of the term of 'basic rights'. Lastly, it is important to emphasize the fact that here the categorization of the scholars interested in the issue of human rights is on the basis of their approach to the theoretical origin of the concept; and it does not specify their philosophy in general.

3.2.1 Skeptical and Instrumentalist Approaches

The skeptic and instrumentalist scholars have a fundamentally critical stance towards human rights conceptualization. The skeptical thinkers' criticism can be constellated under few points. Firstly, there are those who disbelieve in the ontology of human rights in the sense that it simply does not exist. MacIntyre (1981) is one of those who also famously expressed his ideas by an entertaining expression that

> …I mean those rights which are alleged to belong to human beings as such and which are cited as a reason for not to be interfered with in their pursuit of life liberty and happiness…[Do not exist]. … believe in them is one with belief in witches and unicorns" (pp. 68-69).

In his account, there is no reason to believe these rights because they are only self-evident truth as long as the rights are possessed by the people without being breached, and this has been proved wrong. Indeed, his disbelief results from his disappointment vis a vis the 'failure of the Enlightenment Project' as there is no such a moral capacity

[47] Which is also referred to as consequentialist (Waldron, 1987), the term is used here in the sense that it encompasses the utilitarians as well.

of human beings to actualize it. Likewise, those who question the very ontology of human rights mostly approach to the issue from the point that there is no such ground that the rights of humans can be established. But rather what is at stake is the indeed-empty societal construction.

To elaborate more, as Donnelly (2013) points out that the term 'right' has two meanings: being right in the sense of rectitude, and having rights in the sense of entitlement. The former points out a standard of conduct where what is right to do or what is wrong to do is already allotted. This is mostly conceptualized as the objective rights of which relation is closer to the determinant rules rather than the subjective entitlements[48]. As discussed earlier in this section the objective sense of the meaning presupposes already an order where right or wrong is stabilized as done by the dictates of the 'natural law'. Therefore, those who are skeptical about the ontology of the human rights argue that the ground on which what is wrong or what is right is not a kind of transcendental human feature but the social construction which is doomed to remain elusive and volatile. Strauss (1965), albeit he supports the concept of human rights, begins quarreling with what he calls historicism, as he believed historicism rightfully but sadly sweeps out the everything where a conceptualization of human rights may thrive. He puts this very eloquently:

> By denying the significance, if not the existence, of universal norms, the historical school destroyed the only solid basis of all efforts to transcend the actual … It certainly acted as if it intended to make men absolutely at home in "this world." Since any universal principles make at least most men potentially homeless, it depreciated universal principles in favor of historical principles." (pp. 15-16).

The skepticism towards the very ontology of human rights by no means restricted with the relatively recent discussions[49]. On the contrary, since Edmund Burke onwards,

[48] For further discussions see Michel Villey, *Philosophie du Droit: Définitions et Fins du Droit Les Moyen Du Droit*, 2015 place: Press; Richard Tusk, *Natural Right Theories: Their Origin and Development*, 1979, Cambridge: Cambridge University Press

either from a conservative perspective or more liberal ones, an abstentious approach towards the issue of human rights has nested in the relevant literature bodies.

One of the other most important critical veins towards the issue of the rights has been initiated by Marx. In his writing 'On Jewish Question', Marx clearly indicates his discomfort with the individualistic understanding of the rights of the men. According to him, what is presented as the 'universal and compelling principles of the human nature' is indeed the bourgeois acquisitive individual's rights making sense only under the capitalist mode of production (Waldron, 1987). For him, the 'Rights of Men' envisage a civil liberated society composed of 'monads withdrawn into himself'. In that sense, his disagreement with the seventeenth century's supporters of the natural rights leaps out. In Marx's opinion, a designation of civil society needs to be actively preserved from the individuals who composed of it points out a selfish, egoist, otherwise be aggressive portray of individuals. This is not compatible with the prospective harmonious communism that he asserts all societies fated to follow. In other words, the liberty in the rights of men is an anti-social one, and security is what guarantees their egoism (Waldron; 1987). All in all, Marx's critique emphasizes the fact that the rights of men elevate the individual over collectively, the rights over duty, and lastly is indeed contextual (valid only a certain phase of the economic and social relations).

Moreover, a part of this insight stated above –the individualistic nature of the concept of human rights over the collectivist and communitarian approach- evolved into the more political interpretation of the issue. In that regard, it is argued that the human rights projection targets to wipe out the differences in the name of egalitarianism and universalism which remind of an inclination into a sort of tyranny (Mendus, 1995). This argument can be read together with the assertion that human rights are culture blind. And also it conflates with the sought for a more culture-sensitive understanding of human rights concept which can allocate a broader room for the communal and collectivist relationalities.

Furthermore, there are those who approach the issue from the perspective of international politics. According to them; first, the notion of human rights is naturally flawed by the skewed power relations in favor of the Western countries, and as such, it smacks of neo-imperialism (Leford, 1986). And second, it is an unrealistic project which requires effective collaboration and coordination of the nation-states which does not seem likely to happen soon because of the greed that nation-states pursue about their sovereignty (Vincent, 1986). In the more postmodernist stance of criticism of the concept of human rights, it is argued that the power is multidimensional and polycentric. And therefore, claiming human rights while elevates challenges to one power-relations, but it also may promote and provoke the other (Stammers, 1993).

Speaking of the 'Rights of Men', another important criticism comes from the feminist perspective. During the French Revolution, women took an active part. However, their visibility did not reflect on the declaration of the Rights of Men. The female activists such as Olympe de Gouges endeavored for the women's official visibility and recognition of the same rights for the women as well. In that regard, there has been endorsement to publishing the rights of women pursuing the recognition of the same rights sets for the women (Condorcet, 1787; De Gouges, 1791 Wollstonecraft, 1796)[50]. The general tone of this turn was on the issue of women's exclusion from civil life on the basis of their lesser status in the eyes of the men. Also, more recently Women stated that their rights have been systematically violated by the men-kind, and there is no room for such a discussion in the 'male and state-centric' understanding of the concept of rights.

On the other hand, there are also scholars who adopted an instrumentalist/utilitarian approach towards the issue of human rights. Even though the nascent encounter of the utilitarian mode of thought and the concept of rights happened under the antagonistic terms, in the contemporary world, utilitarianism took more 'rights-friendly' guise. In

[50] For more contemporary debates see C. MacKinnon. 'Crimes of war. crimes of peace' in S. Shute and S. Hurley (eds), On Human Rights (New York. Basic. 1993), pp. 83-1 10.

1789, Bentham, when writing "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure"; was quite distasteful towards the declaration of the Men's Rights (Waldron, 1987). According to him, it was futile to expect men to follow other than those two masters. Alike most of the other eighteenth-century thinkers, he also found ridiculous and nonsense to talk about the Rights of Men. However, he still believed its utility in the political arena with respect to claiming some provisions from the sovereign power. This is what caused his peace with the 'Rights of Men'. Even more, Freeman (2002) evaluates the utilitarian turn as something which contributes to the rise of the human rights concept after its demise with the secularization which makes it emptied after the divine ground has been taken from the beneath. According to the utilitarian point of view, the concept of rights must be safeguarded simply because it serves to 'augmentation of happiness of the party whose interest is in question' irrespective of whether or not it makes sense. In that regard, those who disbelieve in the concept of human rights but still hold the idea that it must be defended and enshrined under constitutional order can fall into the same line. In other words, the favorable consequences which can only be attainable via the instrumental use of the human rights set are what matters in that point of view. Most of the constructivists who believe in human rights are nothing but the discursive construction can be evaluated within this category as well if their approach is still affirmative at the last instance (For example, Halliday, 1995; Kaballo, 1995; Kenneth, 1995).

Even though I will not take a critical stance towards the issue of the rights while analyzing the field research result, it is still important to allocate a brief space here to these discussions. This is because these critical point of view create the opportunity to develop the conceptual recommendation for the term of basic rights.

3.2.2 Foundationalists Approaches

Vis a vis the skepticisms, and criticisms listed above, foundationalist and constructivist school tries to hold a pro-universalist position on whatsoever transcendental

conceptualization of human beings. In that regard, there are scholars, who attribute rationality (Rawls, 1971); or a morality (Gewrith, 1978; Feinberg; 1992) to the so-called nature of human being and thereby establish a ground for the conceptualization of human rights. To be able to jettison the philosophical yoke, there are also scholars who are pushing a 'human-nature-free' conceptual ground for human rights. In that regard, a vein addressed the question of human needs (Bay, 1982; Green; 1981; Pogge, 2001). They commonly argued that the basic needs of the human being at the sufficing level to keep it alive should be determined and out of which a rights-set may be composed. Alternatively, some scholars dwelt on the issue of human capacity (Nusbaum, 2011; Sen, 2005). This point of view targets the actualization of the human potential through its capacities has been supported. However, it seems it caused even more problematic than the issue of human nature (Donnelly, 2013). This is because of the resemblance of the question of what are the human needs to that of human nature. In other words, the conceptualization on the basis of the human needs remained amorphous again.

Apart from these, there are also other scholars who simply evade the question of human nature, or the foundation of the concept of human rights or left these questions' answers highly feeble. In these cases, although they admit that humanity cannot afford to come up with such an idea, they do not delve into it much and rather continue with the construction of human rights. Donnelly, as one of the most famous classic supporters of the concept of human rights, ideally fits into this categorization of the scholars. He plainly admits that human rights are nothing but a historical contingency and a modern concept (Donnelly, 2013). He says that 'Human nature is a social project, rather than a pre-social given'. However, this does not behold him from seeking a ground on which, in the contemporary world, human rights may still work. This ground for him is the human dignity which also perfectly corresponds to the very reality of the post-War period's rights conceptualization[51]. As indicated above even though he

[51] The first article of the Universal Declaration of the Human Rights puts forward that "all human beings born free and equal in dignity and rights" UDHR, Art (1)

admits that human dignity is also a contestable concept just as the other volatile conceptualizations of human rights/nature, he finds a way around that the problem might socio-historically be constructed in this very context. This is actually highly in line with the other scholars who approach the issue of human rights from an affirmative angel. Freeman (1994) says that 'rationalism gives us humanity, and leaves us with the secondary task of realizing it historically' (p.497). In that regard, he adds Laclau and Mouffe, and Rorty along with those who share the same trench. Richard Rorty (1998), for example, is one of the famous thinkers who openly finds the question of foundation obsolete but still pursues stickiness to the idea of human rights. For him, the question to be asked is not 'What is our nature?'. But rather, 'What we can make of ourselves?'. He continues by stating that there is a growing interest in the malleability of human being resulting from the diminishing interest of the ontological questions such as human nature (pp.119-121). And, he concludes with the highly optimistic remark that 'If we can work together, we can make ourselves into whatever we are clever and courageous enough to imagine ourselves becoming'. This is what brings him next together with Donnelly who also put human rights as a 'self-fulfilling prophecy'. He states that '*treat people like human beings—see attached list—and you will get truly human beings*' (2013, p. 16). According to him the forward-looking moral vision of human nature provides the basis for the social changes implicit in claims of human rights'. However, herein, the question of who is going to decide what we will make of ourselves arises. And, this is exactly what equals to asking 'who will compose human rights?' by the virtue of this discussion.

3.2.2.1 Indivisibility and Basic Rights

The problem 'who should compose the package of human rights' does not drop off the international agenda even after the Universal Declaration of Human Rights in 1948. The process leading up to the declaration has been paved by the early ideas of natural law and natural rights, then constitutionalized firstly by the French Revolution and Independence War in America. This process is followed by the treaties abolishing the

slave trade and finally slavery during the consecutive centuries (Freeman, 2002). However, what brought international politics to a tipping point was surely the unprecedented destruction caused by World War II. Since then what is called today Human Rights has been incrementally expanded to 30-Article last version. In the beginning, the first draft prepared by a Canadian lawyer, John Humphrey, based on a comparative examination of the national constitutions. And after a series of meetings and discussions, the final draft has been adopted with forty-eight states voting for, none against, and eight abstaining. The abstaining states were six then-communist states, Saudi Arabia, and South Africa. In that sense, the UN members were composing of philosophically, ideologically, and religiously different interest-seeking agencies. However, setting aside the discussions on the foundations of human rights, UN pursued to create a consensus on the norms (international rules) not on the beliefs and values (Nickel, 1987).

As it stands, substantiating the human rights in terms of legal enforcement has always been subject to contestation among the UN member states. In its first draft, there was 20 Article smack of the natural law on the basis of the life, liberty, property, equality, justice, and pursuit of happiness. Later on it is expanded by the additional ten articles which append right to work, health and education. While the first twenty articles have been called “political” and “civil” rights and also referred to as the first generation of rights, the latter ten become the “economic”, “social” and “cultural” rights and also referred to as the second generation of rights. Moreover, during the 1960s the UN member states have expanded due to the global decolonization of the countries, especially in South Africa. With this development, the agenda of the UN General Assembly started to be bombed by the issues of anti-discrimination, self-determination, and anti-colonization. Following the fluctuant power balance in the UN bodies, in the 1960s, there have been treaties and covenants drafted and ratified. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are of special importance in that they set international mechanisms for the signatory states to report and to be held accountable for their activities.

Ratification of these two covenants was the display for the international power contestation. On the one hand, the first generation of rights addressing such as the right to vote, freedom of speech, freedom of expression, and also right to be treated with dignity and freedom from harassment, torture, and the like. On the other, the second generation rights shift the focus more on the issues such as the right to employment, right to education, right to adequate healthcare, social security, leisure time with payment and the like. For the realization of the first generation of rights requires no positive intervention from none of the duty bearer actors[52] (such as government, NGOs, or members of civil society, etc) but only refraining from breaching them, they are named as negative rights. These negative rights also referred to as the 'cheap rights', sometimes sarcastically though, simply because their exercise do not require any service provision by the government (Cranston, 1962). Needless to say, the power contestation over the rights put the first generation-negative rights on the side of the Western states; and the second generation has been interpreted as the diplomatic victory of the Soviet Bloc Countries (Cranston, 1962:34). For example, as Shue states (1980, p.6), Legal Service advisers at the State Department clearly split the Bill of Rights into two and regarded the 'economic, social, and cultural rights no matter how vital their fulfilment is as less genuine rights with less binding duties'.

However, Shue (1980) finds this way of categorization of rights fallacious. According to him, favoring one right set over the other is intellectual bankruptcy. Rather than contesting these two howsoever differentiated rights, Shue's suggestion is to create a smaller subset out of the intersection of these rights for the purposes of the protection the human beings. This protection is of the most vulnerable ones against the unbridled forces of the economic and political powers. In other words, what he suggests is drawing a red-line 'beneath which no one is to be allowed to sink' (p. 18). In the sense that he talks about the needs, and drawing an abstract line, he conjures up again the previous philosophical dilemmas discussed at the beginning. However, his way-out

[52] For the discussion on duty bearer see Donnelly (2013); Shue (1980)

comes from a self-referential construction of the rights. He suggests these rights must be the ones absence of which must take the enjoyment of the other rights off the table. In other words, these prospective set of rights must precede the existence of the other rights. He calls them *basic rights*[53] (Shue, 1980). For him, the basic rights must safeguard the subsistence, security and the liberty of the individuals. Accordingly, security rights must include not being subjected murder, torture, mayhem, rape, assault (p.20). This can be crosschecked with the other rights as well: No one without a credible physical security can enjoy the other rights. To put this another way, to be able to even talk about the other so-called social or economic rights one must at least be alive. In addition to physical security, subsistence rights must also be counted among the basic rights. According to Shue, subsistence rights both involves right to unpolluted environments such as clean water, etc. but also adequate food, shelter, clothing, and credible health (pp. 20-30) which also presuppose a promising concert of the institutional settings.

Following that since 1990, the discomfort with the secondary importance of the economic and social rights is observable in the academic works especially form the field of social policy and social works. Among them there is a considerable amount of contemplation laid on the constitutionalisation of the economic and social rights. Some of them has been defended it from rationalist and consensualist perspectives (Young, 2012). The concept similar to basic rights has been consisted by them as well (White, 2004; Young, 2012; King, 2014; Fabre, 2000). Having being away from addressing the great aspirations of ideal social justice, they rather appealed to most basic interests common to experience of human beings. Here, due to what is at stake is the minimalizing the rights strategy, their presupposition comes to be known as 'minimalism' as well (Ibid.). King (2014) argues that a social minimum should safeguard human beings' autonomy, well-being, and social participation because all justifications of human rights converge upon these three human interests (p.29).

[53] For a similar conceptualization of a subset of rights also see Nickel, 2007 [1987] . Making Sense of Human Rights [Second Edition], Malden USA: Blackwell Publishing

Thereby, the thresholds of healthy substance, social participation, and autonomy would be met by a 'provision of a bundle of resources'. This bundle of resources what Shue thinks as the robust organization of the institutional setting. Accordingly, they are established on the ground that which is required for a person to pursue her/his life without passing the other sides of the three thresholds listed above. In that regard, a healthcare system which also allows the right-holder to access necessary drugs, and at least basic level of education necessary for economic and social participation might be added next to the Shue's basic rights. In addition to these King also adds that falling apart from the communal and/or social participation is also something intrinsic in human dignity. This is why he also supports financial or in-kind assistance in cases needed under the bundle of resources to be provided for the minimum rights (King, 2014).

The broad definition of the basic-rights concept is what constitutes the backbone of this thesis. The Temporary Protection Regime granting a set of rights upon the Syrian immigrants corresponds not only to the narrowest understanding of basic or minimal rights but also to the general 'Bill of Rights' endorsed by the United Nations as well. That said, the examination of de-facto implementations of the legislations, rules and circulars in connection with the TPR will be held on that basis. In other words, even though Turkish government recognized a rights-set for the Syrian migrants under the TPR, their accession to them have remained highly restricted, as discussed in the previous chapter along with the facts and figures circulating in the literature. This being the case, instead of re-evaluating to what extent the migrants are able to access to their rights defined under TPR, this thesis focuses on to what extent their basic rights in the sense of healthy substance, security, social participation is respected today.

3.3 Structural Causes of *de facto* Implementation Problems

The current problem of refugees' access to their rights and some basic services can be conceptualized in many ways. Given the fact that one of the main pillars of this thesis established on the question of how de facto implementations diverge from the TPR and

its relevant legislation and procedures, the problem at hand can be evaluated as the "implementation problem" as it is conceptualized in the literature of social policy and public administration. In the indicated literature bodies, the implementation problems are directly discussed under the public policy-making processes (Esman, 1980; Grindle, 1980; Smith, 1973; Meter &Van Horn, 1975). However, policy-making is embarking deliberately on the creation of a comprehensive and deeper social change in a targeted social area via the hands of governments (Ibid.). These can be epitomized by the policy changes in the area of employment, public health and education services and the like to create better possibilities or eliminate a problem altogether. In that regard, Turkey's refugee response does not aim at the creation of such a social change, nor it initiated deliberately by the government. Instead, what is witnessed here is the articulation of Temporary Protection Regime into the already existent social policies due to the unplanned sudden massive influx of immigration[54]. This is why the literature bodies that I will avail myself of are not exclusively and exhaustively composed of the social policy, albeit includes it too. After clarifying the most prominent concepts related to the implementation problems, their possible structural causes in the Turkish context will be discussed.

3.3.1. Incapacity Problem

Institutional incapacity comprises the intersection point between the literature body on the Syrian immigrants surged especially after 2011, and my thesis on the most distinct structural problems of the right accession processes. However, it is important to remember the fact that in the relevant literature on Syrians cited mostly in Chapter 2, the institutional incapacity has been established far from the conceptualization as a social structure. In other words, in the literature on the Syrians' right accession problems; the institutional incapacity has been put fore in the descriptive sense exclusively arisen by the unprecedented amount of immigrant influx. Yet the incapacity

[54] There can be against-argumentations, however, whether or not Turkey's response on the Syrian migration is a policy would far exceed the extent of this thesis

problem in the Turkish bureaucracy and its service provider institutions has always been in sight. The inadequacy of the schools, hospitals, and other public service institutions in terms of the employees' inefficiency, material impossibilities, and over-crowdedness was always the case for Turkey's public services.

The incapacity problem in the relevant literature bodies mostly covered under the implementation of the public policies. And, these policies, in general, are the developmental ones. Designation of public policy or a development program does not necessarily give the expected outcomes and the erosion occurs in the implementation processes. This "attrition" is more pertinent to the developing countries than the developed ones (Smith, 1973a, 1973b, Grindle, 1980). The reason for this is attributed to the state's howsoever incapability of organizing robust mechanisms to execute the planned policies (Rondinelli, 1978; Riggs, 1963; Esman, 1980; Myradal, 1970). However, in these discussions, the notion of incapacity remained somehow ambiguous and used eclectically for substituting for many problems from context to context.

Incapacity is used in the sense of lack of knowledge and the database at the stage of the policy formulation (Rothchild & Curry, 1978; Smith, 1985). This also denotes the absence of technical expertise on the issue and revealed itself as the high level of uncertainty in the implementation and planning processes. This does not only mean that the implementers in the public officers suffer from the ambiguity of the legislative proceedings, but rather, consternation at the first instance while designing public policy. Because of this lack of technical information and a database, the policies or the response mechanism, developed by relying exclusively on the anticipations, intuitions, or most importantly, ideological preferences.

Also, the incapacity is used in the sense of limited resources. Limited resources basically are the financial inadequacy which is translated into material and equipment inadequacy, poor physical conditions, shortfall of the qualified technicians and professionals (Esman, 2006). This qualified technicians and professionals can be thought in the way that it encompasses a wide-ranged area from, for instance, the

translators and interpreters to the doctors and medical caregivers, or to the teachers and the like….

Therefore, it can be said that from context to context the term incapacity is utilized in sometimes a narrow and sometimes in a comprehensive manner. In my analysis, I will use the term in the way that it encompasses everything of which actualization is incapable of, regardless of the intention of the agency who undertakes the proceedings. This means that the incapacity encountered in the right accession processes is independent of the initiative, intention, or deliberation of the agency. In that sense, the incapacity can be an institutional/ material incapacity, i.e. lack of slots or seats for the beneficiary in any service, or lack of the physical instruments in the service provision such as hospital equipment, or technical incapacity, i.e. lack of technical expertise or profession to deliver the service. Still, it is worthy to open a bracket here that as the analysis goes up to the public policy levels, the intentionality at the government side can be blurred.

3.3.2 Inefficiency Problem

Of course, this is not the first time where the two terms bureaucracy and inefficiency are mentioned together. Ever since Weber delineates an ideal type for bureaucracy and furnished the term with utmost rationality (Weber, 1946); bureaucracy has been both tested empirically and criticized theoretically to ensure whether it is efficient or inefficient.

The rage towards the inefficiency of the bureaucracy crests with the Merton's evaluation of the bureaucratic structure. He argues that in the bureaucracy the rules which supposed to provide a layout for the ease of the execution of the policies and the service delivery get in the way of the provision of these services too much. This creates almost a pathologic state of proceedings that stickiness to the rules loses its instrumental meaning and turns into the end in itself. He calls this "trained incapacity" (Merton, 1940). Scholars from different platforms also observed the same phenomenon

and keep criticize it as it has the tendency to end up with the 'absolutist attitude' in the implementation processes (Merton, 1938; 1940; Barton, 1979; Cohen, 1970; Wyckoff, 1990; Weimer & Vinning, 1999). This means that following the rules is so strict that it prevents even the delivery of the substance of that service and plugs the way for the public needs. Moreover, these bitter criticisms have been taken too far, along the same line, that Blau (1963) has qualified the bureaucratic mechanism as demonic. According to him, the inflexibility of the bureaucracy in terms of robotically following the rules tantamounts to all-or-nothing kind of implementation practices at the end (Blau, 1963). Indeed, in his interpretation, the demonic aspects of the bureaucracy come out when a person needs to get her/his things done, and bureaucrats or the civil servants cannot carry out the process as the latter ones deliberately prefer to be devilishly stuck at the rules. Therefore, this also brings the question of corruption and fraud into the table as well. However, Cohen (1970) breaks this unanimity with an empirical case he observed in the area of employment service. He says that the civil servants or the bureaucrats do not necessarily be that adamant in the processes of the implementation. Rather, they show flexibility depending on their own personal traits and preferences. Still, Cohen too concludes with that this flexibility also can harm the public interest as it can well prolong the process at the hands of a malevolent civil servant or a bureaucrat.

As the public service deals with meeting the public needs, efficiency is directly related to the public interests in the long run. Defining the efficiency is mostly discussed under the methodological chapters developed for the purposes of gauging the efficiency of the public services vis a vis the money spend by the government. Those scholars are mostly interested with the bureaucracy at the policy-making and execution level in terms of the country's economy (Wyckoff, 1990; Weimer & Vinning, 1999; Riggs, 1998; Miner & Rugierro, 1995). Therefore, in their conceptual framework the efficiency of the public administration and bureaucracy is constituted by the curve of the effort put forth (by the government in terms of spending and allocated budgets) and the material outputs (if the public service includes manufacturing) or the outcomes (in terms of the public services provided). In other words, from that point of view which is

closer to the political economy, the bureaucratic efficiency is again thought as the utility maximization of public services for the public and as well as the government budget. Therefore, their main focus mostly dwells on the management side of the public administration. According to their point of view, there are several factors which have a direct impact on the efficiency of public services.

Competition comes up first among these factors. In many studies, the lack of both internal and external competition within a public service has been pointed as the most distinct culprit of the bureaucratic inefficiency (Riggs, 1998; Wyckoff, 1990; Barton; 1979; Weiner & Vinning, 1999; Robinson, 1990). While the internal lack of competition is related with the structural adjustments of the institutions in terms of tenure employees and the civil servants, the external competition, on the other hand, refers to the spot that institutions covers in the market. The lack of internal competition harms the service provision as it lowers the performance of the civil servants. Also, the lack of rivalry outside of the institution creates a low-quality supply of public services. In that regard, the fact that public institutions are immune to the "invisible hand", has been noted in the relevant literature more often than not (Among others, Barton, 1979). However, it is also important to indicate that along with the criticism concerning the absence of the competition and rivalry, the full-fledged or the so-called perfect environment of the competition is suggested neither. Instead, a kind of controlled conditions for the competition is suggested for the highest interest of the society in terms of reaching the optimal quality of the services.

Another mostly marked point is the lack of a market base or science-based performance measures. After being firstly brought up by Von Mises in 1944, the need for scientific management in the public administration has shown itself within the mentions of many scholars. Barton (1979), for example, draws the attention to the fact the scientific managerial system establishes a functioning audit and supervising system, the absence of which concomitantly ensues a distorted reward/punishment mechanism biased by the political representation. Especially in the authoritarian states this gets worse and reveals

itself as the patronage/clientelist relationship as those countries are more vulnerable to the ruling class exploitativeness. Moreover, even though it is not named under the scientific management techniques, the number of employees in the service provision is also noted as one of the other factors impacting inefficiency. Prakinson's (1957) important contribution that there is an optimal number for the supposed best efficiency of the employees has been noted in the literature as the Parkinson Law. According to that, as the working environment gets crowded the efficiency gets lower. Later on, Klimek et al. (2009) have corroborated with quantitative research.

3.3.3 The Structural Causes of Inefficiency in Turkish Public Administration

When we narrow down our scope to Turkey, lack of science-based managerial approach in the Turkish public administration manifests itself as the most relevant and prominent causes of inefficiency prevailing in the service provision and implementation practices. Metin Heper in his Ph. D. thesis (1985) sought an answer to the question of 'Why a scientific, formal-rationality based understanding of public administration has not developed in Turkey?' (p.7). He sees a continuum of the 'guardian-caste bureaucracy' of the Ottoman state through the modern nation-state of the Turkish Republic, and he argues that the former did not transform into a merit bureaucracy over time. As there is no full-fledged science base technics governing the public administration of the Turkish bureaucracy, the raison d'etre of the bureaucracy grow apart from the public responsiveness in the sense of delivering the substance of the services and policies. As such, this paves the ground for the ideologically-biased, self-interest seeking practices such as patron/clientelist exchange, bribe, nepotism, cyronist relations and the like; rather than rational actions attaching priority to the public good.

3.3.3.1 Lack of Scientific-Technical Managerial System in Turkish Public Administration

Heper analyses the bureaucratic maladies intrinsic into the Turkish public administration on a comparative ground. He mostly follows the path led by the Mardin's thesis that in the Ottoman State, the economy did not thrive in the way that it organically brought out by a social mobilization, especially among the middle strata. This being the case, according to the followers of this school, the social mobilization has been induced by a small cadre of the intelligentsia. Therefore, the state power turns out to be the actor not the outcome of the social relations, and this is how, under the guidance of the aspirations of a small intellectual group, the modernization ushered in Ottoman-Turkish State (Ward & Rustow, 1964; Mardin, 2000; 1973; Heper, 1985; 1992; Özbudun, 2000; Karpat, 2006)[55].

According to Heper (1985), the West managed to differentiate bureaucratic institutionalization due to the impetus given by the mercantilist norms, relatively easier than the Ottoman state could. Combination of this with the remote link between the church and the absolute monarch come to serve the separation of the state administration from the religious, cultural tenets as well. With the French Revolution, the bureaucratic formation stripped from the arbitrariness of the ruler, and conceded the rule of law (p. 15-56). In other words, while a separated bureaucratic body ramifies, the identification of the scientific-technical managerial understanding with the cultural-religious tenet broke off. In stark contrast with that, in the Ottoman state, the bureaucratic administration was not able to disentangle from the Islamic religious

[55] This does not mean that other perspectives to Ottoman-Turkish modernization do not exist. For example, some scholars challenged the dominant paradigms in the study of Ottoman Empire and focused on the analysis of modernization from within complex dynamics of power, demonstrated the changing nature of elites and constituent forces of the Empire. Rather than a ruling-central model (Abou-El-Haj, 2005; Tezcan, 2010). Similarly, there are critiques of dualistic center-periphery frames and state centered models of analysis which might miss the multiplicities of the process of the emergence of Turkish state (Emrence, 2008).

principles. The causes of this both can be sought in the feeble 'ayan' class[56] and as well as in the prescriptive static and infiltrating nature of Islam (Berkes, 1998). However, the fact still remains that the identification of the technical-scientific expertise continued to be with the Islamic principles. And as Heper argues, the connection between the bureaucratic merit and the Islamic tenet could not be broken off, yet could weaken during the nation-state establishment[57]. However, what was at stake during the establishment of the republic was almost the complete superseding of the prescriptive static Islamic values of which rationality remained at the substantive level in a morally-interwoven way, with the more secular but equally prescriptive ideology of nationalism.

Given the stated argument that the modernization process is induced by an élite cadre rather than the indigenous economic, social and political forces, the nation-state building was also interpreted as an outcome of the modernization zeal. In that regard, the nascent governmental institutions of the new republic have been established as the administratively centralized modern instruments to cater the prospective citizens. However, the values that must prevail was not there yet (Bouquet, 2016). This is why the bureaucratic development, particularly during the late Ottoman and early Turkish state, has been qualified as an uneven one (Heper, 1985). Also, during the nation-state establishment, the official ideological lacuna of the new Republic is filled by a tripartite ideological system: Nationalism, étatism, and populism. In that regard, nationalism can be read as an effort to form a meta-identity which is intolerant to any sort of autonomy and variety among the citizens (Ünsal, 1998). On the other hand, étatism is the economic rectification endeavor of the new state by the means of draining the resources

[56] which corresponds to the middle class of the Ottoman state, mostly occupied by the artisanship but not really with the trade (Karpat, 2006)

[57] It is worthwhile to drop a footnote here that the process of the establishment of the Turkish state was by no means was contestation-free with the previous cultural, economic, political, and social forces of the precedent sovereign. Therefore, while the bureaucratic merits' identification supersede with more secular tenets, the bureaucratic field also turned into a stage of the political rivalry between the Ottoman state and the Young Turks. However, for the sake of not exceeding the extend of this study, this process will be skipped.

into the center. These étatist policies created a halo composed of the public who also try to take economic and political advantage of the powerful bureaucrats around the center (Gourisse, 2016). Another function of the étatist policies was inducing the economic development through an entrepreneurial class under the protection of the state. Over time, this project yielded in a new oligarchic cadre composed of the local notables and the big business-people. Their political stance was marked by more traditional values of the Islamic tenet. After switching to the multi-party system in 1950, Democrat Party took the office. Their party program was on the basis of economic liberation from the "protective measurement of the government" with an accompanying traditional conservative prospectus for the civil society. According to Heper (1985), the burgeoning of a new ruling élite and their take-over was rather an organic development than the induced one. The new conservative ruling élites were arbitrating between the entrepreneurial business people and the masses by creating a greater potential of the social mobilization. However, this neither yield in the formation of a middle class with consistent and objective values could have been imposed upon the administrative structure for a more scientific rationale and technical governing. On the contrary, their main function has become the revival of the Islamic tradition in a combined form with nationalism.

Thus, at the last instance, what deprived of the Turkish public administration from a productive-rational and technical-expertise governance was its over-determination by and over socialization with the political value system due to the absence of well-developed middle-class values which supposedly should have brought about a tradition of socio-economic change. In other words, according to Heper (1985; 1998) for the bureaucracy was too busy with inducing socio-economic and political changes driven by aspirational visions, they could not duly deal with developing a merit-based understanding of public administration. And this has kept manifesting itself as the inefficiency during the policy-making and implementation processes. However, it is important to emphasise the fact that here what is meant by 'being too busy' is not in the sense that the élite ruling cadre of the Ottoman and Turkish state was not able to handle

with the administrative affairs, but rather the administration was overly politicized and molded at the hands of the political aspirations of the unsteady ruling.

3.3.3.2 Lack of Rights-Based Understanding During Implementation

Furthermore, another structural problem intrinsic in the same state-society relations, relevant to the discussions in this thesis, is the lack of right-based understanding among the public as it appears during the service provision processes. Its roots also go back to the residues of the patrimonial legacy of the Ottoman state. In the literature, the embodiment of the rights-based understanding has been discussed mostly under the issues of citizenship and democracy (Ünsal,1998; Üstel, 1999; Özbudun, 2009; Gürses, 2011). However, in this thesis, the concept of the rights is not pursued as exhaustively restricted by civil and political rights. This is why looking at the literature on the social work and social policy designation and implementation would also be illuminative after discussed the former.

To begin with, it would not be wrong to argue that origination of the concept of rights has developed in the Ottoman-Turkish state highly dissimilarly from that of in the West. As discussed earlier in this chapter, the first theorizations of the rights infused in the political contemplation realm of the West by the conceptualization of natural rights. The importance of natural rights, for our context, is its egalitarian and universal characteristic. Contrary to that, Donnelly argues that in the Islamic thought it is quite challenging to come across with a conceptualization similar to what would have been called human rights today (Donnelly, 1982:49-57). But still, in the Ottoman state, the societal order was organized on the basis of a strict understanding of a justice strongly patterned by the Sharia law (Eldem, 2017). Sharia law embodied in the authority of the Sultan (who is also Caliph) was of an omnipotent character in the daily lives of the subjects of the empire as is Islam of a prescriptive character in the moral, ethical, social, and political terms as well. What is interesting in this point is that even though there was a strong tradition of justice, the comprehension and conduct of it within the Islamic thought, especially under the Ottoman order, *was not* necessarily in alignment

with the principle of equality. This means that the concept of justice did not presuppose a set of collateral egalitarian rights vested equally upon the subjects. Eldem (2017) argues that this very well-known and accepted fact, readily open in the inequality between the Muslims and non-Muslims, women and men. As such this poses the first contradiction between the modern understanding of human rights and the conservative Islamic tradition of the rights and justice.

In the Ottoman state as a result of the patrimonial regime, the sovereign ruler is regarded as the 'owner of the land along with those who live on that very soil'. The ruler's relation with the other servants is in a patriarchal form where the Sultan is in the role of the father and where the rest is considered as its family/home (Mardin, 2000; İnalcık, 1958). This being the case, what could be counted as the first written document regulating this relationship between the state and its subjects in the way that giving an elbow room to the latter is brought about by the hands of the state itself to gain some support from the mass (Ünsal, 1998 [Recited from Gürses, 2011]). What is at stake here is that the promulgation of these documents, initiated by the 'Şer'i Belge' (1807) and followed by the 'Senedi İttifak' (1808), 'Tanzimat Fermanı'(1839), and 'Islahat Fermanı' (1856), is not the consequences of a pressure brought out by the organic socio-economic developments in the society (Karpat, 2006; Ozbudun, 2009:7). But rather it is a result of the aspiration of bringing an end to the collapse of the state by upgrading the status of masses within the communal relation (reayaa) to the level of something closer to the concept of citizen (tebaa). Hence, it would not be wrong to argue that while in the west the invention of the concept of rights is for the protection of the individuals on an egalitarian basis, in the Ottoman state it transpired as vice versa, i.e. as the protection of the state's perpetuation. The political culture of the self-saving state has been ascribed into the Young Turks as well. Even though in the nation-state building processes the rule of law has been unconditionally introduced in the Republic, a representation system which mirrors the 'general will' of the citizens is deemed enough. And the full-fledged realization of a rights-system has been kept deterred to an unknown future (Sağlam, 1998). Moreover, under the rules of the other

governments, the Turkish public sphere has been always the stage for nipping of the burgeoning rights by the intermittent but frequent coup d'etats (eds. Ünsal, 1998).

In a nutshell, it can be argued that there is no strong legacy inherited from the Ottoman Empire in order for the civil and political rights to thrive later. When we change our angle towards the social and economic rights, which requires an active role of the state for the service provision, concluding such an argument does not seem that easy. Inalcık (1994) argues that the Ottoman Empire was indeed a welfare state on the basis of the fact that there was a comprehensive mechanism catering some basic needs for the subjects living on its soil. Inalcık continues that the idea behind this was the philanthropic Islamic rule stipulating the public welfare and the economic principles organized around moral values. However, this welfare provision in the Ottoman Empire carried out by the state-sponsored and private undertakings on the basis of a presumed moral economy. To be clearer, even though the state spearhead of the philanthropic donation, along with the private wealth owners, the distribution of disproportioned wealth was undertaken by the channels of waqfs, military salaries, and agrarian tax revenues (Inalcık & Quataert, 1994). Thus, the welfare understanding prevailing in the Ottoman state did not rely on the centralized bureaucratic institutions on the basis of uniformity, systematicity, and centralization. In that regard, Singer (2008) argues that Inalcık's interpretation of the welfare state first and foremost seems ahistorical. She ground this on the basis that infusion of the term welfare state has been taken place after the Second World War. Also, she continues by the fact that in the welfare state what is aimed is both saving people from 'falling off the cliff' and decorating them with the abilities of self-maintaining. Moreover, the Ottoman state's example poses stark contrast in other senses as well: In the Ottoman state, the welfare service provision is not impersonal. Singer explains this the service provision was mostly constrained within the city centers, as a result of this considerable number of the population remained excluded. Likewise, the service provision was selective and targeted too. This is because in most of the cases the welfare support was provided to Muslim and male population. Additionally, she argues that most of the expenditures

were not spent from the state's coffer, but rather depended on the private attempts and the war revenues. All in all, even though there is a philanthropic concern to support the people in the Ottoman Empire, as this service provision is not impersonal, systematic, self-sustaining, institutionalized and well-coordinated, Singer concludes that it was rather a *welfare society*, not a welfare state. This being the case, the social and economic necessities of the people was under the autonomy of the waqfs' ability to charity giving. Şişman (2017) makes a similar remark on the issue. According to her, there was never right-based understanding settled in the provision of social services. In terms of the sociologic, demographic composition of the society what was at stake was mainly crowded families, closer kin and neighborhood relations, religious Vakıfs and the like (Şişman, 2017). Its combination with the Islamic tenets such as zakat, fitre, sadaka, kurban and the like, the protection of the vulnerable ones has been undertaken by the civil society itself, rather than the rulers. In addition to that, the occupational associations built by the fellow craftsmen and artisans called *lonca* and *ahihilik*, has formed a charity pool for the social solidarity. Again, with the advent of the 19th century where comprehensive administrative alterations are imposed, more right-based, systematic, institutional and regularised implementations started to be seen. In 1868, an institution to provide relief assistance during the war times has been established and turned into Kızılay, as known today, in the 20th century. Over time, after the republic has been established, and as the individual fundamental rights and freedoms are recognized in the constitution, a social-policy making in the modern sense of the term commenced.

However, even after the establishment of the republic, the social service provision was not trouble-free. On the contrary, in the relevant literature, the social service provision has always been associated with the clientelist way of the relation of the government with the masses. This is both interpreted as the problem of Turkish public administrations (Özkanan & Erdem, 2014) and also the problem of authoritarian state-society relations (Among others, Durmaz, 2016; Somer, 2016; Ulutaş, 2017).

3.4 Conclusion

In this chapter, the theoretical and the conceptual framework of this thesis is tried to be clarified. As the main axis of this thesis is on the structural causes of the rights violations of the Syrian immigrants arising out of de facto implementations of the legislations, and rules related to the TPR, I firstly defined what is to be understood by the social structure. In that regard, the Giddens' understanding of the social structure which is virtually formed by the relentless reiteration of the same practices of the actors has been adopted. Moreover, Giddens' understanding of social structure is not a static one which would otherwise be doomed to reproduce itself in the exact same manner forever. But rather argues that the practices of the actors turn into both the mediator and the outcome of the same structure. In line with this, Bourdieu's conceptualization of habitus draws our attention to the same recurring picture in the smaller scales. According to Bourdieu, where the practices of the actors are inculcated is also becomes the means of 'structuring the structure'. Therefore, while these practices recurring again and again into the bureaucratic fields, for our case, they are orchestrated by the bigger structures but also they orchestrate the same structure too. To concretize, it can be said that the structural problems of the Turkish bureaucracy give way to a set of practices (such as inefficiency) which also gives way to the reproduction of the same structural problems again. Within this framework, what is asserted further is that between the gears of this recursive mechanism, an amount of "attrition" in the sense of right accession deficits occurs.

Later on, I wanted to specify what is to be understood by the concept of rights. As indicated in the precedent chapter, in Turkey, the Syrian immigrants' rights are safeguarded by the Temporary Protection Regime. The rights set conferred upon the Syrian immigrants by the TP Regime are in alignment with the internationally recognized Bill of Rights. However, when we look closer, it appears that de facto implementations of the Foreigners' Law and the other associated legislation and regulations can cause some deficiencies in the basic rights. Here the basic rights are

conceptualized as the subset of the intersecting first and second generation of human rights, having been inspired by the Shue's initial definition. According to this original conceptualization of the basic rights, there must be a red-line, beneath of which no one should be allowed to fall. These rights are also be cross-checked by their 'mediating' aspects. This means that all the other rights causing unresolved philosophical debates must be possible only and only if the basic rights are there and well-realized. In other words, the absence of these basic rights must denote the absence of the other possible rights as well. Upon this conceptualization of the narrow understanding of the basic rights, there have been some responses from the literature bodies particularly on the social work and social policy. In their discussion, three chief principles precipitated out of the superimposition of a similar emphasis on the functions of both human rights and the basic rights: Healthy substance, social participation, and autonomy. Accordingly, they expanded the content of the narrow delineation of the basic rights in the way that includes the right to assignment on adequate healthcare and education. Thereby the specification of the concept of rights comes to be completed as well.

Lastly, I wanted to search for the possible structural causes of de facto implementations of social service delivery. In that regard, the world literature showed two possible answers: the problem of incapacity, and inefficiency during the service provision. In the literature the incapacity problem was rather amorphous and eclectic. Therefore, the incapacity is operationally defined as both the technical incapacity and the institutional/material incapacity. While the former is more related to the technic and expertise inadequacy in the policy-making and implementation processes the latter refers to financial and equipment shortfall. When it comes to the problem of inefficiency, the main cause turned out to be the lack of scientific expertise management of the public administration, along with the lack of competition and rivalry.

Therefore, I focused on the structural causes of the lack of scientific expert technics in the literature body on the Turkish bureaucracy. In the literature, most of the structural

problems of the Turkish politics and state-society relations have been accounted for by the Ottoman states' lag. This is argued mostly by relying on the thesis that the socio-economic transformation of the Ottoman state has not been organically transpired by the impetus of a middle class. But rather induced by an élite cadre in accordance with their political aspirations and projections. Because of the lack of the former, there was also a lack of a compelling pressure on the objective and consistent middle-class values. Instead of that what was at stake was rather overly preoccupied and socialized ruling élite cadre with the political agenda. Moreover, there was also a notable impact of the Islamic tenet identified as the bureaucratic merit for the administrators. This is also pointed out as one of the other reasons precluding Turkish public administration's break off with the quasi-medieval bounds.

Apart from that, the lack of rights-based understanding during the service delivery has arisen as the other possible cause of the right accession deficiencies. The same state-society relations molded immediately by the patrimonial regime of the Ottoman state have become highly determinative. Also, the contradistinction between the West and the Ottoman state in terms of the development journey of the right concept can be highly illustrative. Accordingly, while the concept of rights has arisen as the universal and egalitarian value in Europe, in the Ottoman Empire the objective rights on the basis of the justice system did not presuppose any equality. Furthermore, the very precursor term of the natural rights has been established on the protection of the individuals as its raison d'etre, and demanded by the individuals who are at the verge of 'being citizens'. On the other hand, in the Ottoman state, the first regulative document has been brought out by the state itself for its own protection. While this draws the development path of the civil and political rights, the situation for what is called positive rights was slightly different. In the Ottoman state, public wealth was relatively high. Yet this was not a result of the positive action-taking of the state. Rather, it turns out that this was relying on a charity based understanding as the service provision was not impersonal, systematic, centralized, institutionalized, and out of the pocket of the state.

This being the case, even though some institutional reconfigurations taking place at the administrative level especially by the hands of the modernization zeal of the Ottoman-Turkish state, the structural problems of the state-society relations having repercussions on the Turkish bureaucracy and the Turkish politics remained intact. In that regard, these structural problems perpetuated to give way such practices that they cause the rights accession deficits on the ground. In the next chapter, these practices will be examined.

CHAPTER 4

4. THREE WAYS OF IMPLEMENTATION PRACTICES

In this chapter under the light of the theoretical and conceptual framework laid out in Chapter 3, the findings of the field research will be discussed. De facto implementation practices in the bureaucratic field will be connected to the bigger structural problems of the Turkish bureaucracy and the state-civil society relations. Moreover, the right accession deficits in the sense of physical well-being (including right to healthcare services, adequate food, shelter, and right to security), autonomy, and participation to the communal/social relations (including right to work and education) will be examined in relation with the intended or unintended outcomes of the implementation practices.

In that regard, the discussion will be opened by the national or international non-Governmental Organizations (I/NGOs) role on the ground. This is because the narration of the NGO employees also harbors hints as to the well-seated practices of the bureaucratic implementations of the regulations and legislations. After this, there is a special place spare for the ID obtaining processes due to its unique importance for the beneficiaries as the precondition of pursuing their life in Turkey. Another reason for this is that the ID obtaining process is mostly marked by almost all conventional bureaucratic maladies of the Turkish bureaucracy. As such, it posits the sources of the most vital accession deficits. These two subsections are followed by the three de facto implementation practices of the government officers during the service provision and law enforcement: *Arbitrary/Inconsistent Implementation, Prolongation, and Conditional Implementation*. These ways of implementation practices are come out of the consistent, superimposing narrations of the protection employees who work vis a

vis the government officers and as well as the beneficiaries. And lastly, there is a discussion sub-section where the three implementation practices are discussed along with the structural problems and as well as their possible harms to the basic rights of the Syrian immigrants.

4.1 I/NGOs Role in the Field

Before starting to discuss what are the NGOs' role while assisting the immigrants during their rights accession processes, it is important to make a distinction between two concepts mostly cited together: the Civil Society Organizations (CSOs) and the Non-Governmental Organizations (NGOs). CSOs are the grass-root formations arising out of the uncoerced aggregation of the people around a common demand, problem, or interest for forming a counterposing force during the policymaking processes in the national and/or international agenda (Walzer, 1991). They create a forum-like environment where the civil society comes together, discusses and later on poses a counter-hegemonic resistant movement against the state-centric world. Moreover, they also create pressure upon the governments and push them being more transparent and accountable to the public by urging the people to participate. This is why they are mostly evaluated as the key area for possible democratization of the world (Keyman & İçduygu, 2003).

However, what is important here is that the formation of the CSOs consists in the voluntary participation of the civil society and their will to create an impact on the political agenda. As it stands, this requires a strong tradition of active citizenship in the sense of civic and political engagement in the state-society relations (Bee & Kaya, 2017). As it is discussed in the preceding chapter it would be challenging to assert the existence of such a public sphere which is equipped with the consciousness of the civil and political rights that pushes a bottom-up pressure to the government in Turkey. However, it is still noteworthy to indicate the fact that after the 1999 earthquake a revival of the CSOs is observable. However, even this revival urged by the aid-based rganizations has been curtailed by the adversarial relationship between then-

government (Jalali, 2002).

The second boom of the CSOs in Turkey has come with the Syrian crisis. However, it would be questionable to argue that during the Syrian refugee influx, the emerging NGOs are those formed by the local, authentic concerns of the citizens. What is witnessed during this process is rather the relief and resilience operations of the national or international NGOs? This brings us to distinction point where the CSOs and NGOs separated from one and other: These operations carried out by the means of smaller or bigger I/NGOs, are initiated firstly by the Inter-Governmental Organizations (IGOs)' aid pools such as ECHO[58] or UN-OCHA[59]. Therefore the ripple that Turkey experiences now is induced by the top-down effect of globalization under the form of 'global governance'. Through the channels of the IGOs, such as UN Agencies, a lump of money is pyramidally infiltrate to the smaller or bigger national or international non-governmental organizations. However, it is still important to emphasize the fact that here the grass-root CSOs and the top-down IGOs are not completely irrelevant from each other. Apart from that, they both work in the civil sphere (government-free, possibly international); the IGOs can also employ the CSOs as well. With the Syrian crisis, most of the already existent CSOs expanded their working fields in the way that it includes some sort of service or assistance provisions to the Syrians thanks to the fund allocation of the IGOs (Mackreath & Sağnıç, 2017). Also, there has been mushrooming of the new non-governmental organizations established for the purpose of carrying out professional works in the humanitarian sector of 'refugee response' regardless of depending or not to the IGOs. Therefore, it would not be wrong to say that the NGOs appear as the implementer hands of the inter-governmentally set policies in different fields. In that regard, their existence mostly owes to IGOs and also to the permission from the government to be able to operate their work in the field. In my

[58] European Civil Protection and Humanitarian Aid Operation, a sort of humanitarian fund pool which provides resources for the activation of most of the NGOs in Turkey. For further Information see: https://ec.europa.eu/neighbourhood-enlargement/news_corner/migration_en [08/09/2019]

[59] The UN Office for Coordination of Humanitarian Affairs which funds mostly emergencies and therefore, cross-border operations in Turkey. For further information see https://www.unocha.org/about-us/funding [08/09/2019]

field research, I reached out to those who are carrying out a professional protection works irrespective of whether or not they were CSOs or NGOs.

In that regard, these NGOs provide legal and psycho-social consultancy, deliver social services, provide financial assistance, undertake advocacy on the humanitarian, and bridge the gap between the public services and the beneficiaries so on and so forth. In other words, as the operations and the activities of the NGOs in the Turkish case, for the time being, already became a sector, they do not appeal to civil or political mobilization, but rather, they try to go on with their business by providing ad hoc assistance and relief operations to the people in need. In that sense, they are not able to put forth a self-sustaining mechanism of empowerment and protection, but rather they carry on their activities case by case when a right violation or right accession problems occur. Thereby, the protection staffs employed in the I/NGOs fill the gap between the government and the beneficiaries by reaching out to those who are already or possibly having an inconvenience, and by working closely with the government offices and the civil servants to push a trouble-free run of the rights accession processes. The NGO employees that I interviewed also position their occupation in alignment these. For example, a 4-year-experienced INGO employee who is now in a coordinator-like position says

> I am filling the gap. Normally the government is responsible for the protection of the people who reside within the national territory, but the government here is so inadequate. Yet we are unable to do advocacy. This is not very sustainable for the beneficiaries.

Another 3-year-experienced officer from a national NGO expresses:

> We are facilitating the problems; make their [beneficiaries'] accession to the services. In a sense, we help them live on.

The examples above are perfect responses which in full accord with the conventional explanation as to the function of the NGOs working on the ground. However, there are also those who rather evaluate their occupation in relation to government officers and

civil servants. Among others, the following quotes can suffice to show their main tone. The NGO employees from the field of SGBV, child, and disabled protection fields having 5, 1, and 3, years of experience respectively say these:

> You know what my job really is: I am standing on top of the civil servants' head and push them to do their jobs. My days pass by forcing those officers in many ways to enforce the law already written.
>
> My job is negotiating with the government officers to facilitate the beneficiaries' access to the social services.
>
> I am solving complex problems. My job is problem-solving, which is not supposed to arise in the first place.

Therefore, it can be said that among informing the beneficiaries, facilitate their accession to the service delivery by providing interpretation service or making their appointments, etc; the definition of "filling the gap" also includes negotiating with the civil servants, convincing them, even begging them, as to how badly the TP beneficiary needs to that service. Or, obviously, it does so in the Turkish context. To what extent the facilitating, mediating helping them to access to the services composed of the negotiation processes with the civil servants and the bureaucrats will be revealed as the chapter proceeds.

4.2 Problems With the ID Obtaining

Since Arendt (1961) drew our attention to the fact that what is debated on as human rights is actually the rights of the citizens. In other words, to be able to have even the narrowest definition of human rights in the sense of life, liberty, and property, one should have a national identity. Since her remark on the issue, the relationship between the refugees and human rights started to hold a gradually incrementing space in the literature. And the studies emphasizing the fact that no matter what, the foreigners' law, in all around the world, posits an exception to human rights have accrued ever. This is true for the Syrians in Turkey too. Even though under the TPR most Syrians could avail

themselves of a rights-set akin to those conferred upon to the refugees all around the world with the exception of temporariness, Syrian has to pass through an array of bureaucratic processes to be able to achieve their statuses. This is actually where the exceptionality of their status begins. Herein, the exceptionality can be understood as the transformation of the so-called negative rights into positive rights. This virtually means that while each and every individual has a rights-set to be respected just because they born, the asylum seekers have to officially demand it from an authorization. This is actually what corresponds to ID obtaining processes for the migrants in Turkey. In other words, unless a migrant has an ID, s/he cannot have any rights but the 'bare existence'. Hence, it is important to state from the beginning the fact that every problem arising during the ID obtaining denotes a deficiency in the accession to not only TP status as though it is of a *sui-generis* value, but also to the very basic rights attached to it as well. To be clearer without a valid ID, no migrant can be formally employed, go to the hospital, rent a house and the like.

The ID obtaining process for the migrants and asylum seekers starts with the official registration with Turkish authorities. The registration is carried out by the Directorate General of Migration Management (DGMM) –the national asylum institution working under the authority of the Ministry of Interior. Since March 2016, with Regulation No. 2016/8 on the procedures and principles, a pre-registration implementation for the security investigation to be completed has been enforced. Accordingly, the immigrant first should approach to the DGMM Offices[60] in their provinces and give personal and biometric data. These are registered in the GÖÇNET system under the supervision of a police officer in order for this data to be combined within a single system later on. Afterward, a 30-day-valid document substituting for the original ID, starting with the numbers "98" is issued. Within 30 days, this temporary ID document should be replaced by an original ID starting with numbers "99". With this pre-registration

[60] These Provincial Directorate of Migration Management is also called as PDMM. However, as their function is the same within a smaller scope at the provincial level, the terminology DGMM will be used throughout the Chapter to avoid any unnecessary confusion or complexity.

document, the TP beneficiaries can avail themselves of the emergency services and they can enroll their children into the schools. In urgent cases such as advanced stages of pregnancy or cancer patients, the governor can step in and provide a temporary protection certificate without waiting for 30 days. Otherwise, in the pre-registration processes along with biometric data the resident details, any other valid documents from Syria, and detailed family information of the 'beneficiary-to-be' is requested. In case of the absence of any of these documents -which is quite likely for the Syria-originated documents given the war circumstances- the oral declaration of the Syrians is supposed to suffice for the pre-registration. Apart from ID issuance, the DGMM offices are also responsible for the demographic data update such as divorce, marriage, birth; transfer of the beneficiary into another city; and the beneficiaries' leaving processes of the country via the resettlement and/or voluntary repatriation. Herein, it is noteworthy to indicate that the IDs and the TP status are exclusively valid in the cities where the registration is firstly done. Therefore, the official transfer of the immigrant into another city is nearly as vital as the issuance of an original ID. According to the outcomes of the field research, as the main key-holder agency for all the rights including basic rights too; DGMM along with the other relevant set of bureaucratic agencies shows all the symptoms of typical, conventional bureaucratic maladies This is noted in the sense that there are implementation practices giving way to rights accession deficits caused by the lack of a sound monitoring system, rights-based understanding, informal relations between the right-holder and the service provider civil servants. However, this time its repercussion turns into the very life-or-death matter, for the migrant population in Turkey.

As it stands out of the procedure stated above, among many things, two major problem-generating causes distinguish: First, the winding process of the pre-registration resulted from the prerequisite of registration documents which unnoticeably involve a lot of other governmental or non-governmental institutions into the process; and second, the amorphous authorization of the civil servants to accept oral declaration where the whole negotiation, convincing and even begging practices begin, and over time set in.

For the former, what blocks the process from the very beginning is the certificate of the residence. To be able to receive this document one should first go to the mukhtar in the neighborhood with the tenancy contract signed on behalf of the immigrant, and s/he should demand a "settlement" paper from the mukhtar. If the immigrant had any official documents remained from Syria, s/he should make it translated by a sworn interpreter and then go to the notary to have official recognition and approval of that document. All these documents along with any corroborative papers such as any utility bill prepared on the immigrants' name and the like should be handed to the DGMM Offices. However, as it can be understood, without a valid ID it is highly already tenacious to have the tenancy contract, or the settlement paper or any official paper prepared on the name of the immigrant. And this can end the pre-registration process even before it starts. In line with this, the uncollaborative attitudes of the mukhtars can be the problem itself. In that case, if the migrant has a connection with one of the protection officers, can ask for help from them. What protection officers do is to go to the mukhtar and tell the situation and convince them to provide the required paper. This is reported many times by the protection officers focusing especially the rights accession deficiencies resulted from the registration processes. In these cases, the protection activities against the rights accession problems turn into going to the mukhtars' office and talk to them, convince them or inform them about the migrants' situations and the need for the ID.

4.3 Inconsistent Implementation

Still, in the absence of any of these documents, the testimony of the migrant him/herself is supposed to be enough for proceeding the registration. Yet, this is up to the decision of the responsible agent in DGMM. This brings us to the second point: In the registration processes the authorization power cast upon the civil servants in accepting the oral declaration and skipping the 30 days of investigation period can cause right accession deficits and push the Syrian migrants to "find a way around" and/or adopt other coping mechanisms such as resorting to bribe. Furthermore, there is

also one more thing making the process even more complicated. Before the last regulation enforced in 2016, the registration of the asylum seekers was mainly on the basis of their oral declaration. During the first rounds of registration, accuracy and the authenticity of the information provided by the immigrant were not sought through concrete channels especially because of the incredibly high numbers of the asylum seekers who are accrued every day more until the DGMM has been established. This inconsistency of the registration procedure before and after 2016 renders the people more and more subjected to the civil servants' authority. Inasmuch as the decision-making mechanism is established exclusively on the authorization of the implementing agent, the arbitrariness and the inconsistency unavoidably rule over. This is because are hinted by the words of the people who have to work with them. As to the arbitrary and inconsistent implementation of the registration system, the following statements are noted by the protection staffs from all fields, who have averagely 3 years of experiences:

> [For DGMM] They are absolutely not consistent, one day they can do your job, another day they can brush you off. It is totally up to their mood.
>
> There are certain things that they certainly couldn't do such as V87 cases[61]. But for the others, you need to negotiate like hell.
>
> [For DGMM] They are inconsistent and arbitrary; everything can change from officer to officer, from day to day. It is a matter of their mood. It does not depend on the substance of the case at hand.
>
> Of course they [DGMM] are inconsistent, unless it is an order from above. If the manager said that we are not doing this anymore then they are one hundred percent consistent. Otherwise, anything in between can depend on a lot of things.
>
> I can call an officer to ask for something, they say no to me. Then the next day I call them again, I can get a result.

[61] V87 is a type of cases when the immigrant first attempted to voluntary repatriation and then somehow turned back to Turkey. In these cases, without an exception DGMM does not re-activate their ID no matter what, in Gaziantep. This is because although Ministry of Interior issued a circular in favor of the returnees, this is blocked by the absolute order from the governorship.

> An officer one day can say that this is impossible to do, another day s/he can do it. One day s/he says we need at least three photocopies of these documents. Another day s/he can do it without anything.

In the passages provided above, there are certain things repeated by more than one employee. For example, the first and the third one lay the emphasis on the "mood" of the DGMM officers. The others also show consistency in terms of the indeterminacy and uncertainty of the factors that the process may depend on. The words such as 'from day to day', 'from officer to officer', or 'a lot of things' prove this. Even though the 'mood of the officer' is somehow pinpointed as one of the determining factors, the rest seems unpredictable and uncontrollable by neither the NGO employees nor the migrants. In that regard, everything affecting the personal judgment of the decision-maker agent such as experiences, value system, the capability of empathy or sympathy, his/her nationality or mind-set and the like may come into the play. Therefore, it would not be wrong to argue that as the formal procedure consists in the decision of the implementer agent, too many parameters meddle in. As a result, what appeals one of these interplaying variables affecting the decision-maker agents' motivation in favor of the immigrant, over time turns into the unspoken 'requisites of getting things done'. Moreover, according to the quotes above the things cannot be done is purported as though there is a legal obstacle before the proceeding. However, when the same thing can be completed by another officer or by the same officer in another day; it is proved that the obstacles are only put forth by the officer, not by the legislation itself. The only check mechanism providing consistency and predictability is what is expressed as 'order from above'. Here, what is meant by the term 'above' is obviously someone who is in a hierarchically superior position with a supervisory power upon the civil servants. Thus, relying on the consistency of the NGO employees' narratives about the inconsistency of the processes[62], the absence of the managerial monitoring system can be concluded as a result of the arbitrariness in the processes.

[62] Only 2 out of the 21 participants argued that the processes in the government offices are consistent. Still, one of them said this in the sense that they are consistent that they always shuffle off.

The inconsistency and arbitrariness resulting from the authorization power of the DGMM officers especially relevant when it comes to admitting the oral declaration of the immigrants in the absence of any corroborating hard-copy document. However, in the legislation, there is still no guideline specifying under which conditions it shall be accepted. There is only one exception of the possibility of accelerating the process on the basis of medical emergencies. Therefore, the ID obtaining through the registration process are at the hands of the personal judgments of the DGMM officers without a legal ground legitimizing why or why not a person cannot access to his/her ID, and the collateral basic rights attached to it. To exemplify, the followings are shared by one-year-experienced protection lawyer who works in a national NGO:

> They [DGMM Officers] always avoid from taking the initiative to fasten the process, their authorization is too broad. Even though it is their legal responsibility, they can reject to receive a petition. For example, if the consultant desperately needs to be transferred to another city because of a medical emergency, DGMM staff can insist on an official paper from the hospital stating that the required operation cannot be performed in that hospital despite the fact that the oral declaration must be enough in these cases. On the other hand, the hospital cannot issue such a paper because the problem is not that they don't have this service but they do not have a slot to admit an inpatient. But on the other hand, the DGMM staff can easily say that –Oh! You are married to a Turkish person, why didn't you tell me this before let me look at your file again.

Another protection staff exclusively responsible for the cases of the ID obtaining in an INGO with 6 years of experience says:

> They normally never ever register an infant baby if the parents do not have the birth certificate, even if they live in Turkey. I observed this a million times. But once there was a guy in the DGMM bureau, he did not linger the process and handle things easily. Afterward, I learned that he became a father very newly. There was another officer she showed me a pile of files of which width was almost my palm, and she said me: You see these papers they are all refugee children I am not registering them why should I register the one that you brought.

These two examples also show that the DGMM officers act the TP Regulation arbitrarily, as it is up to their judgment to accept or to decline the evidencing documents and the oral declarations of the TP beneficiaries. And thereby, in the first instance, it caused a deficiency in accession to right to health which is directly related to the 'healthy substance'. Likewise, in the second example 'pile of babies' 'right to have a right' (Arendt, 1961; Shachar, 2014) is blocked.

Apart from the difficulties with the pre-registration, updating the demographic information after an ID is obtained can be quite challenging as well. This is especially pertinent if the beneficiary needs to update the information which is provided before 2016 when the registration mostly proceeds on the basis of the testimony of the immigrant. In this case, an evidencing document for the update can adamantly be sought for the process to be carried out depending on the decision of the DGMM officers. Again, when to accept the oral testimony of an immigrant to update the data or when to insist on an evidencing document is up to the DGMM offices[63]. This problem mostly manifests itself in the accession processes to the social and economic assistance which can occupy a life-saving space in the lives of the thousands.

One of the most common social assistance programs is the Emergency Social Safety Net Cards, known as either Kızılay Card or ESSN card. The ESSN cards provide the families who are genuinely in need of cash assistance with a monthly 120 TL per person in the family. However, there are strict preconditions to be eligible for the ESSN cards, examined by either the staff of World Food Programme (WFP) or the General Directorate of Social Assistance and Solidarity (Sosyal Yardımlaşma ve Dayanışma Vakfı, known as SYDV). The latter works under the Ministry of Family Employment and Social Service (MoFESS). To be able to apply to this card, the beneficiary is supposed to go to the Directorate of Population and Citizenship Affairs, another institution affiliated to the Ministry of Interior, after s/he got her/his full registration

[63] Their title is migration specialists and assistant specialists

done and obtained the ID starting with the numbers "99". In the Directorate of Population and Citizenship Affairs, the beneficiary is supposed to make a residential registration into an online system called MERNİS. Also if there is a disabled person in the family applied for the ESSN assistance, her/his disability ratio must be reported with a document taken by the hospital review board and it must be at least 40%. If the beneficiary manages to compile all the required documents then s/he goes to the SYDV bureaus and makes the application by filling other additional forms in order for this provided information to be checked by a home-visits afterward. If everything goes well, lastly the beneficiary can go to Halk Bank and receive his card. Apparently, the process, similar to the pre-registration, is already over-complex in the sense that it involves a lot of governmental and one inter-governmental agency and requires too many preconditions to be seen as eligible. Unfortunately, the process sticks at the first stage before moving on the later ones due to the difficulties in the DGMM offices. One and a half year experienced national NGO employee who assists the Syrians in the application processes to the ESSN cards shared a case epitomizing the accession impasses arising in the DGMM offices:

> I used to have a case of a single mom with three children who unhappily had to make her 13 and 14-year old children work, instead of enrolling them to the school. The reason for this was that the husband in Syria used to marry two women. They can register this officially into the Family Book (Kitab AleAyila)[64]. When they came to Turkey the registration officer registers my consultant as single and without a child. Also, the officer registers the father as married to the other women with three children, and all the children's age is incorrect. After a while, the man abandons my consultant and moves into another city with the second wife and leaves the children to my consultant. But what it seems official is that the man has the three children and a wife, registered into another city. My consultant was in an incredibly arduous situation and she was really broke. She desperately needed the ESSN card, yet, she was not eligible as she seems like a workable woman without any children. On the other hand, the father enjoyed the ESSN assistance provided for a family of five as it seems officially the children are with him. We went to the DGMM Office with the woman, children, and the husband. We told the situation, they

[64] An official document in Syria where the demographic data of the family is recorded

> did not listen. We wrote a petition, they did not accept. The officer dug her heel in the requirement of a paper stating that these two adults were married once and they got divorced and the children stayed with the mother. On the other hand, I know that the DGMM officer can correct this with a single click. This is because this is how they registered them at first.

In the case above it is seen that the DGMM officers can also indirectly control the accession processes to the other rights as well. In this case, the accession process of the single mom to financial assistance that she practically is eligible is blocked by the negligent attitudes of the DGMM officer. And thereby, the children's accession to the right to education also happened to be hampered as well due to the insurmountable financial incapability without the ESSN aid. Here, it would not be wrong to argue that the ESSN aid also corresponds to what is framed as basic rights in the previous chapter. This is because, in case of absence of it, the family becomes dependent on the husband and as well as child labor. And, needless to say, this directly breaches the threshold of autonomy of the family and the social maintenance of the children.

Even though there are two adults who confirm the same story as to their family life with a document from Syria, the DGMM officer asked for additional evidencing documents. As it can be discerned by the nature of the "forced" international migration[65] and the differences of the civil laws between Syria and Turkey, the DGMM officers are left into such an arbiter position where they might always ask for additional documents or they might just be convinced. This naturally provides a perfect ground where the arbitrary and the inconsistent way of implementation mark the whole processes.

Furthermore, the arbitrary and inconsistent conducts do not peculiar merely to the DGMM staffs. The school managers, the hospital staff from the appointment servants to the doctors, the police officers, in short, the other government employees too, implement the procedures arbitrarily and inconsistently to the extent that their

[65] Even though the term forced here is open to discussion, given the existent terminology it is chosen as the one which best describes the situation in Turkey

authorization allows them. For the function of each and every officer differs from one another in an important sense, their arbitrary and inconsistent implementation can harm or benefit the rights-accession processes to the varying extends as well. According to the report from the protection employees, the police officers follow the DGMM staff secondly in the arbitrary, negligent and inconsistent way of implementations. The police officers come into play especially when there are criminal cases which require denunciation or testimony to proceed to file a complaint. These criminal cases can be exemplified as sexual and gender-based violence (SGBV), child employment, child marriage, child abuse, or the cases of the unaccompanied child so on and so forth. Therefore, the police officers hold a key position in re-binding the people to their rights. But also they can be the very actor of the violation itself in any cases of border-crossing such as voluntary return, resettlement, and deportation.

The arbitrary implementation of the procedures by the police officers especially reveals itself in the testimony practices. Giving the testimony is the beginning step to appeal to the courts in cases of any right violation or crime, such as rape, or domestic violence. Moreover, in the cases of separated or unaccompanied minors, the child's testimony can be required to place the children in the orphans' asylum (Çocuk Destek Merkezleri, known as ÇODEM); or to appoint an official guardian among the kin such as the grandparents by means of the court judgment. Thus the problems with taking the testimony of a person officially down, has a direct impact on the accession to the basic rights in the sense of protection from physical violence, having a secure shelter, guardianship appointment; or in the sense of autonomy such as divorce. Even though the police officers do not have the authorization to decline to receive the testimony; they have the authorization to determine the manner in which the testimony will be valid. This means for the immigrants that in order for their testimony to be taken there must be an interpretation service. The police officers can act arbitrarily in accepting or rejecting the interpreters. Because of this, as most of my interviewee expressed, the victims, the interpreters and themselves, might have to spend hours in the police stations by waiting for the police officers to take the victim's testimony. For example,

one of the staffs in a national NGO who sees averagely 20 – 25 SGBV cases per week shares this:

> Police Officers generally expect us to bring an interpreter with us to record the testimony of the consultant. Sometimes, we go to the police stations with our own interpreter [the interpreter employed in the NGO], they receive the testimony. But sometimes, if they are busy or the station is crowded they do not accept our interpreter and insist on calling a sworn interpreter just to deter us. The sworn interpreters sometimes may not show up for hours. We, me and my consultant and the NGOs interpreter, maybe have to wait in the station during hours by doing nothing. But sometimes, the same police officer can ask us to help them with our interpreter for another irrelevant case.

Here police officers inconsistent and arbitrary act to accept or decline the interpreter can get in the way of accession to the rights of having a secure place which is free from physical violence. As it is explained above, according to the uncontrollable factors such as the crowd in the police station, the police officer can trump for a national sworn interpreter, and thereby deter the process for hours. What meddles in is the personal judgment of the police officer with respect to the significance of the cases awaiting for compiling an official complaint. Again lack of a control mechanism valuing for the human rights and having a sensitivity on the women issues result in the arbitrary implementation of the interpretation services. And thereby this results in the accession problem to the right to healthy subsistence and autonomy. This is because longer the waiting process, likelier for women to return to home without any protective outcome.

Arbitrary and inconsistent way of implementation can also be exampled by the resettlement and voluntary return cases as well. The Resettlement operation as one of the three durable solutions is carried out by UNHCR in collaboration with the DGMM bureaus. UNHCR receives the most vulnerable cases from the DGMM and tries to resettle them into a third country. The third country grants a refugee status on the immigrants and thereby confers on them political, social, economic and civil rights similar to those enjoyed by the nationals of these countries. Even though the

resettlement has never been categorized as a right[66], one should doubtlessly be able to enjoy of resettlement after having been considered as eligible by the receiver country. Both for the voluntary returning and the resettlement, DGMM offices record and proceed with the procedure. DGMM updates the data of the immigrant who is going to leave the country accordingly and provides an Official Exit Permit Form. This paper also works as the 'Official Cover Letter' (Üst Yazı) which presents an official exemption from handing some required documents or papers in order for immigrants to leave the country such as passport, or the ID. For the cases of resettlement, the immigrant must deliver also a travel warrant and visa both taken from the resettlement country along with the Exit Permit Form to the Visa-breach bureaus (police stations placed within the airports, known as Vize İhlal Şube). The leaving process is initiated in these Visa-breach bureaus by processing the Exit Permit in the PolNet System; this is why every immigrant in Turkey must pass through there to leave the country. Moreover, those who entered the country illegally –even though it is stipulated by the nature of the TP status; is subjected to the procedures applicable to the irregular immigrants. This is the other reason why the TP beneficiaries too should first stop by the Visa-breach bureaus before proceeding to the airplane. According to the NGO employees working in the field of resettlement and voluntary return facilitation, the police officers employed in these processes can also implement the legislation arbitrarily, inconsistently and negligently. One of the INGO employees who used to work in the field of the resettlement and take care of the arrangements for 200 people per month, with a five years of experience tells this:

> …For example, the travel warrant is documented differently by each and every receiving country. This document is issued only for once and for the travel of a single person. This paper is firstly sent to the Turkish Ministry of the Foreign Affairs, via them it is introduced to the Ministry of Interior Affairs, and thereby it appears on the PolNet System deployed by the Turkish police responsible of the foreigners' exit and entrance. However, some countries do not prepare this document or issue it in another unconventional format which does not appear on

[66] For a detailed explanantion see https://www.unhcr.org/tr/en/ressettlement, Feceived in July 20, 2019

> the PolNet System. In these cases, we contact with the DGMM Offices and ask them to indicate this issue on their Letters. By this way, the police officers can print a subsidiary travel warrant for the immigrants' resettlement. For example, England one of these countries who did not issue such kind of a travel warrant for a period of time. We told the situation to the police officers, at first they helped us. But over time, they just stop collaborating for no reason. They started to come up with silly excuses such as 'I cannot do that it is outside of my authorization', 'I cannot do that the issuance is carried out in downstairs and I don't want to go down there now'. 'I would do it but, I am telling you, it would take five hours' (and he knew that the plane will take off within 2 hours), 'do not insist I will never do this again', and the like… You wouldn't believe, during this period no one could leave for England.

Another ex-employee with a similar amount of experience confirms this with a similar example:

> The police officers in the airports are acting completely arbitrarily and inconsistently. They sometimes tell us 'I cannot accept front-and-back photocopy', but sometimes they do. Sometimes tell us 'it is impossible to process the system without the ID, but sometimes they do. The resettling families are crowded. We were photocopying like crazy. Our organization hired someone just for the photocopying work. For example, there was a guy he was the devil himself. He was being happy when someone gets upset in front of him. We were arranging all operation by looking at his shift. Their schedule is announced one week before. We were looking at the table then we decide 'oh! Today is X person's shift nobody will be able to exit' then later in the day we were proven right. I mean the legislation is written there, but they do not implement it again and again and again. This became the rule. Then we started to adapt ourselves. We were buying the plane ticket accordingly, informing the receiving country accordingly. They were doing their arrangements, such as hotel booking, orientation and everything accordingly.

The two examples above show how arbitrary and negligent implementation of the police officers can result in the right enjoyment deficiencies. In the first case, the legislation does not specify anything for the police officers to issue a substituting paper for travel warrant which cannot be introduced into the PolNet system by the third country. However, it is unavoidably required to be able to leave Turkey. Thus, whether or not the police officers will issue this document is left up to the police officers' decision. And as their decision can differ from one officer to the other, the process has

been doomed to be inconsistent until a sort of standardization has been introduced. In the second example what is called the demonic implementation of the bureaucratic processes can be observed in the sense that being irrationally sticking on the unnecessarily detailed rules for the exit procedures prohibits the exiting itself. However, what varies here is that in our example, the purpose is not following the bureaucratic rules adamantly as it is a true thing to do, but rather blatantly causing problems for the migrants themselves. Also, there is no consistency, neither, as another police officer can be motivated more to ease the process instead of blocking it. Lastly it is important to indicate the fact that the right accession and enjoyment deficiencies can be generalized for the voluntary return as well[67].

The examples of these kinds of arbitrary implementation of the police officers can be multiplied forever. It is obvious that there are some extreme cases such as the police officer that my interviewee depicts above as 'the devil himself'. Or, it is known that the police stations have always been the scene for degrading or inhuman treatment such as torture. People used to "get lost or disappear" under the police custody, these cases were especially notorious during the 90s for the Kurdish activists. However, for I am not a journalist, I will not discuss these extreme cases of basic rights violations or their unacceptable frequency. But rather, I argue that there is a certain level of ossified, stabilized negligent, arbitrary, and inconsistent implementation of the procedures and legislations resulting in right accession and enjoyment problems at a constant level. What I mean by a certain level is of an ambivalent character but it is substantiated by the nature of the work done.

The narratives cited above on the issue of arbitrariness and the negligence among the government officers point out an inconsistency in de facto implementations of the

[67] As the political situation in Syria is still regarded as unstable, most of the I/NGOs do not assist immigrants' voluntary return operationally. However, over the other immigrants from other nationalities who embarked on voluntary return, it is stated that their right accession processes are prohibited even more. This is because in the resettlement procedure, the third countries are also concerned with the arrival of the immigrants. But for the voluntary returnees, this is not the case. Thus, they can spend days and weeks in the airport. However, this will not be discussed within the content of this thesis.

legislations, rules, and regulations associated with the Foreigners' Law. In that sense, it can be said that there is a consistency of the inconsistency in the stories of the NGO employees that I interviewed. And also this is evidenced by the consequences as the right accession deficiencies for the beneficiaries too. In the expression quoted above the NGO employee says that '… They don't implement it again and again and again so that it became a rule'. The repetition in the words also denotes the repetition of the same practices countless times. This is what makes it the unspoken and unwritten rules of delivering the public service. Moreover, this also couples with the fact that the NGO employees and the beneficiaries themselves adjust their practices as well as their expectations accordingly. Then, the patterns of inconsistency turn into a subsidiary set of rules which are referred to during the regulation of the relationships among all the parties, besides the officially recorded legislations and procedures. As these ways of delivery of the job repeated, it gained more regulatory power, as it got more regulatory power it is doomed to the reproduction of itself. In that sense, the repetition of arbitrary implementation practices appeared mostly in the DGMM and Police offices is highly consonant with Bourdieu's conceptualization of the relentless reiteration of the actors' practices. In the Bourdieusian analysis, this repetition settles so well that it starts to be protected by the consensus of the actors who takes a part in its reiteration. And thereby, it delineates the demarcations of a reservoir where the varieties of these practices are residing and reproduced. In our examples, nobody -neither the beneficiaries, nor other fellow government officers, nor the NGO employees- regards these practices odd, or embarks upon right advocacy, or filing a complaint about the arbitrariness or negligence of the government officers.

Good examples of this kind of consensus can be provided by the acknowledgment of the misconducts of the civil servants in their attitudes towards the beneficiaries. When I asked 'How would you describe the officers' attitudes and the behaviors towards the beneficiary, on the basis of your observation to the extent that you could?", there was no, even one single, positive response. But the answers were mostly like as the following statement shared by the same INGO employee who used to work in the field

of resettlement.

> Once they throw the papers to the beneficiary's face by shouting and swearing. He was my consultant. The Police officer wanted us to bring these papers in the proper manner next time

Belittling, degrading attitudes and behaviors towards the Syrians are easy to encounter in the government bureaus. These incidents have been noted by different NGO employees in the other government offices as well. For instance, one of the protection staff who has expertise in the cases of registration with 6 years of INGO experience that I interviewed says:

> Once I was in the chamber of a DGMM staff, there was also another guy trying to complete the registration process. The officer told him that 'Ok, I have done the job. Now go and wait for an SMS from us'. And the guy left the bureau happily. I asked the officer as I am surprised that I did not know the SMS thing. She [the officer] responded to me by laughing and said that 'There is no such system, I am busy now, I cannot deal with him. So I just send him away'. I got shocked. The guy will be waiting for an SMS for how long who knows.

To what extent the NGO staff is comfortable with these practices, or to what extent the beneficiaries and other parties regard these practices as odd or normal, is, of course, open to discussion; and requires a whole another research to conclude. However, even though they create an ethical inconvenience for the people, the beneficiaries, as well as the NGO employees, have to connive at them in the way that they can maximize the beneficiaries' interests and thereby ensure the continuation of their professional operation on the ground. Given these still, there is a consensus, though an uncomfortable one, that the officers' authorization of carrying out the official registration opens up space where the government officers can wield a hierarchical superiority over the migrants. This acceptance is not in the sense that the NGO staffs and the beneficiaries are completely fine with this "way of doing things". But rather, there is a common acceptance of that fact in the way that it can also regulate the whole application and interaction processes.

Even though the DGMM and the police officers take the lead in arbitrary and negligent implementations of the legislations, these practices are quite common among the other civil servants as well. The school managers resistance of enrolling the Syrian children on the basis of their worries with regard to the schools' reputation, has already been noted in the newly-surged literature on Syrians (Akbaşlı & Mavi, 2019; Aydın & Kaya, 2017; 2019). Yet there are also other actors whose initiative may determine the fate of the children as well. The school teachers' authorization to deem from which class the Syrian children continue their education can also be another proper ground for the negligent, arbitrary and inconsistent implementation. As it is indicated in the chapters above, from which grade on the children is going to pursue their education is up to the examination of the school teacher. In that regard, the TPR Art.28(3) indicates that "…If the foreigner has received education under a different curriculum, which was documented, these documents shall be evaluated by relevant units of the Ministry of National Education or Presidency of Council of Higher Education and equivalence proceedings shall be conducted for the grades deemed appropriate." The Circular on the educational services of the foreigners (No. 2014/21) refers us to the Equivalence Proceedings Guidance 2011. Accordingly, with a document indicating the grades and academic levels of the students, the children can be directed to the relevant grades. Yet, none of these specifies any guidance in case of the absence of such documents or diplomas which is mostly the case for the Syrians. This is why there the judgment of the teacher takes over without any referral system to be followed during the examination of the academic competence of the children. Unsurprisingly, the unqualified evaluation of the children mostly results in a mismatch of the children's intellectual capability and the grade s/he attended. Of course, this gives way to the children's failure in the school and followed by the high drop-outs. One of my interviewee with 3 years of experience in a national NGO from different cities with the expertise on the child and disabled protection tells the so-called evaluation process:

> I sometimes take children to the Provincial/District Directorates of National Education for their placement tests. There the evaluation process is all about by

> asking ‘have you ever go to the school in Syria’ if the children answers ‘yes’ the teacher continues ‘What grade were you in’, let’s assume the child said ‘6’. The teacher concludes like ok then you are in the ‘6 grade here too’. Sometimes they can add questions like ‘Do you know who the president of Turkey is?’ or ‘Can you name the days in a week’. That is all. This is how a child placed in a class. No written test, no math questions, nothing…

The examples can be accrued by the likewise parables. However, it is not only limited with the education services either. There are also problems in the accession to right to health as well. This kind of negligent implementation of the service delivery can be observed in the ways of how the healthcare staff performs their duty. As this is the case of health, the accession deficits can even result in the death of the immigrants in the long run, or even in the short run. The examples of these cases are provided by the protection employees working in the field of disabled persons. One of my interviewee who has one and a half year of experience in the field of disabled people’s protection, with both health and law educational background tells this:

> In emergency services, a lot of people die. And the nurses do not even bother themselves to indicate a cause of death. Can you believe that? One of your relatives dies and you don’t know even why. This is even legally problematic

These instances do not arise only in emergency situations. The doctors’ negligent attitude towards the patient can result in similar tragedies too. The same employee continues:

> Doctors do not even look at the face of the beneficiary. They do not explain anything. If the disease is treatable, they write a prescription but do not explain why it is needed, what kinds of effects it will show on the patient and nothing. Sometimes, they write operation and don’t even tell why, and how. In these cases especially families can be inclined to drop giving the medicines for their children. This is because they do not know why they should use it. Later in the cases, this can worsen the children’s condition and make them dependent on the bed or on surgical operation.

These arbitrary and inconsistent implementations as exemplified by the police offices, DGMM bureaus, hospitals, and schools can sometimes be caused by the broad

authorization casted upon the service-provider agent by the legislative, sometimes by the unintended legal gaps. But in some other cases, the reason is none of them. Why the governmental agents implement the legislation and the procedures in the way that they do, even though the legislation warns them otherwise, lies obviously in the fact that there is a lack of the scientific managerial system which is supposed to establish a functioning audit, monitoring, and supervising system. As discussed in the previous chapter absence of such a system entails a distorted reward/punishment system. Apart from that, the unstandardized legislative procedures can cause arbitrariness as well, especially as shown during the ID issuance processes. Still, it would be fallacious to finding the solution in the stricter regulations. However, there could have been some safeguarding compelling the implementation processes which stipulates the highly interest of human life.

4.3.1 The Lack of Centralized and Standardized Body of Legislation in DGMM Offices

Even though the Turkish public administration system is technically characterized as centralist in the sense that the decision making originates from one superior authority and diffuse to the bottoms pyramidally (Polatoğlu, 2009); the inexpertness with regard to the unprecedented amount of immigration influx results in the divergences from the conventional organization models of public administration. As it stands, this can be evaluated as a technical incapacity problem where the expertise within the country, who can employ the information as to the nature of the migrating mass to develop a comprehensive organization of the registration processes comes forth. To be clearer, since 2013, the Ministry of Internal Affairs put in force five different modes of registration processes and thus five different rounds of ID issuance. Each and every renewal of the process cause a further mass in the field. Furthermore, the absence of a governmental centralized institution working exclusively on migration management until 2013 is itself a self-proving sign of a technical incapacity with regard to the migration management.

As indicated in Chapter 2, technical incapacity is followed by the ambiguity during both policy implementation and designing processes. This being the case the Ministry found the solution in giving a determinative authorization to DGMM officers to accept or decline the oral declarations, or to deem the sufficiency of the written documents. Giving an authorization power to the migration specialists in the DGMM offices does not consist of a problem in itself. As a matter of fact, this semi-autonomy vested on the government officers can result in quite affirmative examples too. For example, there are always occasional narratives popping up rarely but regularly in the shared stories of the NGO employees, illustrating the positive initiatives taken by the officers to save or ease the life of the immigrants. The stories about the benevolent DGMM officers, police officers, teachers, or school managers also have accompanied to all the narratives as well. In relation to that, Okyayuz (1999) discusses how obtaining an ID as a migrant in Germany have become more difficult after the Foreigners' Law becomes more standardized and centralized. However, what is crucial here is the way of implementation practices. To be clearer, it is not the semi-autonomy causing the right accession deficiencies but rather, the lack of scientific managerial monitoring mechanism in the government offices. This is evidenced by the fact that during the interviews, most of the respondents point out the desperate need for sound monitoring mechanism over the service-provider civil servants as an answer to the question of their suggestions. To exemplify, one of the 5-year-experienced national NGO employees, on the field of SGBV protection succulently put it like:

> It is not really difficult to put forth a functional sound monitoring mechanism. All the numbers can be collected, and the points where exactly the inadequacy and incapacity take over can be identified. How many people went to the police stations, how many of them were able to get a result, what kind of interference is undertook, what kinds of problems arose, and the like should be examined. There have been many awareness workshops etc, but to be able to get a result there must be a serious monitoring mechanism.

However, as it is evidenced by the negligent and deferring attitudes of the civil servants obviously this is not the case.

4.4 Implementation and Enforcement Through Prolongation

The reasons for why the civil servants implement and enforce the law in this way are mostly related to the ideological and social leitmotiv of Turkish society. In the ideal description of bureaucracy, Weber expects the system to be stripped off the personages of the people who compose the bureaucratic body. In modern bureaucracies, the public does not develop a relationship with the 'person', as was it in medieval times with the feudal or patrimonial authority (Weber, 1946). Rather, what functions as the bureaucracy is an impersonal, mechanic, and rational system. However, he also continues by stating the fact that "*behind these functional values a culture-value stands"* which also provides an '*ideological halo for the master*' (p.199). In the countries with the more patrimonial political culture at the background, the diversion from the ideal type of the bureaucratic proceedings is more likely. And thus the ideological halo becomes more visible and intensely discernible. As discussed in the previous chapter, in Turkey, there is a strong academic tradition that argues the patrimonial political relations by having been patched by nationalist ideology is transmitted to the Turkish Republic as well. All these ideologies live and reproduce themselves in the reiterating practices of the bureaucrats and the civil servants.

In addition to that, patriarchal understanding nested in the minds can be observed across all ranks and sectors of the bureaucratic organizations too. David Bayley says that 'the police are to government, as the edges to the knife' (1985 [Recited from Bowling et al., 2001). Given that, it is not surprising that the most absurd cases resulted from the patriarchal understanding come from the police stations. Especially in the cases of domestic violence, the enforcement of the law is shrouded in a glaringly sexist form. In cases of the sexual and gender-based violence (SGBV), the procedures to be followed and the guidance to resort are enshrined in the Law 6284. After the İstanbul Convention on Action Against Violence Against Women and Domestic Violence is

prepared by the European Council in 2011; Turkey put the Law 6284[68] in force in 2014. With the Law 6284, vital amendments increasing the protective measures in favor of the domestic violence survivor have taken place. For example, according to the law, the definition of the domestic violence has been extended in the way that it encompasses the physical, sexual, psychological, and economic violence coming from not only those who share the same shelter with the survivor but also from those who live in a distance as well, such as the father, unmarried intimate partner and the like. Another important point in the new law is that it gives the survivor the right to claim of preventive and/or protective measures against the perpetrator from the varieties of the governmental offices[69], not exclusively from courts. The point in this new regulation and amendments is to provide the survivor not only with full protection but also doing so within the shortest time possible. However, there are plenty of examples when a woman cannot access to her right to be protected by the legal measurements. Sometimes, her desire to get a divorce can even be blocked by the mal-judged acts of the officers. My interviewees working in the protection field of SGBV shared countless numbers of cases as such. For example, one of my interviewee with for years of experience exclusively in the field of SGBV cases, within a national NGO shares this:

> When a beneficiary reaches us in cases of domestic violence, we try to intervene as soon as possible. Especially, we do not want to leave her alone with the police. This is because the first reaction of the police is trying to reconcile the women with her husband. For example, a woman flees from his house and arrived at the police station to claim protection. The police officer may call up the husband, invite him to the police station, and says things like 'this is normal, every family has these kinds of problems, apologize from your wife, and say that you never going to do this again, ok'; and to the women things like 'this is your husband, he can get angry, do not make a big deal out of it, don't you see he is regretful, you will be so sorry later, forgive him' and the like…

[68] The Law on Protection of the Family and Prevention of the Violence Against Women

[69] Police Stations, Violence Prevention and Control Centres (Şiddet Öneleme ve İzleme Merkezleri, known as ŞÖNİM), Family Courts, Governorships, Office of Chief Public Prosecutors (Cumhuriyet Başsavcılığı), Kaymakamlık

This kind of peace-making role among the police officers in the cases of intimate partner violence (IPV) cases is not rare not only Turkey, but also in the other parts of the world neither (Lila et al., 2012) The huge literature body on the issue of the police officers' first reaction to the IPV cases shows us it depends on several factors including the relationship between the perpetrator and the victim of the violence, the victims' demeanours, the police officers' personal beliefs in patriarchy or misogyny (DeJong et al., 2008; Saunders, 1995; Saunders & Size, 1986), or the male-dominated subculture in the police offices. In our cases at hand, what legitimizes the violence against women in the eyes of the police officers can be one or the combination of more of these factors. However, it still confirms the fact that legitimizing the domestic violence against women is based on some hetero-normative family role expectations where the place of women howsoever cast in a lower status in the sense that "*she is a lesser sort of being than a man*" (Bosson, et al., 2010, p.528 [Recited from Lila et. al, 2012:909]). Moreover, it also contributes the perpetuation of the legitimization of the violent practices against women at the bigger scales in the long run as policing is also symbolizes the public acceptance or the limits of the public tolerance towards the violence. Therefore, in these cases as well the law enforcement practices of the police officers are structured by the bigger patriarchal realities of the Turkish society and they are again re-structuring it by every repetition of the same practice.

These kinds of sexist practices blocking the way of accession to social rights can be epitomized in the hospitals as well. There are plenty of cases stated during the field research of this study where the women's accession is not only hindered by the law enforcing bodies of the bureaucracy, but their physical well beings are also be harmed by the nurses and the doctors as well. One of the lawyers who work in the field of SGBV protection from a national NGO for approximately one year tells that:

> In the hospitals, it is so common that a woman who is in labor gets slapped in the face as she is screaming. I have been called many many times because of these kinds of events. I witnessed that they are shouting the pregnant women like 'are you giving birth again? You Syrians are breeding like animals. I am

sick of you' and the like…

Normalizing the extreme pain that the women have in medical cases is also considered as another form of sexism especially taken places in the hospitals. In the literature, the most common versions of sexism among the healthcare professionals can be categorized as first the doctors' disbelief that the female patients are able to understand their body well and identify correctly the symptoms that they are having; second, the general inclination of evaluating female patience inconvenience as psychotic, trivial, neurotic disorders; third, the male-dominated setting where women have to submit their body in the hands of the practitioners mostly in the opposite sex (Halas, 1979). Among these, it would not be wrong to argue that, recently growing attention has been paid to the treatment that the women get during the medical operations among which labor holds an important place. Accordingly, women are not allowed to make themselves comfortable in the way that they feel it is good both for their own and the babies' health. On the contrary, the practices such as humiliating, pinching, and slapping the women are quite common (Maya, et al., 2018). First, the sub-conscience believe that this violence is good and necessary for the health of both the baby and mother; and second, the persuasion that even the slightest non-compliance from mother is seen as an absolute disobedience to the healthcare professionals and as an act of questioning their expertise are arises as the reasons for why such practices are that common. Yet, it is also underlined that at the bottom line the patriarchal idea that women should suffer to be worthy –of being a mother or something else- which appends to 21st century as a misogynist subculture in hospitals lies. This is why even though the example provided above is first seen as open discrimination against the Syrians, it is one of the typical ways of sexism mostly happens to women across all social strata. However, the psychological violence from the healthcare staffs towards the pregnant women in the parable above takes the appearance of xenophobic form in this case.

Overall, along with the police officers' conception of their role as mediator and peacemaker in the cases of domestic violence, the physical and psychological violence

against women in the hospital setting can be counted as the distinguished forms of sexist practices within the field of social service provision. Apart from these, rambling the bureaucratic procedures by being irrationally stuck on the rules, or by deferring responsibility for proceeding the process to the other colleagues, supervisors, or other incumbents in the other institutions can be seen as an ambivalent form of sexism hampering the accession of the female immigrants to their rights. Police officers' arbitrariness in taking the testimony must also be considered as an epitome of the latter version of rambling the process. Furthermore, there is also another way of enforcement of the Law 6284 in the way that prolonging the procedures for the beneficiaries' disadvantage. This is well explained by one of my interviewees who are working in the field of all kinds of protection with approximately 4 years of experience gained from the different Anatolian cities as well with a social work educational background:

> According to the Law 6284, normally police officers should be able to initiate the preventive measure and place the woman who is beaten into the ŞÖNİM [the women shelter offices]. However, I haven't seen the process is carried out in that way in Gaziantep never. Instead, the police officers refer us to the court for the decision of preventive measurement. In that case, we need to wait for the court verdict which lasts approximately fifteen days. Thereby, the woman is turned back to home for fifteen days where the abuser husband also lives, or she needs to find a place to stay. What if that woman gets killed within fifteen days at that home? I mean the consultants reach us at the last moment already, when the violence it is not bearable anymore, I mean, when they are really convinced that their very life is at stake. Sometimes, our organization arranges a hotel room for them.

In cases such as cited above the police officers enforce the law 6284, but in a prolonged way by inserting unnecessary institutions and procedures into the process. In the formal sense of the word, it is not misconduct as the ones undertaken by the healthcare officials, nor an example of non-enforcement as the police officer records the testimony. Fortunately, depending on the protection employee's insight, they can skip resorting to the court, and instead, they can directly go to the ŞÖNİM offices to claim a placement. However, the ŞÖNİM offices mostly demand the health report stating that the beneficiary has suffered from physical violence. Therefore, at the last instance, to

be able to take a legal step for preventive and protective measures which includes the placement of the woman into the women shelters, in practice, the survivor and the protection officer should follow these steps: First they need to stop by the police officers to make their complaints officially taken down. As discussed above, the process is highly likely to stick at that point especially if the woman is alone and unaccompanied. But, if they managed to proceed, they secondly need to go to the hospital to receive an expert report as to that she has been battered. Then, with these documents she can apply for the measurement decisions to the courts, or directly to the women shelters. 8 out of 8 protection staff who particularly have an expertise on the SGBV cases, reported that the process is carried out in that order maybe with slight divergences, during my interviews. They also indicate the fact that even though there is a police force nested within the public hospitals, mostly they are not the ones who escort the SGBV victims to the women shelter offices. Rather, they are expected to turn back to the police station where they first issued their complaints about the perpetrator.

However, sometimes passing through all these processes may not be enough either. Even though my interviewees' observations about the ŞÖNİM offices are neutral or positive, there are cases where the immigrant women are turned down on the basis of there is no available room. After applying some pressure such as asking for initiating the transfer options to the other shelters in other cities, or implying that a legal step may be taken about the officer who declines admission, the SGBV survivor is mostly admitted for accommodation. However, the afterward stories show that, unfortunately, the admission is only functional with the presence of the protection officers. Sometimes punishment-like applications in the shelters or direct kicking off the immigrant women may take place. Two of my interviewees shared their observation regarding such cases. Yet, it is noteworthy that these events have taken place in the two different cities other than Gaziantep, recorded on the basis of my interviewees' past experiences. The below comes from a national NGO employee who has 2,5 years of SGBV protection expertise gained through different cities in Turkey with a social work educational background:

> I had a consultant who suffered from SGBV; we took her to the ŞÖNİM. The officer there did not want to admit my consultant at first. Anyway, we somehow managed them to take my consultant there. But a few days later, my consultant reached me again with the same problem. Normally, the women we place in the women's shelters leave quickly. This was not surprising for us at all. But the story was different here. They took my consultant out this time. I wanted to learn why. I called the officer in ŞÖNİM and learned that my consultant's file has been re-examined. And the expression that she was kicked by her husband was not a valid enough excuse for placement to the women shelter.

Another protection employee who has approximately 3,5 years of experience with the protection activities working in an INGO says that:

> When we insist on too much for the women to be accommodated in the women shelter, afterward we start to hear bad stories about the implementations there. I mean I always inform my consultants about the conditions of the shelters, what expects them there, I tell the rules as far as I know. However, the treatment there towards the Syrians is so bad. Once my consultant told me that the incumbents there did not allow them to eat anything after 4 P.M. not even for her children. Or they were even not allowed to close their room's door. I mean there was no privacy respected for them while the others are able to close their doors. They couldn't stand much there of course.

As it is revealed, the procedure for having protective and/or preventive measures for the SGBV victims is carried out in a highly complex and prolonged manner in practice. It includes police stations, public hospitals, ŞÖNİM offices -not the exact place where SGBV-sufferer women are accommodated. Both the involvement of the more than one governmental institution and the prolonged process composed of long waiting hours due to filing a complaint and having been medically examined increase dramatically the chances of being stuck at some point. And some cases the abuser husband may get in the process as well because it is easy for him to catch the survivor at some point even if she is missed in another. In the long run, it increases the "attrition" between the planned policy and the outcome. However, it should not be forgotten that this is how *de facto* the procedure is implemented and the law is enforced. Ideally, the women should have claimed preventive and/or protective measures in the police stations and should have been placed in the women shelters' with her own oral declaration that she is

suffered from the one or more of the physical, sexual, economic, and psychological violence. For the latter, the reason why the oral declaration of the survivor women is not enough for admission to the accommodation is based on the excuse that the capacity in the women shelter is too limited. According to the common explanation, there is no enough room for all the women who suffer any sort of violence. Thus the officers employed in ŞÖNİM find the solution in seeking for more concrete shreds of evidence corroborating that the admitted women are more at risk than the others, in other words, is more worthy to be admitted. The same incapacity problem enters in play in the excuses of the police officers as well when they declined to take the testimony down or deter the process for hours. However, still for not proceeding the preventive and/or protective measures immediately in the police officers remained without a solid explanation. When I asked insistently, the most valid and comprehensive explanation became the phrase that "this is just the way how things are going on here". As this phrase substituting for an answer, it turns into the knowledge of that field in reference to which the other practices are regulated as well.

Apart from inserting vain steps in, the procedure prolongation can be observed when the civil servants are overly sticking to the bureaucratic rules as well. When it comes to the "uncomfortable" issues regarding the women, the relevant actors in the process are tended to defer the job on the basis of implementing exactly what legislation orders. Or, they can refer the survivor to the other possible responsible agents other than themselves. This is very well instanced by the words of one of the protection staff who worked in different cities in the field of child and SGBV protection for a national NGO for 3 years:

> Once I had a child rape case. She was 16 when she came to me with her mother. She needed to go under medical check because, since the unfortunate event, she had an itching and vaginal discharge. I took her to the hospital. First, we go to the child doctor; the doctor told me that we need to go to gynecological diseases. So did we, however, there they said to us that we need to go to infectious diseases. The infectious diseases department neither wanted to handle the case on the basis that this is not their expertise. I mean, really nobody took

> care of her. Lastly, what they suggest us was that we should go to the police and give a testimony, then with that testimony we need to go to court and then the court should refer us to the hospital's relevant department. This is ridiculous. Also, the family was so strict that they don't want this event to be heard. So that option as well got eliminated. Maybe, it was my fault. I know that if I haven't said that the girl was raped, they would have directly taken the examination.

In this case, almost a demonic insisting on the bureaucratic rules can be observed. However, in general sense, the obsession of implementing the bureaucratic rules replaces its instrumental meaning with being the purpose itself. However, in the case above it would be challenging to argue that the hospital employees' genuine concern is this. What is at stake here is rather the blaming, re-victimizing, and punishing the survivor herself. Moreover, the differences between the cases of the hospital and the police office in the sense of prolonging the process is that in the rape case a referral from the court might have a substance in the relevant law. There, to be able to resolve the problem an initiative might be required form one of the doctors. However, in the cases of the police and ŞÖNİM offices referring the victim to the other governmental institutions is up to the implementing agent. Hence, the prolongation of the process can be carried out by diametrically opposed ways of practices of the implementation and enforcement of the laws and procedures. To be clearer in comparison to the police officers' actions which is based on deferring the job to the other officers by *not being stuck on the legislation*, the case with the doctors was the opposite. They prolong the process by *overly being stuck on the legislation*.

Apart from the sexist and misogynist practices, what worsens the right-accession deficits is its combination with the well-seated ideology of nationalism and newly arising xenophobic attitudes towards the Syrian immigrants. This, for sure, reflects upon the way how they enforce and implement the legal regulations. This is also observable in their motivations, and lastly in their judgments when their evaluation is required for proceeding to the next steps in the accession to rights. The instances mostly manifest themselves as the intolerance towards the language incapability; making overgeneralization about the Syrians on the basis of their alleged mal-intention,

or considering the Turkish nationals more worthy of service provision than the others. These practices especially concentrate on the health-related services provisions, though by no means only restricted by there. According to the interviewees that are conducted during the field research, almost no neutral or positive opinion is recorded about the doctors' approach towards the Syrian patients. On the contrary, the doctors who do not even look at the Syrian patients' faces, who kick off the patients with physical intervention and verbal humiliation, or who announced that they are not admitting any Syrian patient by no means have been emphasized many times. Along with this, it is also noted that the ambulance service is highly selectively provided on the basis of the nationality of those who are having a medical emergency. Moreover, as already elaborated above, there are the police officers and the DGMM officers likewise attitudes going too far that it becomes misconduct in the job delivery or even a hate crime.

Apart from these, it is possible to argue that even though in the legislation the Syrian migrants are entitled to the right to get avail of the translation services[70] especially during asylum claim, and medical examination; this right is barely realizable for them. While the reason for not getting availed of the interpretation service is rather an incapacity and arisen corruption between the civil servants and the interpreters; the consequences provides a propitious ground for the nationalist practices within the service provision field and ends up with the right accession deficits. For example, one of my interviewees with approximately 3 years of experience in the different national NGOs from the other cities of the Anatolia as well with a social work educational background shares this:

> I have been working in this field for such a long time. I did not see once the interpreters in the government officers are enough, especially in the hospitals and DGMM offices. I mean, the name has on it: It is a Migration Management office. Nobody can speak anything but Turkish. As this is the case, they always

[70] https://help.unhcr.org/turkey/information-for-syrians/reception-and-registration-with-the-turkish-authorities/ Received in September 8, 2019

> snap at or scold angrily the migrants for they do not understand what the officer tells. They say things like ‘don’t stare stupidly, Don’t you understand what I am saying: Get out!’ and more horrible things.

Here again, what is at stake is rather the mal-treatment than one of the implementation ways. However, this is triggered by nationalist and xenophobic attitudes. There are also more cases which have direct relevance with the bureaucratic processes. The overgeneralization of the Syrian beneficiaries on the basis of their alleged ill-intention can be encountered frequently during the social service provision. For instance, to be able to get benefit from the ESSN card the Syrians need to meet certain criteria among which disabled ratio also may be included. To prove the disability, the beneficiaries must have an expert report from the hospitals. However, according to the observation of the NGO employees, receiving these documents are not easy because the doctors make their judgment not only on the basis of the beneficiaries’ health condition but also their appearances. One of the interviewees who works in the field of the disabled children's protection and whose education is also on the healthcare and rehabilitation with one and a half year of experience from a national NGO told me this:

> Sometimes a consultant approaches to us regarding their health status and ask whether or not there is a social, economic aid s/he may be availed of. We accompany them to the hospitals to make sure their accession. However, doctors’ attitudes are terrible. For example, even if the beneficiary can barely stand up, but s/he entered the doctor’s room by walking, it is almost impossible to receive a disabled report. The doctors secretly say to me things like ‘you wouldn’t know them. They are doing this [pretending as sick] to be able to receive social aid. I know them by heart’ and the like…

Here what is at stake is the overgeneralization of all the Syrians as a group on the basis of their nationality as if all Syrians are deluder for being deemed as eligible for the ESSN Cards. Approaching the TP beneficiary intentionally is not only specific to the doctors, neither. For example, police officers and the DGMM officers also can do the same to those who want to be transferred to another city as well. For example, that the police officers decline to officially take down the complaint due to their persuasion that the beneficiary takes all these steps just to create an official ground for him/herself to

be transferred into another city has been noted many times by my interviewees.

On the other hand, there can be other cases where the government officer does not believe that the same procedure applies to the TP beneficiaries that apply to the Turkish nationals. In these situations the civil servant is needed to be convinced that the TP beneficiaries can also have the right to the same public services by the NGO employees. Or, sometimes they can insist on unnecessary documents or procedures for providing the same service to the TP beneficiaries as well. According to the legislation, the mentally disabled children are subjected to a special education program appropriate to their conditions. The special education can be provided both in the same school as a harmonization training (Kaynaştırma eğitimi) or in the different schools established for these kinds of special children. To be able to enroll in these schools or classes, the student needs to have a medical report taken from the Counselling Research Centres (Rehberlik Araştırma Merkezleri, known as RAM), which can prepare the report on the basis of the opinion of the doctor or the children's teacher. But when it comes to the Syrian children, the RAM does not issue the report easily. The same employee whose words shared above also tells:

> To be able to issue the report that the children need to take special care in the school, RAM normally act upon the children's teachers' opinion or the doctors' opinion. Yet, what they want us to provide them is a medical boards' report. The medical board first does not assemble very frequently, and second even if they do they want us to take them a letter taken from Kızılay as to that the family is in need of that report. The confusion is that normally to be eligible ESSN aid Kızılay may require a disabled report. However, in this case, our purpose is not applying to the ESSN card. But get avail of the harmonization classes. Anyway, we cannot take this letter from Kızılay of course because this has nothing to do with them. And the hospital board cannot give us the report, and we cannot apply to the RAM to receive the final report from them.

What is at stake in the cases of the special children is that even though the TP beneficiary children are subjected to the same regulation about the mentally disabled children, during the implementation additional steps may be required for them. It starts with the RAM's insistence that a hospital board's opinion is required for the disabled

children to be examined and for their reports to be issued while they might proceed on the basis of the referral from school counsellor or an ordinary doctor. Secondly, the hospital sometimes may not examine the children without a referral from Kızılay, the institution which accepts the applications for ESSN cards[71] application. This is because the hospital board thinks that the disabled report is for the ESSN card application even if it is not. Herein the NGOs intervention can play a vital role in that their explanation of why the disabled report is required can unplug the process for the special children's enrolment into the schools, or special treatments. The difference of the service provision in the way in which the process is prolonged for the Syrian nationals can be observed in other fields as well. A similar example has been told by another protection staff who also works in the same area for approximately one year and who also practices nursing care previously:

> We used to have a child who suffers from substance addiction. We wanted to undertake his treatment. However, here we have only two centers providing treatment to those people: one of them told us that they do not accept the Syrians, and the other one says they admit Syrians but not at that age. So we wanted to transfer the children into another city where he can access to this service. But this time the DGMM office insisted on a report indicating the situation. We again turned back to the hospitals to ask for such a report from the psychiatrists but they again turned us down.

In this case, again the unwilling attitudes of the psychiatrist to provide the services to the Syrians distinguishes as the reason blocking the way of the right accession processes. Besides direct rejecting the Syrians, civil servants may give priority to the Turkish nationals in the way that the Syrians are left out of the right accession processes. The school managers' resistance in enrolling the Syrian children on the excuse that the Turkish children's parents are not approving Syrians' enrolment into their school can be given as the most frequent example to this. However, this is observed again in other fields such as ŞÖNİM Offices. To exemplify, one of the

[71] The function and the application procedures has been detailed on page 74-75, also can be found http://kizilaykart-suy.org/TR/basvuru0.html (Retrived in July 20, 2019)

interviewees from an international NGO with 3,5 years of experience in the field of SGBV protection from the other cities as well says that:

> Even though there is an available place for the SGBV survivor women, the ŞÖNİM may reject sometimes to admit them on the ground that the Turkish women will not be happy to see the Syrians around. The manager in the ŞÖNİM explains to us like 'I cannot receive them, the Turkish women will fight with them'. I heard this before, by the way, as the Turkish women young the Syrians old, their languages are different, their daily habits are different, there happens fight between them.

Sometimes the service provider can reject service provision without putting forth the excuses of the others. One of the respondents who has 5 years of experience in a national NGO exclusively in the field of child and SGBV protection says the followings::

> The school managers, ŞÖNİM officers, ÇODEM officers can comfortably say this to us 'I cannot admit that child/women here. I am not even able to look after my own children/ women.' And things like that…

Here again 'my own children/women' shows the nationalistic bias of the service provider agents. As it can be proved by the examples above, even though the formal legislation is not conspicuously marked by the sexist biases towards the women, and regards Syrians and the Turkish citizens as equals, the way how it is de facto implemented gives way to social rights accession deficits and/or impediments. To sum up, this happens in two distinct ways: First by prolongation of the bureaucratic processes by adding extra steps into the process. These extra steps can be brought out by the initiative of the government officers on a legally ungrounded basis as in the cases of the enforcement of the preventive and protective measures or the special children's enrolment in the specialized schools. Or, it can very well be based on the avoidance from initiative taking as in the cases of child abuse. Secondly, the right accession problems can be engendered by the blatant non-enforcement of the law or not proceeding the procedure. This can have root causes in the patriarchal societal organizations as it is instanced by the police officers who try to make peace between

the abusive husband and the SGBV victim wife. Moreover, the other root cause of the second way of implementation practice can reach to the nationalist ideologies prevailing in the Turkish bureaucracy as well. As it is revealed in words of the government officers 'I am not even able to look after my own child/women…' that the officer thinks that the distribution of the "scare sources" must be arranged in the way that it gives priority to the Turkish people. Here, the implementer agent can simply reject carrying out the procedure or can be overly resistant to do so. Also, what is attention-worthy as much as the nationalistic and misogynistic attitudes are the incapacity problem in terms of providing enough service to the people.

Before delving into the incapacity problem, the mal-treatment common among the government officers deserve to heed as well. It is revealed by the field research that the mal-treatment of the government officers towards the Syrian beneficiaries from the very beginning of the pre-registration processes to the fringes of every kind of right accession can be observed as well. Even though by itself it does not depict a model of de facto implementation or enforcement of the law, it is among the reasons which give way to right accession deficits. Even more, for the mal-treatment instances, it can further be argued that these practices may turn into the very right violation instances themselves. The other reason why a place allocated for the mal-treatment practices is that the same structured political and bureaucratic maladies habilitate them within the varieties of the small fields of bureaucracy.

Apart from the reasons above, there is also another robust structural reason of not implementing/enforcing the procedures. As discussed in the previous chapter, the incapacity problem in terms of inability to provide adequate and qualified service or accommodate enough space for the public has caused the right accession deficits and creates 'emasculation' of the government policies (Smith, 1973a). As the most marginal parts of the society are also those who are attached to these services in a highly fragile way; their drop out of the system is highly likely. Given the unaccountable and exceptional nature of the Foreigners Law in general, in the Turkish

context, the Syrians are one of those[72] whose accession to the social and economic services are on the shakiest ground because of the institutional, material, and technical incapacity. It is already indicated that to the public schools, hospitals, and shelters the Syrians may not be easily admitted because of the highly constrained spaces. Also, even though there are free places in order for the public to be availed of the social services, the providers can hold these spaces for the prospective Turkish citizens on an ungrounded basis. In this subsection, I will also include the cases where even though a good intention is employed for the boon of the beneficiary, the right accession may not be actualized due to the problems of incapacity. Moreover, the cases where technical in capacity in terms of deprivation of the required knowledge, data, and expertise, get in the process of accession to the social rights will be exemplified as well.

The former type of incapacity is observed mostly in relation to child abuse, child employment, unaccompanied child and child marriage cases. According to the regulation[73], upon the identification of any of these cases, any citizen can make a denunciation to the police force, gendarmerie, the prosecution office (savcılık), Ministry of National Education, Ministry of Health, and Ministry of Family, Employment, and Social Services. Afterward, the child police would intervene in the process and the child's testimony is officially recorded in Child Oversight Centres (Çocuk İzlem Merkezi, known as ÇİM). If it is convinced that the child's high benefit is breached by the abuse or negligence of the child's guardians (which can be the child's parents or any other responsible person); an oversight and/or protection measurement may be concluded by the court. In that case, the child is taken to the Child Support Centres (Çocuk Destek Merkezleri, known as ÇÖDEM), where the children are accommodated. Therefore, when there is a criminal activity regarding the

[72] More than the beneficiaries of Temporary Protection, it can be argued that the International Protection beneficiaries' situation in Turkey is much more fragile. This is because while the TP beneficiaries are able to avail themselves of a set of rights similar to those of the Turkish nationals, even the IP beneficiaries' accession to the asylum claim his highly limited. And even though they are granted with the IP status, their rights in Turkey is highly constrained.

[73] Regulation No. 29310, issued in the official gazette in 29th March, 2015

children is identified, the process is mostly carried out by the hands of the state in the way that the children's testimony is taken once and the NGO officers are mostly left out. Given the possibility of the re-traumatization of the children, the regulation seems quite plausible on the paper again. However, unfortunately, de facto implementation does not comply with the written format broadly.

First of all, to be able to initiate the process any person in Turkey may make a denunciation call to the Family Ministries' report line (183). In some cases, a follow-up number might be provided. There is also another option for taking the children directly to the Ministry of the Family or any other relevant institution where denunciation about criminal cases involving a child would be welcomed. Still, the great majority of my interviewees noted that as far as they could observe the line is not working. To elaborate, one of the child protection specialist with more than 4 years of experience both in national and international NGOs and different cities in Anatolia shares the following remark:

> "When we came across in cases where the child needs to have protective or oversight measurement, we do use the report line 183. Thereby, the case appears on their [ministry of family's] system. However, for the social workers, it is enough to go there and note that 'no one was in the home' to close the file. I mean they are like the cargo company, if they went to the house and if no one in the home they just drop the case. Because of this, I dealt with the same case many many times."

Due to the high number of cases like this, the government officers are highly inclined to drop the case without making any proceeding. A similar example mixed with language incapability intolerance has been told by another protection employee who works in the field of mixed protection for 2,5 years in different national NGOs' different offices:

> I had a child abuse case at the age of 16. His [the child's] parents get divorced when he was very little and he is abandoned to his grandparents. He has been battered by his grandparents since he was two years old. His grandparents did not let him go to school at all. And they forced him to work. I denunciate this to

> the ministry of family, a couple of weeks later, a lady from the ministry called me and said that 'eee this family do not speak in Turkish, how come you expect me to communicate with them?' I told them that we [the NGO] can provide you with a translator. But this time they did not accept it. I don't remember why. But she was an ordinary officer from the ministry; maybe another one could have accepted my translation offer.

In the second example especially the incapacity problem unfolds as the technical incapacity too. What hinders the child to access a secure shelter for his high benefits is blocked not only by the institutional or material incapacity of the state to accommodate these children but also by the lack of the competent staff to overcome any possible language problem. The experiences of the other protection employees from the same or similar field are more or less similar to each other. There was no positive result regarding those children's cases has been recorded. However, some of the interviewees noted that after reporting the case to the ministry, either they are not allowed to follow the case; or they, themselves, did not prefer to follow it afterward. Still, what blocks the process for those children's access to their social or even basic rights is also the inefficiency of the ministry's officers too. However, the problems of de facto implementation are not only about the undoable first step. Sometimes, these kinds of cases come to the NGOs offices directly, and the protection employees happen to accompany the children all along. Especially with the unaccompanied children cases, it seems it is very difficult to find a knowledgeable officer to implement the procedure. In the unaccompanied children cases, the responsibility to escort the children is given to the DGMM offices[74]. The DGMM offices give the children ID if the information of the child provided is in line with his/her appearance. Otherwise, the child is taken to the hospital for the identification of his/her age with the medical examination. However, the protection officer from this field reported that the DGMM officers do not take the responsibility of the children in this procedure as they have no idea what to do. One of my interviewees with 2,5 years of experience from different national NGOs and from different Anatolian cities with a social work educational background quite succinctly

[74] Unaccompanied child regulation. No. 152065. Published in the official gazette in 20th of October, 2015

summarized the situation:

> I had an unaccompanied child case…. I spend all my day in the DGMM office by fighting with the officers there. Do you know what they suggested to me? They suggest me to take the child to the ASAM Office. This is how desperately they do not know what to do… I am not going to say anything more.

The DGMM officers are frequently subjected to the occupational sessions of training not only from the state by also other international parties as well. This has a great impact on improving their services. Still, the technical incapacities resulted from the lack of knowledge are continued to pop up on a regular base. There are more issues regarding with the technical incapacity of the DGMM officers: Especially, during the early times of the immigrant influx, as it is admitted by the government himself[75], the registration process has been established and carried out almost in a tentative base. During those times, along with issuing the ID on the basis of the oral declaration of the immigrants, the translation from the Arabic alphabet to the Latin one caused extreme spelling errors. This, unavoidably reflected upon the beneficiaries lives when they try to access to their social and legal rights. For example, due to the last names appear differently across the whole family members, the parents cannot prove that they are the mothers or the fathers of their own children. In these cases, they were again completely condemned to government officers' reasons and moderation to proceed.

Apart from the technical incapacity, the institutional incapacity as well caused non-implementation of the process and its concomitant tragic consequences where the violations of the basic rights pursue. In relation with the examples provided above, there are lots of cases where the ÇODEM and ŞÖNİM officers sadly turn down the victimized women and children on the basis of that there is no "available" space for them. The available here must be regarded in the sense of "appropriateness" as well. These cases are very well depicted by the words of my interviewees who works especially on the area of child protection for 3 years in the different duty station of the

[75] The Ombudsman Institution of the Republic of Turkey, 2018, Special Report, p. 54

same national NGOs:

> I had a case. The child was beaten by his family [not the blood-related parents but the legal guards of the child] and forced to work. He was a very introvert child. The ÇODEM reject to admit him. They told me that let him stay at his home. If he comes here the other children make him sell the drug. He may become addicted. He is at least taken care of at his current home now.

This is not an extreme case where a child is declined to be admitted into these centers. On the contrary, especially in child marriage cases, the authorities mostly believe that it is better for the children to stay at the "home". Unless the police force busts the very event of wedding, neither the police nor the ministry of family takes any action to distance the child from that marriage. According to the protection employees' observation, sadly the women shelters are no better than the houses where the underage girl is married and sometimes beaten. One of the protection employees working in the field of child protection for 3 years in a national NGO who also has a social work educational background said that:

> In Turkey, there is no enough space to place every underage married girl. If they express that they are happy, even we don't do anything.

Another area where not taking an action is well seated is the child employment including the street begging. According to the regulation, the child employment is divided into two: If the child is completed 14th age, s/he can be employed in the workplaces arranged according to the labor law. Otherwise, this is the second option; the situation of the family can be reported to line 183 or 170, and resorted for oversight and protective measurements. What kinds of steps are followed in the latter cases is already noted above. Therefore, it would not be difficult to assume that in the other cases where the 14-year-old or above children are employed no measurement is taken. Still, in some cases, the children's employment conditions are checked with an interview with the child. If it does not meet the legal guidance, the family may be served notice via the authorities evoked by the 183 line. Or sometimes the family can be referred to the social and economic aids. There are a limited number of financial

supports provided for the families who are in need. Yet, the numbers of families who are able to be availed of them are highly limited because of the excessive demand again. Therefore, the technical and the institutional incapacity problem structured from the very early times of the establishment of the republic because of the underdevelopment and poorness as a country gives way to the practices of non-implementations. However, these practices somehow differ from those triggered by the nationalistic and patriarchal structure since the incapacity does not involves deliberation of the implementer agent.

4.5 Conditional Implementation and Enforcement

As indicated above even though there is a consistency of inconsistency in the implementation, it does not necessarily mean that parameters are uncontrollable or unpredictable, and because of this, the right accession processes are completely out of control and chaotic. But rather, there are certain patterns of implementation precipitated by the superimposition of the same line of reasoning which operates on the varieties of service provider state crafts. In other words, from the pre-registration processes to the other branches of the rights accession, what urges the service provider agents to implement their job faster or slower shows consistency. Apart from the written rules and regulations, there is a set of practices and a set of mental and physical stages expected from the immigrants and/or from the protection officers for a better quality of the accession processes. This is expressed by the ‘if’ formula in the implementation of the Foreigner’s Law and associated bodies of regulations and legislations. The beginnings of the following sentences can provide typical examples: ‘If there is a phone from above…’, ‘If there is nothing else really do…’, ‘If I am really good with the officer…’ and the like. Thus, in this way of implementation and enforcement, there is a certain set of conditionality existence of which can turn into the key to unblock the process.

The certain set of conditionality is provided from a bigger reserve of the social and political structures. According to the observation of the protection staff, the refugees’

deprivation in the most dramatic sense of the word consists of one of these conditions to have accession to the rights. The DGMM offices present a perfect scene where the begging and self-dramatization come into prominence as the most survival and effective mechanism. One of the international NGO employees who has a specialization with the registration related cases with 6 years of experience tells this:

> Once I was in the DGMM Office again. We prepared all the documents for the pre-registration of the immigrant. The DGGM officer look at the file, examined it a little and look at us with one eyebrow above, and said ‘e this girl does not have anything [in the sense of does not have any emergency]. I mean yes she was not sick or something but she still needs to be registered, right?”

Another one with 2,5 experience in the field of SGBV protection in a national NGO continues with a similar example:

> Normally, when a refugee is registered they automatically have a sort of social security to be able to go to the hospitals free or buy the medicine cheaper. But the DGMM officer has the authorization to activate or deactivate it on the system. In many times I came across when they deactivated it because it is not needed. I mean when the refugee is not sick or when they do not have a medical emergency. After a while, when the refugee got sick, they could not go to the hospitals because in the online system it seems like they don’t have the security. In these cases, we go to the DGMM office and tell the situation and ask them for reactivating their security.

In these cases, the DGMM officer does not consider having an ID and being entitled to its collateral set of rights as something already granted as a legal right by the Turkish government. Rather, what is proved by the narratives of the NGO employees is that the registration and the ID are provided especially if there is a ‘need’ for it. The need here corresponds to the understanding of a sort of transgression to the very basics of human dignity or life. Otherwise, undertaking the registration process and issuing the ID is unnecessary. In the minds of the ID issuing officers decorating a person with the ability of accession to health, education, access to labor markets and the like is not something unconditional, as it is revealed by the practice of ‘seeking for a reason’. Reichert (2011) indicates that the provision of social services on the ground of ‘need’ points out the

understanding of justice rather than rights. This also shows perfect consonance with the ID obtaining processes in Turkey with regard to that it is almost exclusively relying on the judgments of the DGMM officers on what is just for the migrants and what is not. However, the problem stems from the fact that the comprehension of justice may differ from one officer to the other.

Furthermore, the ways how to demand the registration by the immigrants themselves or the protection employees is highly illustrating in that sense as well. Most of the protection staffs that are interviewed stated that before going to the DGMM offices they try to find a problem that can show the immigrant is in an urgent need. Or sometimes that the protection staff tries to make a dramatic story out of the files composed of the immigrants' documents. Other than these strategies, it is reported that the immigrants insistent begging may work. For example, this is shared by a 5-years-experienced national NGO employee from the field of SGBV protection:

> I had a case, the woman's husband was sick and they needed the ID as soon as possible. I tried all my force but could not succeed. The woman entered into the officer's room I stayed outside. She cried out and begged so hard that the officer finally got convinced to complete the registration. However, I know that their case was not that much emergent. There were other people I know, their situation was much worse, but not their performance. I remember how surprised I was that she managed to get the registration done.

Begging as such has been pointed out many times as the most effective way of passing the pre-registration process successfully. When this is combined with the protection employees' observation that especially the DGMM officers' attitude towards the immigrants is more like doing a good deed or a favor rather than delivering their job; the mind-set permeated in the field becomes apparent. Governmental employees' effort to distance themselves in a hierarchically superior position relying on the authorization vested upon them by the virtue of the unaccountable nature of the Foreigner's Law, also creates the delusion that the immigrants are subjected to the officers' incompetent judgment. This understanding especially crystallized in the practices of the DGMM offices are by no means exclusively peculiar to them. The repercussion of the same

understanding can be observed in the other fields of the social service providers as well. One of the other protection with 2,5 years of experience from different cities and different national NGOs staff told me that:

> While the officers evaluating the eligibility of the Syrians for ESSN cards, they go to home visits. This is a critical moment for the refugees because financial aid is really crucial for them. If the immigrants deemed eligible they become so happy. They thank a lot. But the officer sometimes does not take this in a humble way. I once witnessed that an officer let the Syrians kiss his hand.

As discussed in the previous chapter, the social state understanding in Anatolia remained feeble for ages. Instead of that, what is called "welfare society" where the social, economic deprivation of the individuals is alleviated by the religiously motivated social solidarity has thrived (Singer, 2008; Şişman, 2017). What disassociates the former from the latter is first, the latter is based on moral values fuelled by the Islamic religious tenets; second, thereby this gives way to charity-based understanding rather than a rights-based one. As the action mostly consists in the givers' ethical judgment and capability of a good deed in the charity giving, beneficiaries do not have any other choice but appealing the givers' emotions and ethicality mostly on the religious ground. Also, the giver must mostly be subject to exaltation to ensure the perpetuity of the system. The instances shared by the protection employees point out that rather than a rights-based understanding, a charity-based one perpetuates its presence in the social and legal works' delivery.

In relation to the discussion above, especially after the neoliberal turn, the 'social state' understanding gave way to 'social aid' understanding (Ulutaş, 2017). However, for the answers to the question who needs the social and economic aid are remained exclusively and unaccountably to the authorization of the government officers whose appointment determined strongly by the connections within the governing parties; distribution of the aid has turned into the perfect tool for the clientelist, nepotist and informal relationships between the government and the society. As a perfect epitome of a bureaucratic filed with all its maladies, the DGMM offices also for sure provide a

propitious ground for such practices to thrive. This constituted one of the other unspoken and unwritten conditions that the immigrants or the protection practitioners had to pursue: Without an exception all the NGO employees interviewed indicated that having a good personal, friendship relations with the officers in the DGMM bureau is the most vital key to open up the ways to pre-registration processes. In that sense, unless the immigrant themselves or the protection officers have good connections within the bureau, their accession to the pre-registration and thereby to the ID obtaining process would be highly jeopardized. This is expressed many times by the NGO employees particularly when I asked 'what are the strategies that you or the beneficiaries have developed to ease the collaboration of the government officers with you?' All responses included both self-dramatization and effort to develop close personal relationships as the first or second mostly resorted strategies. One of the international NGO employees with 6 years of experience told this illuminating story:

> We always try to keep our relations good with them. As an organization, we visit them even we do not have anything do work on it. We invite them to our offices. When a new staff started in our office we take him/her to the DGMM office and introduce him /her to the people there. I mean we almost fawn on them. This is because otherwise we wouldn't be even stepping in their office.

Developing a personal relationship with a colleague is quite understandable, of course. However, the otherwise cases are the ones what bring the implementation process under the conditionality formulation. Sometimes, these personal relationships can be disguised under the hints of romantic interest to the government officers. And sometimes, this relationship can be conducted via an open material exchange. There are some practices of corruption and bribe, however, some others unfold as a formal agreement between two organizations. One of the protection employees working in the field of protection of the disabled persons for 1,5 years in a national NGO tells that:

> Sometimes our organization offers the governmental institutions to reimburse one of their material expenses. This happens as an agreement between the two agencies. For example, there was a school specialized in disabled children. We purchase their crayons as a sign of our good intention and relation. Afterward, it

was easier for us to refer our children to school.

This is also again exemplified more than a few times during the field research, maybe it was not the crayons but some other equipment required by the government institutions. These kinds of agreements between the two agencies can also be interpreted as the continuum of the clientelist understanding of the service provision at the smaller local levels. As it is revealed by the very nature of the practice itself, there is a hierarchical relationship between the service provider and the beneficiary agencies running in favor of the former. By reimbursing or directly purchasing the equipment, the beneficiary agency turns itself into the clientele of the services supposedly provided indiscriminately to all those who are in need. Also, the good intention of the NGO harbors the meaning of loyalty by rendering itself dependent on the perpetuation and the stability of that governmental institution's current administration.

Closely pertinent to the relationship between the service provider "patron" and beneficiary "clientele" in the social service provision, the immigrants' accession deficits are also marked by the authoritarian ideology within the bureaucracy as well. Authoritarianism has a long and well-discussed past in Turkey. As a requirement of the unrealized full-fledged break off with the patrimonial political culture of the past, authoritarianism has mostly been cited together with the democratic deficiencies in Turkish politics. However, recently, with the super concentration of the executive power at the hands of a JDP government and the discharge of the almost all possible balancing powers from the Turkish politics; a new wave of an authoritarian turn come to the academic terminology (Somer, 2016). The incremental rise of the authoritarianism in Turkey has reached a peak with the promulgation of the state of emergency following the failed coup d'état. Among many things what was very remarkable under the state of emergency is also the strong and sudden restructuring of the state. This happened by the massive dismissals of the civil servants who might possibly pose a threat to the government and their supersedence by those who unhesitatingly can prove his/her loyalty to the government. Replacement of the already-

undergrowth merit system with the loyalty in the appointment of the civil servant is itself stands as a strong sign of the authoritarianism within the state. But at the same time, it also serves to the further concentration of the power in that the erosion of the merit-based system increased the unquestioned submit to any authoritative power within the hierarchical structure of the bureaucracy. This brings us to the other condition that can have a determinative impact while passing through the bureaucratic processes. If the immigrant or the protection employee knows 'someone from above'[76], their accession to the services gets much faster and becomes much easier. This mostly shows itself as 'a call from above' or palpable obeisance to the orders of a superior even if there is a contradiction with the law or the legislation. Most of the protection employees expressed this when I asked the question of 'do you think there is a well-defined division of labor within the government offices?' or the question of 'Do you think that the government officers are well aware and know the legal regulations and legislation in relation with their duty?' Most answers were in line with the following sentences shared by a 5-year- experienced national NGO employee from the field of SGBV protection:

> It simply does not matter as they only listen to their supervisors irrespective of what is ordered is unlawful or not. This was especially so during the state of emergency

Also, consistent responses came up when I asked 'whether the government officers' implementations of the legislations are consistent or arbitrary? Or is it changing from case to case?' They generally answered me in concordance with the following line shared by a national NGO employee:

> Their attitude and implementations do change from day to day or even it can change on the basis of the government's agenda. However, it is mostly the same across to all beneficiaries. Still, they can say that we stop doing this now. According to an internal decision, they can stop doing work. It is only up to

[76] It is important to indicate the fact that here, the above used is in the sense of a high ranking bureaucrat. Someone who has more experience or seniority within the same institution would function in a similar way.

> their supervisors' order. Not really related to the beneficiaries case.

In both quotation, the emphasis on the 'supervisors' order' and the 'state of emergency' connect their responses to the authoritarian hierarchical relationships within the bureaucratic field in general. Yet, there are few common implementations where this kind of obedience is especially valid. One of them is the deportation processes. If an immigrant does not have an ID and howsoever get involved with a crime either as a criminal or as a victim the police officers deport them without checking their condition in Syria. No information is provided to the family or to the person him/herself. And the protection employees cannot take any action with regard to the issue as the deportation is concluded in a quite fast manner. The cause of this implementation is again stemmed from an informal decision of a superior bureaucrat. However, in some cases, the police officers can take the initiative to inform the immigrants that in case their complaint is taken about the crime they will be deported immediately. Yet in most others, police do not show this compassion. One of the lawyers working on the cases of child protection within a national NGO with one-year experience tells this:

> I don't know why they recently started to do this. Whenever there is a case of those who get involved in a crime without an ID starting with 99, the police officers just take them to the border. It is totally unlawful. But we cannot intervene in.

According to the international instruments on refugee rights, the deportation must be committed in the very extraordinary cases such as in the cases of war criminals[77]. Even in these cases if an immigrant refuge in a country and seeks asylum until his/her status is concluded they must be protected against deportation. If there is a criminal activity taken place where the immigrant is the culprit, they must stand trial and condemned according to the national law where s/he seeks asylum. Given the fact that Turkey also parties those international agreements and conventions, the implementations undertaken by the police officers is by no means lawful even in the cases of the

[77] 1951 Geneva Convention, Art. 1(E), (F)

criminal immigrants let alone the criminal cases where the deported person is also a victim. However, in de facto implementation the unquestioned submission to the authority of superior to the ordinary police officer' position so overrides that it can sweep over both the national and international law. In that sense, this implementation can be evaluated as an example of the authoritarianism at a smaller scale and scope over its congruity to jeopardizing the rule of law in general Turkish politics.

Lastly, there is also a reverse example of the practices where the superior's order rules more than anything but resulting in a better accession to the rights. Most protection staff named provincial and/or district Directorate of National Education as the offices with which they are in touch during the protection of the Syrian children. The reason why they regularly visit these directorates is that they always needed the directorate's order to enroll a child into public schools. However, according to the Primary Education and Training Law No. 222[78] and to the circular No 2014/21, the registration of the children to the public schools is proceeded by the collaboration of the school managers and the mukhtars on the basis of the residence address of the children. In the cases of the Turkish children, ideally, a residence paper documenting the address is well enough for the children to be enrolled into the closest school to their address. Yet, the protection employees mostly reported the fact that when it comes to the Syrian children's enrolment the school managers act highly 'resistant'. Even though there are few exceptions who approach the issue in an extraordinarily constructive manner; in most cases, the school managers do not easily enroll a Syrian child without an order from above.

As it is proved by the two examples of the school managers' and the police officers' de facto implementations of the relevant legislation, the authoritarian political culture within the field of the bureaucratic relations can have a determinative impact on the right accession processes. If an immigrant has a connection with someone from above

[78] Law No. 222, issued in the Official Gazette in 1st May, 1961

their accession to the rights gets much easier.

4.6 Conclusion

In this chapter, the results of the field research are discussed. As my intention during field research is to capture how the legislation implementation and law enforcement practices diverge from the written rules and thereby give way to rights-accession deficits, I spoke with the I/NGO employees who work closely with the government officers and the TP beneficiaries. In that regard, the first discussion in this chapter is constituted by clarifying I/NGOs' position in the filed. Accordingly, that they are professionally and occupationally involved in the protection processes is indicated. Before concluding the chapter it is important to revisit the national and international NGOs' role with regard to their occupation on the ground. As indicated the NGOs appeared as a sectorial response induced by the top-down globalization to ever increased amount of international migration in Turkey. In that regard, the fact that their presence in the field is directly up to the official permission and as well as informal affirmation of the bureaucrats in the work setting is already indicated earlier in this chapter. This actually hints something closely related to limping bureaucratic implementation processes. Even though the bureaucratic processes are full of structural problems (as discussed throughout the chapter, such as lack of scientific managerial monitoring mechanism and rights-based understanding, the existence of informal relationship grid, and the like), there are complaint mechanisms as well. Especially in the cases where the rights-accession deficits become obvert the complaint mechanism may be put in force. A complaint about misconducts such as mal-treatment, fraud, corruption, and the like can be directly filed to the Presidency Office via an online system called CİMER[79]. As well as those kinds of cases can be relayed to someone superior in rank within the same or higher institutions. However, the field research also shows us that it is highly challenging to operate such a complaint mechanism in the

[79] For further Information see https://www.cimer.gov.tr/sorular, Recived Semptember 8, 2019

field of service provision. Throughout my interviews, although any question regarding the complaint mechanism is included in my questionnaire, the mention of it almost unexceptionally brought up. For example, the INGO employee working in the field of resettlement whose words are already shared above about a police officer that he describes as 'the devil himself' added the followings about the complaint mechanism:

> We tried to make a complaint about him maybe countless of times. However, it was nothing but a waste of time. Things got worse as we make official complaints about him.

Similarly, one of the other national NGO staff who has expertise on the disabled children in terms of both educational background and one and a half year of professional experience tells this:

> Once there was a school manager who was completely closed to collaboration. He was not registering Syrian children without even an excuse. In these cases, we cannot make a complaint about them. Otherwise, they completely stop working with us. However, one of the INGO staff file a complaint about him. The school manager thought it was me. And we could not step into the school for weeks. We tried really hard to convince him it was not me.

These two examples emphasize two different sides of the unfunctional complaint mechanism. While the former shows that the service provision itself gets worse, the second exemplifies how it can harm the sectorial interest of the NGOs in cases of an official complaint filed. During my field research, and my interviews with 21 employees from more than 10 different organizations nothing positive came out as to the complaint mechanisms. On the contrary, whenever the topic comes up, the employees were extremely cautious. This is because even the slightest suspicion from the government officers towards the NGOs with regard to a complaint can block their as well as their consultants' accession to the services. Therefore, the complaint mechanism both was not their own first call, and also they were warned against by their supervisor not to jeopardize their business operation.

Still, there may be some otherwise examples where complaint mechanism worked well via a personal undertaking or some other way. However, this still does not show a structural mechanism. The importance of the unfunctional complaint mechanism for our topic is that it signifies a process where the protection sector which has born as a response to the rights accession problems of the Syrians becomes adopted and articulated to already existing structure. To put it theoretically, here it would not be wrong to argue that the structuration in this field continued to reproduce similar rights-disrespecting, informal practices. And thereby, these render the same structure alive too.

This can also be concluded for the other three ways of implementation practices as well. The implementation practices categorized as inconsistent/arbitrary implementation, prolongation, and conditional implementation can be placed onto a socio-historic structural background and interpreted there. What is at stake here, these implementation types precipitated by the superimposition of the same practices over time and thereby constituted the habitus of the bureaucratic field. As such, they started to form the reservoir of varieties of similar practices to which the actor can refer during the regulation of the relations taking place at the bureaucratic field of service provision.

To specify more, for the arbitrary/inconsistent implementation practices the structural problem of technical incapacity and lack of scientific managerial system come fore as the underlying reason. These two causes are especially relevant for the cases of the DGMM offices. This is because the ID obtaining process itself corresponds to what can be thought of as the right to have rights. This means that the rights which are normally regarded as the negative rights in the sense that their realization does not require any positive action from any agency but requires mere refraining transform into the positive rights due to the exceptional nature of the foreigners' law. Following that, a special space is separated for clarification that even though the legal authorization is vested upon the government officers, this does not necessarily entail arbitrary implementation unless there is a lack of science base managerial system which can operate a

supervisory power over the implementing agencies. As it is corroborated later by the similar practices in the different government bureaus irrespective of the written rules allow the officers act arbitrarily or not, what reproduces the arbitrary implementation is the lack of scientific, productive-rational bureaucracy. As such first and foremost the right to have rights and secondly all other social and economic rights which are vital to a healthy substance and personal autonomy can be impeded.

This is followed by prolonging implementation practices. The structural cause inducing the recurrence of prolongation practices among the government officers seems the populist ideologies prevailing in the bureaucratic as well as the social realm. What is also important here is the fact that prolongation practices can involve both simply not-implementation of the practices but also deference from one officer to the other. As discussed in detail in the relevant section, because of the patriarchal social structure, the know-hows of the police officers are shaped not in the way that it can shorten the process of intervention in the SGBV cases. But rather, the police officers ways of implementation consist of the involvement of the other bureaucratic agencies and the procedures as well. Moreover, the prolongation can be caused by the nationalistic biases too. Because of the over-generalization about the Syrian migrants, during the service delivery processes, the government officers can demand additional documents. And this makes the process too winding that most of the TP beneficiary has to give up before reaching their purpose. What is also relevant here also the incapacity problem as well. The institutional material deprivation of the government institutions can cause not-implementation of the legislations too especially in the child-related cases. This is because can shortly be indicated as the material and institutional incapacity permeating in the child orphan houses. Moreover, the child employment cases are not taken into account for first the denunciation line is very loose and second, the mechanisms to re-gain the child into a school are nor well working due to the excessive demand and need.

The last way of implementation practice is conditional implementation practices. Here the bigger structural realities behind these practices are the lack of the right-based understanding especially during the accession processes to the social end economic rights. The expectation of the government officers to have a reason to carry out the proceeding can be evaluated as the direct manifestation of this. The conditioned implementation can be understood as the preconditions that the beneficiary or the NGO employees must have to be able to accomplish the bureaucratic process. Along with the lack of right-based understanding, the authoritarian bureaucratic structure also gives way to this specific type of implementation practices as well. This is very well instanced by the phrase ‘a phone from above’. In addition to that, it is possible to observe some clientelist, cyronist and nepotist relationalities between the service provider and the beneficiary. As such these are again can pose an obstacle before the accession to the right to have rights as well as the right to education health and the like.

CHAPTER 5

5. CONCLUSION

In this study, the rights accession deficits of the Syrian migrants arising out of de facto implementations of the Foreigners' Law and its associated body of legislations, rules, and regulations have been examined. In that regard, three distinct ways of de facto implementation practices by the government officers are identified. These practice types are discussed within the bigger, age-old structural problems of the Turkish politics and state-society relations. The inspiring point of the issues discussed throughout this study is provided by the recently surged literature body of the Syrian crisis. In the relevant literature, voluminous numbers of papers, academic works, government and NGO reports, countless numbers of fact sheets, statistics have been produced. However, most of them stayed at the descriptive level and take the problems caused by the legal regulations into their foci. This is because of the assumption that legal formal amendments will be reflected in the implementation perfectly. However, given the exceptionally well-designated response of Turkey to specifically Syrian migrants (Saleh, Aydın, Koçak; 2018); the striking amount of rights accession deficits requires further explanation. This is why this study intends to take into hand the mostly unheeded parts of the encounter between Turkey and the Syrian migrants.

In that regard, first, Turkey's past with international immigration is examined. Even though Turkey has been receiving international migration from the Middle East especially due to the Iran-Iraq War, its response to the refugee influx was incomparably worse in the sense of right violations. During the 90s when there are considerably high numbers of people seeking refuge, Turkey did not let the asylum seekers into the country and confined itself only by establishing container cities along the border.

Fortunately, this changed over time. Even though the geographical reservation in the 1951 Convention and its 1967 Protocol has been reserved, in 1994, a regulation concerning the rights of refugees and asylum seekers was adopted. This has been subjected to a series of amendments during the 2000s owing to the pressure from the EU. When this coupled with the unprecedented amounts of Syrian exodus into Turkey a regulation concerning their status has become inevitable and in 2013 the Temporary Protection Regulation has been adopted.

Having said that, the rights recognized under the Temporary Protection Regime are scrutinized. Here the purpose was to draw the attention to the fact that even though a rights-set similar to those granted on the refugees (of whom naturalization is aimed at the last instance) has been officially recognized for the TPR beneficiaries, their accession to them remained highly restricted. In that regard, the gulf between what is 'ought to be' according to the regulation and what 'really is' in the field became more apparent. To pose the stark contrast between these two, what could be conceptualized as basic rights under TPR are taken under examination. Even though Turkey followed open border policy and lift the punishment of the illegal stay and announce its stickiness to the principles of non-refoulment[80], some reports from the rights advocacy groups proved otherwise. Moreover, the situation for the right to health, employment and education were likewise. For example, the number of the officially employed Syrians is shockingly little in comparison to those who are able, willing, and need to work. Also, the statistics both from the governmental and non-governmental sources point out the fact that almost half of the Syrian children were out of school even though all subsidiary supporting measurements taken by the collaboration of the government and NGOs.

As indicated this contrast brought out the problematization of the issue studied in this

[80] At the time when the study is written the Turkish governement policy on the Syrians has been in line with the respect for the non-refoulement principle. However, since July 2019 the deportation cases on the ground that the migrants do not have valid ID broke out.

thesis. Even though there is a surged literature body on the Syrian immigrants, the point that they are interested dwelled on the issue of the belated integration policies and the TPR legislation. In that regard, I wanted to seek for an answer to the question as to whether there are structural problems impeding the rights-accessions of the Syrian immigrants.

To be able to embark on such research, the theoretical and conceptual framework is specified. Out of the contrast posed by the early synchronic conceptualization of the 'social structure' against the later and more temporal interpretation of it, what is to be understood by the term 'social structure' came to fore. To simplify, Giddens' theorization of the social structure laying emphasis on the historicity but not in the sense that it was before the Saussurian remark is adopted. This way of understanding is reinforced by Bourdieu's concept of habitus as Bourdieu provides an analytical to analyze the practices taking place in the fields smaller in scope and scale. Thereby, the term social structure come to be something that is open to change, dynamic and temporal, but at the same time recursive and self-maintaining. The purpose of such an effort is to place the patterned practices in the bureaucratic field into the bigger framework of the socio-historic and political structures. Thereby these practices are turned into the very outcomes of these structures and at the same time into the very mediators of the structures as well. Bourdieu's theorization of the habitus as the mechanism what structures the structure laid the ground for such an understanding.

Later on, to be able to better specify in what sense the concept of rights is used, a brief space is allocated for the debates on human rights. The past of the concept is almost coeval with the political contemplation of humanity. This is why to be able to better navigate in the literature, a categorization on the basis of the scholars' stance towards the issue of human rights has been adopted. Even though there are strong criticisms towards the supposed theoretical and philosophical ground on which the modern concept of human rights is established, historically the inevitability of composing a universal, egalitarian and inalienable rights-set imposed itself upon the international

politics. As a result, a combination of the first generation of civil and political rights and the second generation of social and economic rights consisted of what is respected today as the Bill of Rights. However, even though both include to varying extends the 'sine qua non' of the human existence, the importance ascribed on them varied mostly because of the international politics. To solve this problem, what is nested as the basic or minimum rights in the literature is taken to the fore. Accordingly, a rights-set required for not falling under three thresholds is specified. These thresholds are human autonomy, healthy subsistence, and participation in communal and social life.

Having been decorated with the conceptual tools, the structural reasons inherited to the Turkish bureaucracy and the public administration is tried to be outlined. In that regard, the incapacity and the inefficiency problems come to the fore. By looking at the international literature, the eclectic concept of incapacity has been delineated in the way that it encompasses two different lines: technical and institutional/material incapacity. Later on, the problem of the inefficiency is discussed with references to first the international and second to Turkey's literature. Accordingly, the most important reasons behind the problem of bureaucratic inefficiency can be specified as its nature, the lack of internal and outsider competition, and the lack of scientific-technical management of the public administration. The last point was especially relevant for the Turkish case. In that regard, the Heper's thesis (1985; 1998) accounting for the feeble productive rationality behind the Turkish bureaucracy is adopted. This argument fostered by the literature body on the 'strong state tradition' mainly puts forth that there was an absence of the objective consistent value system of the middle class during the economic and the social transformation of the Ottoman Empire. According to the same line of reasoning, this is why the bureaucracy has been controlled by an overly-politicized élite cadre's aspirations, not a solid merit system. In line with this, also the lack of rights-based understanding distinguished as another explanation of the implementation processes which gives way to the rights accession deficits. Here, what is glaring was the structured lack of consciousness with regard to both the civil and political rights and as well as social and economic rights. For the latter what was at

stake was mostly the charity-based service provision which appears as the cliental relationship between the service provider actors and the public.

Out of the field research, three types of implementation practices have been identified: Inconsistent/ arbitrary implementation, prolonged implementation, and conditioned implementation of the legislation and the regulations which connect the people to their basic rights. Even though these implementation practices are common to almost all government officers, still it is possible to observe some relevance of the specific type of implementation to the specific structural causes. As such, they also serve to the reproduction and recurrence of the same structures as well. Along with that the right accession deficiencies also vary.

To be clearer, the arbitrary and inconsistent implementation is mainly the result of the combination of technical incapacity and the officers' negligent implementations of the ID issuance regulation. As such, it causes deficiencies in the accession processes to almost all basic rights. This is because of the special importance of the ID-holding for the migrants. Even though the regulation gives the DGMM officers the authorization to admit or decline the written documents and the oral testimony of the Syrians, there is no mechanism to monitor the implementation practices of the civil servants working there. Moreover, this arbitrary and negligent way of proceeding is not specific only to the DGMM bureaus. On the contrary, the doctors, police officers can also perform their duty arbitrarily even though there is no legal permission for that. The reason for these practices is again is resulted from the structural problems of the lack of scientific managerial supervision. And as such, depending on which officer is in question the right accession deficiency occurs accordingly.

A similar inference is possible to make for the other implementation practices as well. The prolongation of the enforcement of the law by deterring to carry out the process is mostly caused by the patriarchal and nationalistic structures of Turkish society. It is already noted that since the foundation of the Turkish Republic the nationalistic tones in the populist ideology has never been erased. The same thing can be argued for the

multi-dimensional patriarchal societal fabric as well. This being the case, prolongation by deferring the law enforcement and implementation during the service provision occurs. As such, this first and foremost gives way to the "attrition" in the right accession of the cases where a gender sensitivity takes places. Likewise because of the nationalist approaches towards the Syrian immigrants a similar prolongation practices in the hospitals and schools occur. Moreover, here it is important to emphasize the fact that the prolongation also includes not performing the duty as well. Not because the prolongation intrinsically includes it, but because of their structural causes are more or less is the same. The only thing defers is the incapacity problem which also causes not taking any action as to the nature of the case. The incapacity problem is particularly relevant to the cases of the children. In that regard, it can be argued that the incapacity problem can cause deficits in the right to security, and healthy substance.

Lastly, there are the practices of conditioned implementation of the regulations and the legislation as well. The fuels for such and implementation come from the lack of the rights-based understanding and again the lack of the scientific-technical management of the Turkish public administration. The conditioned implementation practices manifest itself as the clientelist, cronyst relation between the service provider agency and the TP beneficiary. These practices are so well-seated that they can give way to 'business partnership' in the public service provision.

To conclude, this thesis contributes to the literature bodies on Turkish bureaucracy, international migration in Turkey, and rights-accession processes by identifying three types of implementation practices peculiar to the bureaucratic fields of the service provision. In that regard, it would not be wrong, to argue that these three ways of implementation practices have turned into the habitus of the field of service-provider bureaucracy, although further empirical study and research is needed to confidentially state such an argument. Having been inspired by the habitus theorization of Bourdieu, I wanted to place these types of implementation practices into the bigger socio-historical structures of Turkish politics and civil society relations. Thereby, these three

implementation practices serve to the perpetuation of the same structures as well by swallowing other nascent parties too. Lastly, I want to indicate that the purpose of this thesis is by no means create a contestation among the previously identified reasons as to the rights accession deficits. However, I humbly hope to shed light on some unheeded parts of the same problem.

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APPENDICES

APPENDIX A: QUESTIONNAIRE

Demografik Bilgiler

Adınız:	
Soyadınız:	
Yaşınız:	
Cinsiyetiniz:	
Eğitiminiz:	

Çalışmayla ilgili sorular

Hangi Organizasyonda Çalışıyorsunuz	
Kaç senedir bu organizasyonda çalışıyorsunuz	
Kaç senedir bu alanda çalışıyorsunuz?	
Siz Kendi mesleğinizi nasıl tanımlarsınız? “Bizim yaptığımız iş aslında….” Dediğiniz şey nedir	

İletişim Adresi:

Koruma ile ilgili sorular,

1) Hangi koruma alanında çalışıyorsunuz?
2) Yaptığınız koruma hangi aktiviteleri kapsamaktadır? (Örn. Çocuk işçiliğe karşı koruma, şiddete karşı koruma, haklara erişimi sağlama, vb.)
3) Bu vaka yönetimlerinde/bireysel koruma süreçlerinde yaptığınız işler tam olarak nelerdir? Vaka tiplerine göre sırasıyla Anlatınız. Örn.
   - Çocuk İşçiliği Vakasında:
   - Çocuk Evliliği Vakasında:
   - CTŞD Vakasında:
   - Engelli birey vaksında:
4) Haftada yaklaşık olarak, tahminen kaç tane vakaya bakıyorsunuz?
5) Vaka yönetimi yaparken devlet memurları ile muhatap oluyor musunuz? (Polis memurundan, valiye kadar her devlet memuru sayılabilir) Evetse;

a. Hangi memurlarla ne sıklıkla muhatap oluyorsunuz? Haftada…
b. Bu memurlarla ne gibi işleriniz oluyor?

Hangi memur	Sıklık	Yapılan işler

c. Sizce yasal prosedürlerin uygulanmasında devlet memurlarının inisiyatiflerinin etkileri oluyor mu? Evetse;
d. Bunlar ne gibi inisiyatifler?
e. Bunlar faydalanıcıyı nasıl etkiliyor?
f. Sizce neden kaynaklanıyor?

Hangi memur	Ne gibi inisiyatif	Olumlu/olumsuz	Neden

6) Devlet memurlarının görevlerinin yeterince iyi tanımlandığını düşünüyor musunuz? Hangi koşulda kimin ne iş yapması gerektiği belli mi?

a. Bu durum faydalanıcıyı etkileyecek sorunlar yaratıyor mu? Nasıl?

7) Devlet memurlarının işlerini yapış biçimleri tutarlı mı? Günden güne, vakadan vakaya değişiyor mu?

a. Değişiyorsa, faydalanıcılara göre de değişiyor mu?
b. Bu durum faydalanıcıyı etkileyecek sorunlar yaratıyor mu? Nasıl?

8) Sizce memurlar yasal prosedürlerin ne kadar bilincindeler? Neleri biliyor, neleri bilmiyorlar? Memurlar arasında fark varsa belirterek anlatınız.

a. Eğer bilgisizlikler varsa, bu durum faydalanıcıyı etkileyecek sorunlar yaratıyor mu? Nasıl?

9) Devlet memurlarının faydalanıcılara olan tavrını genel olarak nasıl nitelendirebilirsiniz? Başlıca olumlu/olumsuz tutumları ne sıklıkla görüyorsunuz?
a. Bu durum faydalanıcıyı etkileyecek sorunlar yaratıyor mu? Nasıl?

10) Devlet memurlarının sizinle iş birliğini kolaylaştırmak için siz veya faydalanıcılar herhangi bir strateji geliştiriyor musunuz? Evetse;
a. Ne tür stratejiler (maddelendirerek)
b. Bu stratejilerin ne oranlarda işe aradığını söyleyebilirsiniz? 10 üzerinden (10 en çok)

Stratejiler	B

c. (Yukarıda belirtilmediyse) Devlet memurları ile çalışırken özel olarak araya tanıdık sokma, hemşericilik ilişkileri gibi yöntemlerin iş birliğini kolaylaştırdığını gözlemlediniz mi? Bu ne oranda işe yarıyor?

11) Vaka yönetimi yaparken en sık karşılaştığınız, "hep olur" dediğiniz sorunları vaka tiplerine göre Sıralayınız
a. Bu sorunlarla tahmini olarak her 10 vakada bir ne kadar sıklıkla karşılaşmaktasınız?
b. Sizce bu sorunların kaynağı nedir? Açıklayınız.

Vaka Tipi	Sorunlar	Sıklık	Kaynağı

12) Vaka yönetimi yaparken bürokratik açmazlarla/tıkanıklıklarla karşılaşıyor musunuz?
a. Hangi vakalarda? Ne tür bürokratik açmazlar?
b. Bu açmazlarla tahmini olarak her 10 vakada bir ne kadar sıklıkla karşılaşmaktasınız
c. Sizce bu sorunların kaynağı nedir? Açıklayınız.

Vaka Tipi	Bürokratik Açmazlar	Sıklık	Kaynağı

13) Vakaları çözemediğiniz oluyor mu?
a. Hangi vakalar?
b. 10 vakadan kaçı çözümsüz kalıyor?
c. Neden çözülmüyor/Hangi aşamada kalıyor?
d. Vakaların çözümsüz kalmasının faydalanıcıların haklarına erişimleri açısından nasıl etkileri oluyor?
14) Fiiliyatta karşınıza çıkan hak ihlalleri/haklara ulaşım sorunlarının önüne geçmek için öneriniz var mı?

APPENDIX B: APPROVAL OF METU HUMAN SUBJECTS ETHICS COMMITTEE

UYGULAMALI ETİK ARAŞTIRMA MERKEZİ
APPLIED ETHICS RESEARCH CENTER

ORTA DOĞU TEKNİK ÜNİVERSİTESİ
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Sayı: 28620816 / 292

28 Haziran 2019

Konu: Değerlendirme Sonucu

Gönderen: ODTÜ İnsan Araştırmaları Etik Kurulu (İAEK)

İlgi: İnsan Araştırmaları Etik Kurulu Başvurusu

Sayın Mehmet OKYAYUZ

Danışmanlığını yaptığınız **Nihan KARAGÜL'ün "Yabancılar Hukukunun Fiili Uygulanışından Doğan Hak İhlalleri ve Yapısal Nedenleri"** başlıklı araştırması İnsan Araştırmaları Etik Kurulu tarafından uygun görülmüş ve **273-ODTÜ-2019** protokol numarası ile onaylanmıştır.

Saygılarımızla bilgilerinize sunarız.

Prof. Dr. Tülin GENÇÖZ
Başkan

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Üye

Dr. Öğr. Üyesi Müge GÜNDÜZ
Üye

Dr. Öğr. Üyesi Süreyya Özcan KABASAKAL
Üye

APPENDIX C: TURKISH SUMMARY / TÜRKÇE ÖZET

Geçici Koruma Yönetmeliği'yle beraber Türkiye daha önce karşılaşmadığı sayıda göçme daha önce hiç tanımadığı kadar geniş bir haklar seti tanımlamıştır. Ancak bu durum yinede görmezden gelinemeyecek kadar yaygın olan hak ihlallerinin önüne geçmek için yeterli olmamıştır. Son zamanlarda Suriyeli göçmenler üzerine gelişen literatürde çok sayıda akademik çalışma bu tutarsızlığın üzerine eğilmiş ve önemli sonuçlar çıkartılmıştır. Ancak yinede literaturü kıymetli bir şekilde dolduran bütün bu çalışmaların ortak özelliği çoğunlukla hukuki düzenlemelere odaklanmak ve politika önerileri yapmak olarak göze çarpmaktadır. Bir diğer deyişle, belkide Yabancılar Hukuku'nun önceki versiyonlarından kalma bir alışkanlıkla, Suriyeli göçmenlerle alakalı akademik çalışmalar özellikle göç dalgasının ilk yıllarında neredeyse sadece Geçici Koruma Yönetmeliği'nin içeriğine yönelmiştir. Bu anlamda da hak ihlallerinin nedenleri büyük çoğunlukla hükümetin ısrarla sadık kalmayı tercih ettiği coğrafi kısıtlamaya atfedilmiş ve bu çalışmalar daha entegrasyona dayalı politikalar takip etmesi için hükümete yapılan çağrılara yol vermiştir. Ancak bu tez, literatürdeki bu önemli tartışmaların katkısını kabul etmekle beraber, buna ek olarak dizayn edilen veya edilmesi önerilen politikaların uygulanışında da sorunlar olduğunu öne sürmektedir. Bir diğer deyişle bütün politika yapım önerileri dikkate alınsa ve uygulanmaya konsa bile uygulama süreçlerinin kendisinden kaynaklanan bir "aşınmanın" olduğunu ve olacağını ileri sürmektedir. Bu anlamda, daha önce odaklanılmamış olan bir alana, Yabancılar Hukuku'nun ve onunla alakalı prosedürlerin, düzenlemelerin ve mevzuatların fiili uygulanışına odaklanmaktadır. Bunu yaparkende belirli tipteki fiili uygulama pratiklerinin ardında yatan, daha doğrusu, onlara bir çeşit zemin ve bu pratiklerin rezerv edildiği bir çerçeve sunan sosyo-tarihsel, yapısal nedenleri de tartışmaktadır. Bu şekliyle, Türkiye'de uluslararası zorunlu göç üzerine kabarmış olan literatürün odağını hükümetin entegrasyona dayalı politikalar takip etmek isteyip istememesinden, bu politikaları hayata geçirebilecek bir yapının oluşup oluşmadığına doğru

kaydırmaktadır. Dolayısıyla, bu çalışmanın bir ayağı son zamanlarda hayli kabarmış olan Türkiye'de uluslararası zornlu göç literatürüne, diğeri de Türkiye'deki devlet-toplum ilişkisi ile alakalı gelişmiş olan yazın üzerine odaklanmaktadır. Ve bu haliyle de iki literatürden hem beslenip hem de ampirik anlamda bir katkı sunmayı hedeflemektedir.

Literatüre ampirik bir dayanak noktası sağlayabilmek açısından Suriyeli göçmenlerin yoğun olarak yerleştikleri illerden biri olan Gaziantep'te niteliksel bir saha araştırması gerçekleştirilmiştir. Saha araşatırması süresince 10'dan fazla Sivil Toplum Kuruluşu'nda "koruma" alnında çalışan profesyonellerle derinlemesine görüşmeler yapılmıştır. Ve bu data farklı pozisyonlarda çalışan devlet memurları ve göçmenlerle yapılan plansız görüşmelerle de desteklenmiştir. Saha araştırmasının odağı olarak "koruma" alanı özellikle seçilmiştir. Bunun nedeni STK'ların sağladıkları koruma aktivitelerinin hem bireysel devletlerin kendi ülkelerinde bulunan uluslararası göçmenler için formüle ettikleri haklar setine hem de Uluslararası İnsan Hakları Sözleşmesine dayanmasıdır (Goodwin-Gill, 2006; Sztucki, 1989).

Daha açık ifade etmek gerekirse, koruma aktiviteleri esasında bireysel devletlerin ödevleri olarak belirlenmiştir. Ancak bu ödevin savaş ve açık ayrımcı uygulamalar gibi nedenlerden dolayı yerine getirilememesi halinde hakların korunması yükümlülüğü uluslararası aktörlerin denetimine bırakılmıştır[81]. Türkiye'de de göçmen hakları alanında faaliyet gösteren STK'larında böyle bir fonksiyonu üstlendiklerini söylemek yanlış olmaz. Bu anlamda bu STK'ların zaten bir şekilde hak ihlaline uğramış veya haklarına erişim sorunu yaşayan bireylerle beraber çalışmakta olduğu söylenebilir. Dolayısıyla, koruma aktivitesi sağlayan STK'lar göçmenleri kendi haklarına erişim süreçlerinde desteklemekte ve bunu yaparken de servis sağlayıcı aktör olan devlet memurları ile yüzyüze çalışmalar gerçekleştirmektedir. Koruma alanını bu çalışmanın

[81] Bu normatif anlatı insan hakları felsefesi üzerine gelişmiş olan literatürüde devlet-merkezci olmak açısından eleştirilmiştir. Ancak şimdilik bu noktada bu eleştirilerin ayrıntısına girilmeyecek ve uluslararası toplum tarafından kabul edilen uygulamalar kısaca özetlenecektir.

merkezine taşıyan bir diğer önemli ayrıntı ise bu alanın kurgusunun haklar üzerinde yapılmış olan klasik ayrışmaya dayanmıyor oluşudur. Daha açık bir ifadeyle, koruma alanları çocuk koruma, yaşlı koruma, engelli bireylerin korunması gibi daha geniş kapsamlı kümeler yaratabilmektedir. Bunun önemi ise bir hakkın gerçekleştirilebilmesi için geçilmesi gereken bütün süreçleri kendi içerisine alıyor olmasında yatmaktadır. Örneğin, bir çocuk koruma uzmanı çocuk haklarına karşı koruma geliştirirken hem okul müdürleriyle hem de çocuk yurtları ile beraber çalışmak durumunda kalabilir. Ve böylece bir bireyin bir veya birden fazla hakka erişim sorununa dair kampsamlı bilgiler sağlayabilir.

Yukarıda da belirtildiği gibi bu tür bir bilginin alınması niteliksel bir araştırma yolu ile gerçekleşmiştir. Bu tez kapsamında 21 adet koruma uzmanı ile yarı yapılandırılmış derinlemesine görüşmeler yapılmıştır. Diğer niteliksel çalışmaların aksine bu çalışma görüşmecilerin kendi bakış açılarına ve deneyimlerine odaklanmıyor olsa da kağıt üzerinde görünen ve fiiliyatta uygulanan pratikler arasındaki farkı yapısal nedenleri ile beraber ortaya koymayı hedeflemektedir. Bu anlamda görüşmeler boyunca koruma uzmanlarının gözlemleyebildikleri kadarı ile hak teslim süreçlerinde Türkiye bürokrasisinin geleneksel sorunlarının ne kadar devrede olduğu tespit edilmeye çalışılmıştır. Dolayısıyla, koruma alanı profesyonelleri ile görüşmeler yapmanın bu tezin hem zayıf hem de güçlü yönü olduğunu söylemek yanlış olmayacaktır. Korumacılarla görüşmeler üzerinden verinin elde edilmeye çalışılması tezi zayıflatmaktadır çünkü nedensellik axiyomunun kurulmasında önemli ölçüde dolaylı bir kaynağa dayanmaktadır. Fakat aynı şekilde bu metod çalışmayı güçlü kılmaktadır çünkü bu dolaylı kaynak bizlere hem faydalanıcılar hemde servis sağlayıcılar açısından tarafsız ve senkronik veriler sağlamaktadır. Bir diğer deyişle, koruma uzmanları bürokratik süreçlerde yaşanan aksaklıkları ve bu aksaklıkların faydalanıcılar açısından ne gibi hakka erişim sorunlarına yol açtığını bütünlüklü olarak aktarabilecek konumda bulunmaktadır.

Ancak bu tezin amacı sadece hak ihlallerinin ve nedenlerinin betimleyici seviyede tespitinden ibaret değildir. Aksine, daha derinlikli bir bakış açısı ile bu süreçlerin ne gibi tarihsel, sosyal ve yapısal nedenlerle ilgili olduğunu ortaya koymaktır. Bunun öncesinde bu tarihsel göç akımının nasıl bir bağlamda gerçekleştiğini açıklamak hangi haklar ve düzenlemeler üzerinden değerlendirilmeler yapılacağının vurgusu açısından önemlidir. Daha önce de kısaca değinildiği üzere Türkiye'nin uluslararası zorunlu göç ile imtihanı çok yeni değildir. Özellikle 1980'li yılların sonu ve 90'lı yılların başında, başta Orta Doğu ülkelerinden olmak üzere Türkiye on yıllar boyunca göçmen alan bir ülke olmuştur. Ancak buna rağmen, hakka erişim sorunları üzerinden bakıldığında, Türkiye'nin başarılı bir sınav verdiğini iddia etmek oldukça zordur. Bunun nedeni olarak 1951 Cenevre Sözleşmesi ve onun 1967 Protokolünden beri sürdürülmekte olan coğrafi kısıtlama gösterilebilir. Bu coğrafi kısıtlama, 1951 Cenevre Sözleşmesi ile beraber *de jure* bir şekilde tanımlanan mülteci statüsünün ve bu statüye eklenmiş hakların doğası ile alakalıdır. Daha açık ifade etmek gerekirse, uluslararası mülteci haklarının en temel dayanağını sağlayan 1951 Cenevre Sözleşmesi'ne göre mültecilik statüsü yalnızca İkinci Dünya Savaşı'ndan dolayı Avrupa'dan kaçan göçmenleri tanımlamaktadır. 1967 Protokolü'yle mülteci tanımının önüne *de jure* bir engel koyan bu zamansal ve mekânsal kısıtlamaların kaldırılması için girişimde bulunulmuştur. Böylece bir çok ülke tarafından herhangi bir zaman diliminde dünyanın herhangi bir yerinden kötü muamele ve yaşam hakkının tehdit edilmesi nedeniyle kaçan herkes mülteci olarak kabul edilmiştir. Mülteci olarak kabul edilmenin esas önemi sığınılan ülkede erşilen hakların zaman kısıtlamasına tabi olmaması, sıradan vatandaşlarınkine oldukça yakın olarak tasarlanmış olması ve zamanla vatandaşlık statüsüne evrilme potansiyeli taşıyor olmasından gelmektedir. Dolayısıyla Türkiye 1967 Protokolü'nden beri zamansal kısıtlamayı kaldırmış olsa da coğrafi kısıtlamaya bağlılığını sürdürerek yalnızca Avrupa ülkelerinden kaçarak sığınma talep edenlere mülteci statüsü vermiştir. Ve bu haliyle de Orta Doğu ülkelerinden savaş nedeniyle gelen *de facto* mültecilerin önemli bir bölümü en temel haklarına bile erişememiş hatta geri gönderme uygulamaları gibi uluslararası hukuk tarafından korumaya alınan bir takım hakların

çiğnenmesine de maruz kalmıştır (Kirişçi, 1996; 2007; Frelick, 1997).

Türkiye bu coğrafi kısıtlamaya hala sadık kalsa bile 2000'li yılların başından beri özellikle Avrupa Birliğinin teşviki ve aktivistlerin oluşturduğu baskıyla mülteci statüsü vermediği göçmenlere tanınan hakları bir nebze olsun genişletmiştir (Kirişçi, 2004; 2012; Ozcurumez & Şenses, 2011; Kaya, 2009; Tolay, 2012). Bu bağlamda 1994'te ayrı ve merkezi bir Yabancılar Hukuku'nun oluşturulmasını 2000'li yıllarda getirilien bir dizi yasal iyileştirme takip etmiştir. Bu nedenle, Yabancılar ve Uluslararası Karuma Kanunu'nun 91. Maddesine dayanılarak geliştirilen Geçici Koruma Yönetmeliği'nde hala coğrafi kısıtlamanın etkisi sürse de 90'lı yıllara kıyasla, haklara erişim açısından çok fazla yol katedildiğini söylemek yanlış olmayacaktır (Soykan, 2012; Kibar, 2013; Kirişçi, 2012). Bu bağlamda, Geçici Koruma statüsü alan Suriyeli göçmenlerin Türkiye'ye kabulü, Türkiye'de cezasız kalmaları, sığınma talep edebilmeleri, geri göndermeye karşı korunmaları gibi uluslararası enstrümanlarla da tanınan hakları garanti altına alınmıştır. Türkiye bununla da kalmayıp, Suriyeli göçmenlere eğitim, sağlık, çalışma gibi bir takım sosyal ve ekonomik hakları da geçici ama son tarihi tanımlanmamış bir zaman periyodu boyunca tanımıştır. Hal böyleyken Türkiye'nin özellikle uluslararası kamuoyundan oldukça takdir gördüğünü söylemek yanlış olmayacaktır.

Ancak kağıt üzerinde neredeyse mükemmel görünen bu düzenleme sahada pek de bu şekilde deneyimlenmemektedir. Bununla ilgili en çarpıcı örnekler sağlığa, eğitim ve çalışma hakkına erişimdeki çarpıklıkta ortaya çıkmaktadır. 2011 yılının başından beri hız kazanarak devam eden araştırmalar bizlere geçici koruma altındaki Suriyelilerin haklarına erişimlerinin çok kısıtlı bir düzeyde kaldığını göstermektedir. Örneğin Türkiye'de bulunan Suriyelilerin birinci ve ikinci derecedeki sağlık merkezlerine doğrudan üçüncü derecedeki sağlık merkezlerine ise sevk yoluyla erişim hakları sağlanmışken ve sağlık harcamaları AFAD tarafından karşılanan genel sigorta ile desteklenmişken, sağlık hakkına sorunsuzca erişebilen Suriyelilerin oldukça kısıtlı kaldığı görünmektedir. AFAD'ın 2017'de yayımladığı rapora göre kamp dışında

yaşayan Suriyeli kadınların %46.5'i ve Suriyeli erkeklerin %35.3'ü hiçbir sağlık hizmetinden faydalanmadığını ifade etmektedir. Benzer şekilde Aile, Çalışma ve Sosyal Politikalar Bakanlığının 2017'de yayınladığı son istatistiklere göre, 2011'den beri Suriyeli göçmenlere verilen çalışma izni sayısı 20,966'da takılı kalmıştır. Üstelik bu rakamın çok büyük bir kısmını da erkekler oluşturmaktadır. Eğitim hakkına baktığımızda ise tablo yine değişmemektedir. Meclis İnsan Hakları İnceleme Komisyonu'nun (Mülteci Hakları Alt Komisyonu, 2018), UNICEF'in (2019) ve UN Women'ın (2018) son raporlarına göre okulda bulunması gereken yaklaşık 1 milyon 100 bin çocuğun ancak %40'ı okula gitmemektedir.

Bu çarpıcı fark üzerine yoğunlaşan çalışmalar gerek STK'lardan gerek hükümet nezdinden gerekse de akademik camiadan gelsin, dil ve yoksulluk sorununu öne sürmektedir. Bu tez bütün bu çalışmaların katkısını kabul etmekle beraber tanınan hakların hayata geçirilmesinde temel aktör olan devlet memurlarının hukuki ve prosedürel uygulama pratiklerinin de haklara erişim açısından bir çeşit "aşınmaya" yol açtığını öne sürmektedir. Bunu yaparken de bu pratiklerin devlet memurlarının kötücül doğasından değil, kapasite yetersizliği, verimsizlik, hak bazlı bir anlayışın olmaması gibi yapısal bir takım nedenlerden kaynaklandığını ifade etmektedir. Bu haliyle haklara erişim süreçlerinde kilit faktör olan devlet memurlarının uygulama pratiklerini mercek altına alınmıştır ve bu pratiklerin belirli sosyo-tarihsel yapısal faktörlerin bir sonucu oluduğunu ileri sürülmüştür. Ancak uygulama pratiklerinin ve bunların yol açtığı hak ihlallerinin analizine geçmeden önce, literatürde çokça kullanılan sosyal yapı kavramının netleştirilmesi gerekmektedir. Bu nedenle bu tez Bourdieu ve Giddens gibi, aktörlerin pratiklerine odakanan ve bundan beslenerek daha dinamik bir sosyal yapı kavramsallaştırması kurgulayan teorileri temeline almaktadır.

Sosyal yapı kavramının sosyal bilimler literatürüne Ferdinand de Saussure'ün (1959) dil bilimi üzerine olan katkısıyla girdiğini söyleyebiliriz. Saussure, en temelde, bir dil içerisindeki tek bir harfin bile anlaşılabilmesi için o harfin tarihsel yolculuğuna çıkmaktan ziyade onun içinde bulunduğu senkronik bütünlük ile beraber

anlamlandırılabileceğini söylemektedir. Bu haliyle oldukça basit bir açıklama gibi görünen bu yaklaşım sadece sosyal bilimlerde değil metodolojik bir sorgulama olarak diğer bilimlerde de kendini göstermiştir. Saussure'ün kavramsallaştırmasına göre herhangi bir fenomenin anlaşılabilmesi için kendisiyle beraber oluşutruğu bütündeki diğer parçalarla kurduğu senkronik ilişki de değerlendirilmelidir. Bu aşamada bütün diye adledilen şey bir yapı olarak düşünülebilir. Bu yapının veya onu oluşturan alt parçalarının analizi ise o an ki tarihsel moment içerisinden alınan bir kesitte açığa çıkan ilişkilerin analiziyle mümkün olacaktır. Somutlamak gerekirse, Saussure'ün yaptığı bu katkı sosyal bilimler içerisinde farklı branşlara doğru açılmıştır ve aktör-yapı olarak ifade edilen temel bir paradigmaya doğru evrilmiştir.

Ancak bu haliyle toplumsal yapı kavramsallaştırması sorunlardan azadi değildir. Aksine Saussure'ün çizmiş olduğu tablo çığır açıcı bir nitelik taşımış olsa da zaman içerisinde yapının tarihselliği ve değişimi sorununu gündeme gelmiştir. Daha açık ifade etmek gerekirse Saussure kurduğu ontoloji dinamiktir ancak statiktir. Yani, toplum bilimlerindeki yankısı, bir toplumsal yapının devingen ancak sürekli aynı ve tahmin edilebilir doğrultuda devam edebilen bir devinimden ibaret olduğu sonucuna çıkmaktadır. Geçerlilik payı olmakla beraber bu yaklaşımın öngörülemeyen şekillerde patlak veren veya öngörülemeyen şekillerde yavaşça gelişen toplumsal fenomenleri tam olarak açıklayamadığı anlaşılmıştır. Bu problemin üstesinden gelebilmek içinse aktör-yapı paradigmasının içindeki diğer elemente, yani aktöre, daha özne-vari bir yapıcı/yaratıcı güç atfedilmeye başlanmıştır.

Ancak bu öznellik, aktörü tamamen kendinden menkul, kendi rasyonelitesi, kendi hedefleri ve enstrümanları olan bir özne haline getirmek için de tasarlanmamıştır. Aksine, aktörü toplumsal yapının bir parçası olmaktan ziyade toplumsal yapının bir devamlılığı hatta bir anlamda toplmsal yapının kendisi olarak resmetmektedir. Bunun gerçekleşebilmesinin ön koşulu ise aktörün pratiklerine atfedilmiştir. Bu son haliyle sosyal ontoloji ne aktörün ne de yapının birbirini varoluşsal olarak öncelemediği bir kavramsallaştırmaya bürünmüştür. Giddens ve Bordieu'nun bu tez açısından önemi ise

toplumsal ontolojiyi tam olarak bu şekliyle kurgulamalarından gelmektedir. İki düşünürün de anlayışında toplumsal yapı aktörlerin pratiklerinin zaman içerisinde sonsuz kez aynı şekilde tekrarlanıp farklı zamansallıklarda üst ütse binmesinden ibaret bir dokudur. Ancak bu haliyle bu doku aynı zamanda kendi nedeninin de sonucudur. Bir diğer deyişle bu iki sosyal bilimcinin de vurgulamakta olduğu şey toplumsal yapının aktörlerin pratiklerinin bir sonucu olduğu ve aynı zamanda aktörlerin pratiklerinin de bir nedeni olduğudur. Giddens (1979) bu kavramı açıklarken kendi raylarını döşeyerek ilerleyen bir tren benzetmesi yapmaktadır. Bu haliyle, toplumsal yapı sürekli olmakta olan, yani sürekli oluşum halinde olan bir ontolojiye tekabül etmektedir. Giddens bunu vurgulayabilmek için yapı kavramı yerine *yapılaşma* (*Structuration*) kavramını öne sürmüştür. Benzer şekilde aktörlerin pratiklerinin önemi Bourdieu'nun teorisinde de açıkça görülebilmektedir. Burdieu toplumsal yapı kavramının daha iyi anlamlandırılabilmesine yol açacak olan ve daha küçük ölçeklerde de çalışan farklı kavramsallaştırmalar da yapmıştır. Burdiue'nun *alan* ve *habitus* kavramsallaştırmaları buna güzel örenkler teşkil etmektedir. Bourdieu'nun alan olarak teorize ettiği şey genel anlayışın aksine mekansallığa doğru bir vurgu yapmaz, bundan ziyade toplumsallığı ve onun ilişkilerini ön plana alır. Bourdiue'ya göre toplumsal alanların farklı habitusları vardır. Bu habituslar o alandaki aktörlerin pratiklerinin, ilişkilerinin ve zevklerinin düzenlenmesinde başvurulan ana reservuar işlevi üstlenmektedir. Bir diğer deyişle habitus aktörlerin pratiklerini, neyi neden yaptıklarını anlamlandıran ve bu haliyle de alanın bilişsel bir haritasını orataya koyan bir bütünlüğü ifade etmektedir (Bourdieu, 1977:80). Ve şaşırtıcı olmamakla beraber habitusu oluşturan ve şekillendiren şey yine aktörlerin kendi pratikleridir.

Bu noktadan hareketle bu Bourdieu ve Giddens'in toplumsal yapı kavramsallaştırması içerisinde yapının kendisi pratiklerin durmaksızın tekrarlanması ile beraber bir tarihselliğe de oturmuş olur. Dolayısıyla bu tez boyunca göçmenlerin haklarına erişim sorunlarının nedeni olması beklenen toplumsal yapılar tartışması bu temel paradigma üzerinden yürütülmüştür. Daha açık bir ifadeyle, bürokrasi alanında yerleşmiş olan habitus pratiklerinin belirli toplumsal yapıların ürünü olduğu iddia edilmiştir. Bu

toplumsal yapılar ise zaman içerisinde tekrarlanan aynı veya benzer pratiklerin ürünü olarak kurgulanmıştır.

Toplumsal yapı kavramsallaştırması kadar netleştirilmesi gereken bir diğer kavram da haklardır. Toplumsal yapı tartışmalarında olduğu gibi hak kavramı da akademik çekişme ile beraber yoğrulup son formunu almıştır. Her ne kadar insan hakları kavramının modern toplumların bir ürünü olduğu düşünülse de bugün karşımıza çıktığında "insan hakları" teorilerinin içine sokabileceğimiz tartışmalar modernite öncesinde ve Batı toplumları dışındaki toplumlarda da görülmektedir (Donelly, 1982). Ancak bu noktada 'objektif haklar' ve 'bireysel haklar olarak yaratılan ayrışmaya dikkat etmekte fayda vardır. Objektif haklar olarak kavramsallaştırılan haklar seti o komünite veya o toplum içerisinde yaşayan insanlar üzerine kör bir şekilde dağıtılıp daha çok bugün hukuk dediğimiz şeyi andırır. Oysa, bireysel haklar bireyin korunmasına vurgu yaptığından modern anlamda insan hakları olarak kavramsallaştırılan haklar setine daha yakın bulunmaktadır. Bunun önemi ise insan hakları tartışmasında ilk referans durağımızın 17. Yüzyıl düşünürleri olan Hobbes ve Locke olarak belirmesinde yatmaktadır. Çok kaba bir şekilde ifade edilecek olursak, Hobbes ve Lock'un modern anlamda kullanılan insan hakları kavramına yaptıkları ilk katkı, kendi kavramsallaştırmalarında bağlamsız ve aşkın bir insan doğası üzerinden, bütün bireylerin eşit olması ve eşit bir şekilde korunmaya haklarının olduğu iddiasına dayanmaktadır. Onlara göre iktidar denen otoriteye bireylerin kendilerini teslim etmelerini meşrulaştıran en rasyonel zemin de budur.

Bu iki düşünür üzerinden açılan insan hakları tartışması yüzyıllar boyunca devam etmiştir. Fransız İhtilali ve Amerikan Bağımsızlık Savaşı ile beraber de ilk anayasal formlarına kavuşmaya başlamıştır. Ancak tüm bunlar gerçekleşirken insan hakları kavramının sürekli olarak destekçi topladığını iddia etmek doğru olmayacaktır. Aksine, insan hakları kavramsallaştırması üzerine kafa yoran düşünürlerin bir kısmı kendi duruşlarını eleştirel, bir diğer kısmı da eleştirel olmasına rağmen son tahlilde destekleyici bir zemin üzerine bina etmişlerdir. Bunların karşısında ise daha

konvensiyonel olarak insanın evrensel ve aşkın bir takım özelliklerinin olduğunu tezine dayanan bir insan haları setinin kurulabileceğini savunan 'temellendirici' (foundationalist) grup yerleştirilebilir. Bu sonda bahsedilen gruba göre gerek insanların gerek rasyonelitesi (Rawls, 1971), gerek moral değerleri üzerinden (Gewrith, 1978; Feinberg; 1992) bir standart blirlenebilir ve bu standardın referansıyla da bir insan hakları seti oluşturulabilir. Bunların dışında ancak yine aynı çizgide, insan hakları kavramsallaştırmasının ontolojik sağlamasından ziyade, insan hakları setini kendi kendini sağlayan bir mekanizma olarak kurmayı öneren bir gruptan da söz edilebilir (Donelly, 2013; Freeman, 1994; Rorty, 1998). Bu yaklaşıma göre insan hakları kendini gerçekleştiren bir kehanet olarak değerlendirilmelidir. Ve insanlığa atfedilebilcek bir ontolojik zemin kurmak her zaman için soru işaretleriyle dolu olsada bir varsayım yapmaksızın bu ontolojik zeminin belirli moral değerlerle bilinçli olarak inşaa edilebileceğini, hatta edilmesi gerektiğini savunmaktadır.

Bu ise bizleri bu zeminin kimler tarafından nasıl bir motivasyonla bina edileceği sorusuna getirir. Ve bu sorunun cevabı insan hakları teriminin kısa tarihi boyunca uluslararası politik çekişmeler tarafından bir çok kez yanıtlanmaya çalışılmıştır. Bu noktada soruna biraz da reel tarih gözünden bakılabilir. İnsan hakları kavramı ilk anayasallaşmaya başladığı tarihten 1948'e kadar ve hatta sonrasına kadar, kademeli olarak uluslararası ve ulusal alanlarda daha fazla resmiyet kazanmıştır. İlk başta salt negatif haklar 1. Jenerasyon haklar olarak tanımlanan bir set ortaya sürülmüştür. Buna göre insan hakları devletin bir hizmet sunmasını gerektirmeyen sadece çiğnemekten saknıldığı takdirde hayata geçen bir grup haktan oluşmaktadır. Ancak zamanla bu haklar özellikle Sovyet ülkelerinin ısrarıyla 2. Jenerasyon, pozitif haklar, denen başka bir grup tarafından takip edilmiştir. Bu İkinci grup halar ise devlete daha fazla ödev tanımakta ve gerçekleşmesi için bir aksiyon alınmasını öngörmektedir.

Bu ayrışma zaman içerisinde pek çok kişi tarafından eleştirilmiş ve farklı bir kavramsal setin ortaya çıkmasına olanak sağlamıştır (Shue, 1980; Nickel, 1987). Bu yaklaşıma göre birinci ve ikinci jenerasyon olarak veya bunların denk düştüğü şekliyle

politik/sivil ve sosyal/ekonomik/kültürel haklar olarak bir ayrım yapmak tercih edilesi değildir. Aksine bütün bu hakların kesişim kümesinden insanlığın sağlıklı varoluşunu (healthy subssistance), otonomisini ve toplumsal hayata katılımını öngören daha küçük bir küme tanımlanabilir. Shue (1980) bu kavramsallaştırmayı temel haklar (Basic Rights) olarak isimlendirmiştir ve bu yaklaşım özellikle sosyal çalışma literatüründe oldukça destek bulmuştur (White, 2004; Young, 2012; King, 2014; Fabre, 2000). Bu anlayışa göre temel haklar (aynı zamanda minimal haklar olarak da anılmaktadır) hiçbir insanın altına düşmemesi gerek bir kırmızı çizgi işlevini üstlenmektedir. Ontolojisi ise diğer hakların sağlanmasının önkoşulu olmasına dayandırılmaktadır. Bir diğer deyişle, ancak temel hakların varlığı durumunda diğer hakların da varlığı dile gelmektedir.

Dolayısıyla bu tezde ele alınan hak kavramı bu son betimlendiği haliyle ele alınmaktadır. Türkiye'de Geçi Koruma statüsü altında tanınan haklar gerek dar gerekse geniş anlamıyla kurulan haklar setini karşılamaktadır. Ancak tezin saha araştırması kısmında odaklanılacak olan yer bu tanımlanan haklardan sapma olduğu için en azından ne ölçüde temel haklara sadık kalındığına bakılacaktır. Örnekler somutlamak gerekirse, öreneğin ayrı düşmüş veya refakatsiz bir çocuğun vasi edinme veya yurda yerleştirlme hakkının gerçekleştirilip gerçekleştirilemediğine bakmaktansa, bu çocuğun 'sağlıklı varlığının' korunup korunmadığı üzerinden bir değerlendirme yapılacaktır.

Saha araştırmasının analizlerine geçmeden önce son olarak üzerinde durulması gereken diğer bir konu ise uygulamadan kaynaklanan yarılmanın ne gibi yapısal faktörlere dayandırılabileceğinin tartışmasıdır. Dünya literatürüne baktığımızda uygulama süreçlerinden açığa çıkan aşınma daha önce tartışılmış ve özellikle gelişmemiş veya gelişmekte olan toplumlarda daha çok gözlemlenebilen bir fenomen olarak ortaya konmuştur (Smith, 1973a, 1973b, Grindle, 1980). Bunun ise iki önemli nedeni ayrışmaktadır: Birincisi yaratılan politikaların hayatageçirilmesinin önünde engel teşkil edebilecek olan kapasite yetersizliği sorunudur. İkincisi ise bu uygulamaları hayata geçiren aktörlerin verimsizliği sorunudur. Kapasite yetersizliği sorununa baktığımızda bunun daha çok eklektik ve sınırları belli olmayan ancak oldukça önemli boşlukları da

doldurabilen bir kavram olarak ortaya konulduğu gözlemlenmektedir. Bu kullanımların kesişiminden ise Teknik ve Kurumsal/Materyal kapasite yetersizliği gibi iki temel ayrışmanın ortaya çıktığı söylenebilir. Öte yandan, verimsizlik sorunu ise daha çok kamu yönetimi ve örgüt teorileri literatürlerinde tartışılmıştır. Buradaki açıklamalara göre ise bilimsel bazlı bir yönetim tekniğinin oturmaması, rekabet eksikliği gibi diğer nedenlerin yanında en çok kullanılan açıklama olmuştur.

Bu bilgilerin ışığında Türkiye bürokrasisini ve hizmet sağlayıcı memurları değerlendirdiğimizde bu iki açıklamanın özellikle geçerli olduğunu görürüz. Metin Heper 1985'te yazmış olduğu Doktora tezinde tam olarak neden Türkiye bürokrasisinde tam teşekküllü bir üretken rasyonelitenin kurulmadığını tartışmıştır. Ona göre yanıt Türkiye-Osmanlı Devleti'nin geçirdiği sosyal ve ekonomik dönüşümün olgunlaşa(ma)an ekonomik ilişkilerin organik bir baskı yoluyla politik bir değişim getirememiş olmasından kaynaklanmaktadır. Daha açık bir ifadeyle kendisinin etkilendiği ekole göre Osmanlı toplumunda organik olarak politik ve sosyal bir dönüşümü beraberinde getirebilecek bir orta sınıfın zenginleşmesinden söz etmek çok mümkün değildir. Hal böyle olunca yaşanılan dönüşümler bir grup élitin kendi politik projeksiyonlarını hayata geçirme arzusunun bir sonucu olarak teşvik edilmiş ve başlatılmıştır. Bu ise beraberinde fazla politize olmuş bir aydın kesimi tarafından devlet yönetiminin sürekli hayali bir projeksiyona doğru sürüklenmesi sonucunu doğurmuştur. Hal bu iken, yani tutarlı isteklerini ve ideolojilerini devlet yönetimine baskı yoluyla sunabilecek bir orta sınıf ortada yok iken, bürokratik gelişim ve yönetişimin esas paradigması ideolojik bir zemine dayanmaya başlamış ve liyakatten giderek uzaklaşmıştır. Bu ise bugün karşımıza üretken bir rasyonelitenin bürokratik işleyişin mantığına yerleşmemiş olması ve bilimsel bir yönetim anlayışının olmaması olarak çıkmaktadır.

Burdan çıkan bir diğer açıklama kolu ise Türkiye'de politik ve sivil hakların gelişmemiş olmasıdır. Literatürde haklar konusu özellikle Türkiye'de demokrasi süreçleri ile ilişkilendirilerek tartışılmıştır (Ünsal,1998; Üstel, 1999; Özbudun, 2009;

Gürses, 2011). Sosyal ve ekonomik haklara erişim süreçlerine bakıldığında ise modern devletin kuruluşundan önce sakada yardımları ile oluşturulan refahın yerini zamanla informal ilişkilere bıraktığı gözlemlenmiştir. Özellikle neoliberal dönüşümle beraber sosyal ve ekonomik hakların teslimi toplumsal dayanışma ilişkilerine bırakılmıştır. Bunun dışında kısıtlı olarak sağlanan devlet destekli sosyal ve ekonomik haklar ise patronaj-kliental ilişkisinin mükemmel bir aracına dönüşmüştür. Bu haliyle, kamu tarafından sağlanan sosyal yardım süreçlerinde, hizmet sağlayıcı aktörler gerçekleştirdikleri faaliyetlerin bir hakka erişim noktası olduğunun bilincine erişememişlerdir. Ve sağlamakta oldukları servisin kalitesi ise evrensel olarak her bireye eşit dağıtılmaktan ziyade bireylerle kurulan kişisel ilişkinin doğasına gore farklılaşmıştır.

Tüm bu teorik ve kavramsal çerçeveyle Türkiye'de Suriyeli göçmenlere sağlanan hakların teslim süreçlerindeki pratiklere baktığımızda özel olarak 3 tip uygulama göze çarpmaktadır. Bunlar tutarsız/keyfi uygulama, dolaylı yoldan uygulama(ma), ve koşullu uygulama olarak categorize edilebilir. Bütün bu uygulama süreçleri saha araştırmasından edinilen verilerle beraber değerlendirilerek tartışılmıştır. Ve sonuç olarak her uygulama partiğinin özellikle etki ettiği hak erişim sorunları, arkalarındaki sosyo-tarihsel yapılarla ilişkilendirilerek açıklanmıştır.

Bu bağlamda ilk olarak tutarsız/keyfi uygulama pratikleri ele alınabilir. Bu uygulama pratiği özellikle Türkiye'de göçmenlerle ilgili bütün resmi işlerin yürütülmesinden sorumlu olan il-göç ofislerinde açığa çıkmaktadır. Ancak hiç bir suretle sadece buraya özgü değildir. Bu noktada il-göç ofislerinin özellikle önemli bir yer tuttuğunu belirtmekte fayda var. İl-göç ofisleri göçmenlerin ilk olarak kayıtlarının yapıldığı, kimlik edinme süreçlerinin başladığı, ve bununla beraber kendilerine tanınan her hakkın aktivasyonunun gerçekleştiği kilit kurumlardır (agency). Dolayısıyla bu noktada açığa çıkan herhangi bir aksaklık temel hakların erişimi kadar bu 'haklara sahip olma hakkı' (Arendt, 1961; Shachar, 2014) olarak da tanımlanabilecek bir süreci tehlikeye sokmaktadır. Türkiye'de Geçici Koruma Yönetmeliğinin görece ve istisnai bir şekilde

oldukça geniş bir haklar seti tanımladığına daha önce değinilmiştir. Ancak uygulama pratiklerinin kodifikasyonunu yapan mevzuata baktığımızda bu haklara erişimini engelleyen bir takım boşluklar olduğu göze çarpmaktadır. Bu boşluk özellikle 2016 ve öncesinde uygulanan kayıt sürecinin değişmesinden kaynaklanmaktadır. 2016 öncesinde gerçekleştirilen kayıt alma işlemlerinde göçmenlerden istenen belgeler daha fazla destekleyici bir nitelikteydi. Bir diğer deyişle sözel beyanat resmi kayıt için yeterli olmakta ve bunu destekleyen yazılı ve resmi bir döküman aranmamaktaydı. Ancak 2016 sonrasında mevzuatta küçük bir değişikliğe gidildi ve artık sözel beyanatın geçerliliği azaltıldı. Bu noktada değiştirilen sistemin en büyük etkisi bir güncelleme durumu söz konusuolduğunda açığa çıkmaktadır. Somut bir şekilde örenklemek gerekirse ilk kayıt sürecinde evil olmasa da evli, çocuğu olmasa da çocuklu vs görünen bütün faydalanıcılar kendi bilgilerini güncellemek istediklerinde bu kez sözlü beyanlarının işe yaramadığını fark ettiler. Bu ise süreçlerin işleyişinde önemli ölçüde karışıklığa ve hak erişim sorunlarına yol açtı. Hükümet en başta çok da yetkin bir şekilde ortaya koyamadığı kayıt sürecinin yarattığı problemlerin çözümünü il-göç idaresindeki memurlara inisiyatif hakkı tanıyarak çözmeye kalkıştı. Bu ise il-göç memurlarının gerek kayıt yapma, güncelleme, veya göçmenlerin farklı bir ile transferini gerçekleştirme gibi işlemlerde sözlü beyanatı kabul edip etmemede tamamen kendi inisiyatiflerinin geçerli olması anlamına geldi. Ancak bir adım uzaktan baktığımızdan bunun görece makul bir çözüm olduğunu savunabiliriz. Memurlara tanınan inisiyatif hakleri kendi başına tutarsız ve keyfi uygulamanın kaynağını oluşturmak zorunda değildir. Bir diğer deyişle Türkiye örneğinde bu uygulamayı problemli kılan şeyin kayıt alma süreçlerinin dizaynındaki teknik bir yetersizlikten çok da kaynaklanmadığı iddia edilebilir. Aksine keyfi ve tutarsız uygulama pratiklerine yol açan şey hangi koşullarda sözlü beyanatın kabul edilip hangi koşullarda rededilebileceğini denetleyen hak bazlı, teknik yönetimsel bir gözetleme sistemin oturmamış olmasıdır. Kısaca tekrar ifade etmek gerekirse, mevzuatta il-göç uzmanları üzerine tanımlanan inisiyatif alma yetkisi uzun vadede keyfi ve tutarsız uygula pratiklerini dönüşmüş ve bu haliylede o bürokratik alandaki ilişkileri düzenleyen ikincil

bir bilgi dağarcığı olarak Kabul görmeye başlamıştır. Dolayısıyla bu yerleşik uygulama pratiğinin bahsi geçen bürokratik alanın bir nevi habitusu gibi işlediği düşünülebilir. Bu habitus ise yukarıda da tartışıldığı üzere Türkiyede üretken rasyoneliteye dayalı bilimsel bir kamu yönetimi anlayışının gelişmemiş olduğu yapısal nedeninden doğmaktadır. Sonuç olarak ise göçmenlerin bütün haklara erişimine müdaha eder bir hale bürünmektedir.

İkinci olarak ise dolaylı yoldan uygulama pratiği tartışılabilir. Bu uygulama pratiği ise daha çok bürokratik işleyişin toplumsal hayatın içine işlemiş olan milliyetçilik ve cinsiyetçilik gibi yapıları birebir yansıtıyor olmasından kaynaklanmaktadır. Bu durum yukarıdaki tartışmalarda iki önemli örnekle açıklanmıştır. Öncelikli olarak aile içi şiddet vakalarında polisin doğrudan yasayı uygulamak yerine ya hiç uygulamamayı ya da işi uzatarak uygulamayı tercih etmesi olarak açığa çıkmaktadır. Daha açık ifadesiyle İstanbul anlaşmasına ve bununla ilişkili olarak uygulamaya konan 6284 Numaralı kanuna göre bir kadın şiddete maruz kaldığı takdirde polis karakolundan, ŞÖNİM merkezlerinden, aile mahkemesindem, valilikten, savcılıktan veya kaymakamlıktan koruyucu veya önleyici tedbir çıkarttırabilir. Ve bu haliyle kadın sığınma evi olarak bilinen ŞÖNİM merkezlerinden birine yerleştirilebilir. Fiili uygulanışa baktığımızda bu sürecin hiçbir zaman bu kadar doğrudan işlemediğini görmekteyiz. Saha araştırmasından edinilen bilgiye göre şiddet görmüş kadınlar ilk olarak polis merkezine, sonra hastaneye, sonra tekrar polis merkezine ve oradan da ŞÖNİM'e gitmektedir. Bu ise bir kadının koruma tedbirine ulaşmasını saatlerce hatta bazı koşullarda günlerce erteleyebilmekte ve bu yüzden çoğu zaman ya kurtulmakta olduğu faile tekrar yakalanmakta ya da sığınma merkezine yerleşme işlemi sonlanmadığı için evine geri dönmek durumunda kalmaktadır. Burda söz konusu olan şey devreye giren memurların hukuki düzenlemeye sadık kalmayarak süreci uzatma yoluna gitmeleridir. Bu haiyle bu kadınların fiziksel şiddete maruz kalmadan güvenle kalabilecekleri bir barınma merkezine erişim hakları olsa dahi fiili uygulanıştan dolayı bu haklarına erişimleri kısıtlanmaktadır. Benzer örneklere hastane koşullarında da rastlmak mümkündür. Bu durumu örneklendirmesi açısından bir tecavüz vakası paylaşılmıştır.

Bu örneğe göre ise tecavüz maduru olan bir çocuğun sağlık hakkına erişimi kendisine bakması gereken doktorların onu hukuki sürece yönlendirmesi ile kısıtlanmıştır. Bir diğer ifade ile çocuk önce polis karakoluna sonra mahkemeye ve mahkemenin yönlendirmesi ile hastaneye kabul edilmiştir. Burada ise söz konusu olan dolandırma uygulaması hastane çalışanlarının bürokratik süreçlere aşırı bağlılığından kaynaklanmaktadır. Ancak her iki hak ihlaline yol açan uygulama pratiğinin temelinde ise şiddet maduru kadınları daha da madur eden cinsiyetçi bir anlayışın yattığı söylenebilir.

Son olarak, koşullu uygulama pratiği göze çarpmaktadır. Bu uygulama pratiğine göre ise bir öevzuatın usulünce uygulanabilmesi için öncesinde faydalanıcıların veya onlara eşlik eden STK çalışanlarının içinde bulunmaları gereken belli koşullar vardır. Bu koşullar ilk olarak faydalanıcıların içler acısı bir halde bulunması olarak kategorilendirilebilir. Bunun önemi ise yine İl-göç bürolarında örneklenmiştir. STK çalışanları ile yapılan görüşmelere göre Suriyeli göçmenlerin kendi haklarına erişimlerinin bir ön koşulu ciddi bir şekilde devlet memurların yalvarmalarından ve/veya çok müşkül bir durumda bulunmalarından geçmektedir. Bu ise bizlere hak sahibi bireylerin kendi haklarına erişmeleri gereken noktalarda bu haklara 'ihtiyacının' olduğunun vurgusunun yapıldığını gösterir. Bu haliyle bu uygulama pratiğini hak temelli bir yaklaşımın gelişmemiş olması sonucuna bağlamak yanlış olmayacaktır. İkinci bir koşul olarak ise faydalanıcıların veya süreçlerde onlara eşlik eden STK çalışanlarının hizmet teslim eden aktörlerle kurdukları informal kişisel ilişkilerdir. Yine saha araştırmasından ortaya çıkan sonuçlara göre istisnasız bütün STK çalışanlarının süreçlerin işleyişini yerine getirebilmek için devlet memurlarıyla kişisel ilişkiler geliştirmek durumunda oldukları ortaya konmuştur. Bu haliyle yine Türkiye bürakrasisine yabancı olmayan bir yapının kendini göçmen haklarına erişim süreçlerinde de yinelediğini iddia etmek yanlış olmayacaktır. Bu informel ilişkiler zaman zaman kliental ilişkiler zaman zaman ise yolsuzluk olarak ortaya çıkmaktadır. Son koşul ise çoğu zaman 'yukardan bir telefon' ifadesiyle açıkça ortaya konan bir ilişkilenme pratiğidir. Bu koşula göre ise yine ya Suriyeli faydalanıcıların ya da STK

çalışanlarının bürokratik süreçlerin sorunsuz akışı için o süreci yerine getiren memurun amiri ile iletişime geçip süreci bir nevi onun varlığının altında tamamlatması gerekmektedir. Bu son uygulama pratiğinin daha çok okul müdürleri özelinde açığa çıktığı söylenebilir. Örneklemek gerekirse, bir okul müdürü Suriyeli bir öğrenciyi okula kaydetmek istemediğinde doğrudan il ve ilçe müdürlükleri aracılığıyla sorunun çözümü yoluna gidilmektedir. Bu pratik kendi başına iyi bir örnek olarak yorumlanabilir çünkü bu sonuç olarak bir çocuğun eğitim hakkının önünü açmıştır. Ancak bu şekilde gerçekleşen sorgusuz sualsiz hiyerarşik emir komuta zinciri çoğu zaman hak ihlallerine de yol açmaktadır. Sonuç olarak koşullu uygulama pratiklerinin sırasıyla hak temelli bir yaklaşımın olmaması, informal, kliental ve otoritaryan bir bürokratik yapının oturmuş olmasından kaynaklandığı ifade edilebilir.

Sonuç olarak toparlamak gerekirse bu tezde göçmenlerin haklarına erişim süreçlerinde devlet memurlarının geliştirdiği üç farklı uygulama pratiği olduğu öne sürülmüştür. Bu uygulama partikleri tutarsız/keyfi uygulamalar, dolaylı yoldan uygulamalar ve koşullu uygulamalar olarak kategorilendirilmiştir. Bu uygula pratikleri özel olarak belirli devlet daireleriyle örneklense de genel olarak bütün bürokratik süreçlere içkindir. Ve bu haliyle de Türkiye'deki bürokrasinin bir habitusunu oluşturmaktadır. Ancak Bourdieusian bir yaklaşımla baktığımızda bu habitusların içinde işlemekte olduğu bir yapıdan da söz edilebilir. Bu yapı ise bizlere Türkiye'de devlet toplum ilişkileri tarafından verilmektedir. Bir diğer ifade ile Türkiye politikasında hak temelli bir anlayışın ve bilimsel temelli bir kamu yönetimi tekniğinin oluşmamış olması bu partiklere yol açan yapısal çerçeveyi oturtmuştur. Ve bunu takiben, bu pratiklerin tekrar aynı yapının yeniden üretiminin bir aracına dönüşmesini beklemek yanlış olmayacaktır. Daha somut bir şekilde ifade etmek gerekirse, Suriye krizi ile beraber Türkiye'ye gelen göçmenlerin ve buna bağlı olarak gelişen 'koruma endüstrisinin'de zaten var olan toplumsal, politik ve tarihsel yapılara adapte olması ve bu haliyle onu yeniden üretmesi kaçınılmazdır. Nitekim, saha araştırmasından da açığa çıktığı üzere informel ve kliental ilişkilere eklemlenen bir koruma endüstrisi ve yalvarmaya dayalı bir hak talebi süreci bunun emarelerini ortaya koymaktadır.

APPENDIX D: THESIS PERMISSION FORM / TEZ İZİN FORMU

ENSTİTÜ / INSTITUTE

Fen Bilimleri Enstitüsü / Graduate School of Natural and Applied Sciences ☐

Sosyal Bilimler Enstitüsü / Graduate School of Social Sciences ■

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Enformatik Enstitüsü / Graduate School of Informatics ☐

Deniz Bilimleri Enstitüsü / Graduate School of Marine Sciences ☐

YAZARIN / AUTHOR

Soyadı / Surname : Karagül
Adı / Name : Nihan
Bölümü / Department : Siyaset Bilimi ve Kamu Yönetimi

TEZİN ADI / TITLE OF THE THESIS (**İngilizce** / English) :

Implementations of Temporary Protection Regulation in Turkey: Structural Causes of Rights Accession Deficits

TEZİN TÜRÜ / DEGREE: **Yüksek Lisans** / Master ■ **Doktora** / PhD ☐

1. **Tezin tamamı dünya çapında erişime açılacaktır. /** Release the entire work immediately for access worldwide. ☐

2. **Tez iki yıl süreyle erişime kapalı olacaktır.** / Secure the entire work for patent and/or proprietary purposes for a period of **two years. *** ☐

3. **Tez altı ay süreyle erişime kapalı olacaktır.** / Secure the entire work for period of **six months**. ***** ■

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A copy of the decision of the Institute Administrative Committee will be delivered to the library together with the printed thesis

Yazarın imzası / Signature ..... **Tarih** / Date 22.09.2019