

AN ANALYSIS OF THE TEMPORARY PROTECTION REGULATION FROM  
AN AGAMBENIAN PERSPECTIVE: SYRIANS IN TURKEY AS HOMINES  
SACRI

A THESIS SUBMITTED TO  
THE GRADUATE SCHOOL OF SOCIAL SCIENCES  
OF  
MIDDLE EAST TECHNICAL UNIVERSITY

BY

SAFİYE MERVE ÜTNÜ

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR  
THE DEGREE OF MASTER OF SCIENCE  
IN  
THE DEPARTMENT OF INTERNATIONAL RELATIONS

DECEMBER 2019

Approval of the Graduate School of Social Sciences

---

Prof. Dr. Yaşar Kondakçı  
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science.

---

Prof. Dr. Oktay Tanrısever  
Head of Department

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Science.

---

Prof. Dr. Faruk Yalvaç  
Supervisor

**Examining Committee Members**

Assoc. Prof. Dr. Tuba Ünlü Bilgiç (METU, IR) \_\_\_\_\_

Prof. Dr. Faruk Yalvaç (METU, IR) \_\_\_\_\_

Assoc. Prof. Dr. Burak Bilgehan Özpek (TOBB ETU, IR) \_\_\_\_\_

**I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.**

Name, Last name : Safiye Merve ÜTNÜ

Signature :

## ABSTRACT

### AN ANALYSIS OF THE TEMPORARY PROTECTION REGULATION FROM AN AGAMBENIAN PERSPECTIVE: SYRIANS IN TURKEY AS HOMINES SACRI

Ütnü, Safiye Merve

M.Sc., Department of International Relations

Supervisor: Prof. Dr. Faruk Yalvaç

December 2019, 114 pages

This thesis aims to analyze the Temporary Protection Regulation's legal and practical implications in light of the theory of Giorgio Agamben. Agamben investigates the relationship between bare life and sovereign power within a biopolitical perspective, where life occupies the center of politics as Foucault suggested. Agamben defines the ancient Roman figure homo sacer as the main subject of biopolitics, considering his exclusion from legal structures and exposure to threat of death. To Agamben, refugee has been the main paradigm to the figure of homo sacer, in parallel to Arendt's distinction between man and citizen within the context of human rights. Similarly, this study seeks answer to the question: "How can Syrians in Turkey be considered as homines sacri?" Following the mass influx of Syrians to Turkish borders, the Temporary Protection Regulation was introduced in 2014, granting Syrians a temporary protection status which leads to a deprivation of basic human rights. The thesis will approach the case of Turkey as a single descriptive case study by utilizing the reports published by non-governmental organizations which examine the condition of Syrians in Turkey. For this purpose, the figure of homo sacer will be conceptualized into three dimensions: (i) exclusion through a state of exception, (ii) deprivation of basic human rights, and (iii) exposition to death. Consequently, the study will present the ways in



which Syrians under temporary protection represent the figure of homo sacer within a biopolitical context.

**Keywords:** Agamben, homo sacer, bare life, refugee, temporary protection regulation.

## ÖZ

### GEÇİCİ KORUMA YÖNERGESİNİN AGAMBEN PERSPEKTİFİNDEN BİR İNCELEMESİ: BİRER HOMO SACER OLARAK TÜRKİYE’DEKİ SURİYELİLER

Ütnü, Safiye Merve

Yüksek Lisans, Uluslararası İlişkiler Bölümü

Tez Yöneticisi: Prof. Dr. Faruk Yalvaç

Aralık 2019, 114 sayfa

Bu çalışmanın amacı, Geçici Koruma Yönergesi’nin yasal ve uygulamadaki sonuçlarını Giorgio Agamben’in kuramı çerçevesinde incelemektir. Agamben, çıplak hayat ve egemen arasındaki ilişkiyi yaşamın siyasetin merkezine oturduğu biyopolitika açısından inceler. Agamben, hukuki yapılardan egemen eliyle dışlanmış ve ölüm tehdidine maruz bırakılmış bir eski Roma figürü olan homo sacer’ı biyopolitikanın temel öznesi olarak tanımlar. İnsan haklarına içkin olan insan-vatandaş ayrımına Arendt’in yaptığı vurguya da paralel olarak mülteciler, Agamben’e göre günümüzde homo sacer’ı temsil eden en iyi örnek olmuştur. Benzer bir şekilde, bu çalışmanın amacı şu soruyu yanıtlamak olacaktır: “Türkiye’deki Suriyeliler birer homo sacer olarak nasıl düşünülebilir?” Türkiye’ye yönelik kitlesel göç akımını takiben 2014 yılında Geçici Koruma Yönetmeliği ilan edilmiş ve Suriyelilere temel insan hakları açısından mahrumiyete neden olan geçici koruma statüsü verilmiştir. Bu çalışmada Türkiye, tekil betimleyici vaka çalışması olarak ele alınmış ve bu kapsamda Türkiye’deki Suriyelilerin durumunu inceleyen sivil toplum kuruluşlarının raporları kullanılmıştır. Bu amaçla, homo sacer figürü oluşturulan üç boyutta incelenecektir: (i) istisna hali aracılığıyla dışlanması, (ii) temel insan haklarından mahrum bırakılması, (iii) ölüm tehdidine maruz bırakılması. Sonuç olarak çalışma, geçici koruma altındaki

Suriyelilerin homo sacer figürünü hangi açılardan temsil ettiğini açıklama amacı taşımaktadır.

**Anahtar Kelimeler:** Agamben, homo sacer, çıplak hayat, mülteci, geçici koruma yönetmeliği.

To Onur

## ACKNOWLEDGMENTS

I would like to express my deepest gratitude to my advisor Prof. Dr. Faruk Yalvaç for his guidance, advice, criticism, encouragements and insight throughout the research.

I would also like to thank Assoc. Prof. Dr. Burak Bilgehan Özpek and Assoc. Prof. Dr. Tuba Ünlü Bilgiç for their participation in the examining committee, and for their valuable suggestions and comments.

I also wish to thank Ahmet Gümüşbaş, Ebru Aydın, Üsame Ceylan, Asiye Köseoğlu for their priceless contributions, endless supports and encouragements during the time the thesis was being written.

I would like to express my love to my family, my sister Ayşe, and dear Onur who always encouraged and believed in me.

## TABLE OF CONTENTS

ABSTRACT .....	iv
ÖZ.....	vi
DEDICATION .....	vii
ACKNOWLEDGMENTS.....	ix
TABLE OF CONTENTS .....	x
LIST OF TABLES .....	xii
LIST OF ABBREVIATIONS .....	xiii
CHAPTER	
1. INTRODUCTION.....	1
1.1 Background.....	1
1.2 Aim of the Research and Research Questions.....	2
1.3 Research Design and Case Selection.....	6
1.4 Selection of the Material.....	9
1.5 Limitation of the Research .....	11
2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK .....	13
2.1 Sovereignty and the State of Exception.....	13
2.2 Bare Life, Homo Sacer, and the Refugee .....	18
3. HUMAN RIGHTS PARADOX OF REFUGEES.....	28
3.1 International Approach to the Issue of Refugee .....	31
3.2 Turkey’s Approach to the Issue of Refugees.....	34
3.3 Temporary Protection Regulation .....	36
3.4 Current State of Research .....	39
4. RESEARCH: DIMENSIONS OF HOMO SACER.....	43
4.1 Excluded through a State of Exception .....	45
4.1.1 Unpredictability of Future .....	47
4.1.2 Cessation.....	49
4.1.3 Detention.....	51

4.1.4 Conclusion .....	52
4.2 Deprived of Basic Human Rights.....	53
4.2.1 Shelter .....	56
4.2.2 Freedom of Movement .....	57
4.2.3 Health Care .....	60
4.2.4 Right to Employment.....	61
4.2.5 Right to Education .....	63
4.2.6 Legal Assistance .....	64
4.2.7 Guarantees to Vulnerable Groups.....	65
4.2.8 Conclusion .....	66
4.3 Exposed to Death.....	67
4.3.1 Admission and Registration.....	69
4.3.2 Suspension and Deportation .....	71
4.3.3 Reports of Violence .....	73
4.3.4 Conclusion .....	74
5. DISCUSSION .....	76
6. CONCLUSION .....	88
REFERENCES.....	94
APPENDICES .....	102
A. TURKISH SUMMARY / TÜRKÇE ÖZET .....	102
B. TEZ İZİN FORMU / THESIS PERMISSION FORM.....	114

## LIST OF TABLES

Table 1 Total Syrians of Concern by Country of Asylum .....	8
Table 2 Sub-Dimensions under the First Dimension of Homo Sacer .....	78
Table 3 Sub-Dimensions under the Second Dimension of Homo Sacer.....	81
Table 4 Sub-Dimensions under the Third Dimension of Homo Sacer .....	84
Table 5 All Dimensions of Homo Sacer.....	86



## LIST OF ABBREVIATIONS

ASAM	Association for Solidarity with Asylum Seekers and Migrant
ECRE	European Council on Refugees and Exiles
EU	European Union
HRW	Human Rights Watch
LFIP	Law on Foreigners and International Protection
NGO	Non-Governmental Organization
RRT	Refugee Rights Turkey
TPR	Temporary Protection Regulation
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## CHAPTER I

### INTRODUCTION

#### 1.1 Background

It has been eight years since the civil war in Syria has erupted in 2011 and there has been countless number of victims suffered from the effects of the war. The severity of the war and its consequences has been catastrophic for Syrian people. Referred to as “Syrian Crisis” or “Refugee Crisis”, the experience is portrayed as the worst humanitarian crisis experienced since the two World Wars (UNHCR, 2014). According to the latest data provided by UNHCR (2019a), it is estimated that more than 13.1 million Syrians, which approximates to the 45 percent of Syria’s population, has been displaced. While 6.6 million of this number consists of Syrians who had to displace within the borders of Syria, the remaining 6 million Syrians have been seeking for asylum in other countries. 5.6 million of these Syrians are currently residing in five countries: Turkey, Lebanon, Jordan, Iraq, and Egypt. Approximately 300K of these people are registered in camps, while remaining 5.3 million is outside the camps living in urban and rural settlements (UNHCR, 2019a).

Turkey is one of the signatory countries to the 1951 Convention Relating to the Status of Refugees, and 1967 New York Protocol. However, Turkey agreed to the 1951 Convention limited by a geographical condition, according to which Turkey will grant the status of refugee only to asylum seekers who enters to Turkey from the borders of the member states of the European Union. Otherwise, it will only provide a temporary protection as a conditional refugee to those who come to its frontiers, until they are relocated into a third country. After the unfolding of events in Syria in 2011, the first batch of Syrians had come to the borders of Turkey to take shelter and beware of the harms emerging within their homeland. Turkey has opened the doors to Syrian people

and accepted them to its borders, however, the legal status of them had remained unclear. Finally in 2014, Turkey has issued a Temporary Protection Regulation, which grants Syrians a temporary protection status for an indeterminate time period. This status aims to provide the people who are seeking protection the basic standards of living as well as to grant them basic human rights within the borders of Turkey. On the other hand, the regulation eliminated the ways to become a ‘conditional refugee’ and a ‘refugee’ for the Syrians by granting them temporary protection status, which is not a type of international protection. This situation deprives or limits the Syrians who sought refuge in Turkey of the rights such as to travel, work, as well as social, economic, and cultural rights; and interfere with their ability to build a vision of future for themselves.

The mass influx of Syrians to Turkey has created a deep area of discussion by both academics and Non-Governmental Organizations. Effectiveness and limitations of Temporary Protection Regulation as a legal framework, the extend and scope of Syrian people’s rights, their living conditions within and outside the camps, their integration into the Turkish society, provision of legal, social, and economic assistance have been some of the significant matters discussed since their first entry into the Turkish borders. Likewise, this study aims to contribute to the growing literature by analyzing the Temporary Protection Regulation, the extend and scope of the social, economic, and legal rights provided by the regulation within a biopolitical framework put forward by the political philosopher Giorgio Agamben.

## **1.2 Aim of the Research and Research Questions**

This thesis analyzes the legal status of Syrians in light of the ideas of political philosopher Giorgio Agamben. It aims to investigate the Temporary Protection Regulation and its legal and practical implications on the Syrian refugees in Turkey. Following paragraphs will introduce the reasons for the choice of the Agambenian concepts as a theoretical framework for the analysis of this topic.

The refugee issue has been a particular area of interest among scholars. Refugee is regarded as a figure which reveals the dynamics within the relationship between the

sovereign and biological life. This relation finds its roots mainly within the sphere of biopolitics, which Foucault has first introduced arguing that there is a transformation within the essence of sovereign power given that modern state utilizes the biological bodies of people rather than their political bodies (Foucault, 1990). As the space where sovereign exercises its biopolitical activities, state of exception – which was introduced by Carl Schmitt – has been addressed as a mechanism by which sovereign legitimizes its actions. Agamben identifies the state of exception where the sovereign practices biopolitics through the exclusion of biological body (bare life) of people from political sphere. This activity, according to Agamben, is the main activity and the very foundation of the sovereign power (Agamben, 1998). What Agamben means by excluding bare life from the political space will be further illustrated within the theory chapter.

Agamben reflects bare life within the classical ancient Roman figure, *homo sacer*, the person who, due to a crime he has committed, could be killed by anyone but not sacrificed in religious rituals. The point Agamben tries to illustrate is that the *homo sacer* was excluded both from the ordinary law given that his murder would not be accounted as a crime, and also from the divine law since his death would also not be qualified as a sacrifice (Agamben, 1998). As a result, *homo sacer* was excluded from the law, which is only for the citizens of a state, and consequently existed within a state of exception. For Agamben, the concentration camps of the twentieth century provided solid grounds where sovereign power was able to justify its actions toward bare lives within a state of exception (Agamben, 2005). Lives within the camps had been separated from that of the citizens, and excluded from the law where in normal circumstances maltreatment of citizens is prohibited. For this reason, according to Agamben, being the usual inhabitant of camps and existing within a limbo, refugee is the perfect figure symbolizing the life of *homo sacer* (Agamben, 1998, p. 120).

This thesis aims to illustrate how the temporary protection status as a state of exception puts Syrians in Turkey in a condition where they are reduced to a state of bare life, and live their lives as a *homo sacer* (*homines sacri* in plural). The main objective of this

study is to contribute to the growing literature regarding the Syrians in Turkey by answering the following question: “How can Syrians under temporary protection in Turkey be considered as *homines sacri*?”

Existing within a state of exception where European and non-European immigrants are treated differently, the temporary protection regime of Turkey reveals the biopolitical nature of the sovereign power. For this reason, Agambenian concepts will be utilized throughout the thesis.

In the second chapter called “Literature Review and Theoretical Framework”, the relevant concepts will be introduced, including biopolitics which Agamben borrowed from Foucault; the state of exception, originally introduced by Carl Schmitt which is a temporary suspension of law; forms of life which are *zoe*, *bios*, and bare life; *homo sacer*; the camp as the space where state of exception is realized and bare life is produced; and the refugee.

In the third chapter named “Human Rights Paradox of Refugees”, Hannah Arendt’s discussion regarding citizenship, nation-state and human rights will be touched upon since it illuminates the original motivation of the sovereign power behind the distinction between the rights of citizens and that of non-citizens. Following Arendt’s ideas, international approach as well as Turkey’s approach to the issue of refugees will be highlighted historically. Then, a brief introduction to the Temporary Protection Regulation will be made. This will be followed by a brief review of the current research regarding the Agambenian conception of *homo sacer* and its contemporary representative cases.

In the research chapter called “Dimensions of *Homo Sacer*”, three dimensions to the figure of *homo sacer* will be introduced in light of the arguments put forward by Agamben. These dimensions are *homo sacer*’s (i) exclusion through a state of exception, (ii) deprivation of basic human rights, (iii) exposition to death. Following an introduction of these dimensions, the legal framework of the temporary protection regime and its practical implications on the Syrians will be analyzed under each relevant dimension. Within the first dimension, three subjects will be introduced: unpredictability of future

caused by the temporary protection status, cessation of the status, and detention procedures under temporary protection regime. In the second dimension, basic rights and freedoms which Syrians in Turkey are reported as being deprived will be addressed: shelter, freedom of movement, health care, right to employment, right to education, access to legal services, and the treatment of the vulnerable groups. In the third and final section, the factors which leave Syrians vulnerable to the risks of death and injury will be addressed. These are admission of Syrians to the border and registration procedures, suspension of the temporary protection status, deportation of the temporary protection beneficiaries, and incidents of violence between Turkish inhabitants and Syrians.

In the discussion chapter, the findings that have been reached in the Research chapter is assessed using a table where thirteen sub-dimension are categorized as full exception or partial exception. This framework is the main contribution of this study to the literature in its utility for future research to assess similar cases, where it can be considered as ruled by a state of exception that creates bare lives.

In the following two sections regarding research design and case selection, I will explain the reasons behind designing this thesis as a single descriptive case study guided by Agamben's theory in a systematic way. The issue of Syrian refugees is a complex and multidimensional subject, hence, I preferred a qualitative case study design instead of a variable-oriented research design. In this regard, I will present several reasons for (i) choosing temporary protection regime in Turkey as a case, and (ii) using a systematic review of the reports published by international non-governmental organizations. I will provide the reasons behind selecting Turkey for this theoretical discussion. Then, I will highlight the context within which I have conducted this study and what kind of materials I have used. I will present Turkey as a single descriptive case study, where the Syrians under temporary protection in Turkey — who are living both inside and outside the camps — can be considered as *homies sacri*.

### **1.3 Research Design and Case Selection**

Research design can be considered as a “strategy of inquiry” (Franzese, 2007). As social phenomena are complex and context matters, selecting a proper research design in line with theoretical goals and empirical goals is crucial. It is the key to redress this social complexity (ibid.). Within this strategy, researchers shift from a theoretical perspective to the empirical cases by the help of methodology. In this process, research design illuminates how researchers delimit and observe social phenomena, collect data from observation by selecting fitting materials, and make inferences from these observations (Denzin & Lincoln, 2008).

It is possible to divide the strategies of research design into two branches: case-oriented and variable-oriented. Case study design grasps social phenomena as a whole in contrast to variable oriented research which tends to analyze observations by dividing into variables. In other words, scholars in case-oriented research tradition embrace outcomes in a holistic way rather than disaggregating outcomes into variables (Della Porta, 2008). For this reason, while variable-oriented researchers select their observations by random sampling in order to test generalizable hypotheses, case-oriented researchers utilize information-oriented and intentional sampling for inductive analysis (Flyvbjerg, 2006).

In case study design, researchers define their unit of analysis as a case by asking that “is this case of what?” within a specific research design (Gerring, 2008). In other words, case study can be defined as “an intensive study of a single unit for the purpose of understanding a larger class of (similar) units (Gerring, 2007).” A case study research design conceptualizes an instance of a class of events as case in order to examine relevant aspects of a historical period (George, Bennett, Lynn-Jones, & Miller, 2005).

Since Syrian refugee crisis and temporary protection process in Turkey constitute a multi-dimensional social phenomenon due to the complex interactions of macro-level structures and institutions, meso-level social networks and micro-level interests and perceptions, case study research design is preferred in the study. Arguably, it is not

easy to disentangle relevant variables and to test hypotheses as Syrian Civil War prolongs. Within an ongoing refugee crisis in which multi-level structures, institutions and actors have involved, a case study design might offer a great flexibility to gather the details of this process (Mahoney & Goertz, 2006).

With regard to the complexity of the ongoing crisis, a descriptive case study tends to shed light on the unfolded aspects of refugee crisis. Instead of developing a theoretical perspective to explain a causal mechanism, researchers can be focused on elaborating a thick description of a given case (Yin, 2006). In a descriptive case study design, a selected theory can guide researchers to define relevant aspects of the case and to present these aspects as a whole. Therefore, theory guidance helps to precise the boundaries of the case (Levy, 2008). Accordingly, researchers can interpret a single historical period by focusing on theoretically particularized aspects of reality (Lijphart, 1971). Therefore, descriptive case study research design can be employed to find what dimensions of observed phenomenon concerning Agamben's concepts about refugees for Turkey's migration crisis.

Case selection and the number of cases have a central role in qualitative research. Depending on the objectives and the scope of research, researchers conduct either single case or cross-case studies. The selection of a single case is significant to understand the unique conditions of a particular phenomenon (Gerring & Cojocaru, 2016). An intensive study of a single case is valuable to apply a multi-dimensional concept to understand the observed phenomena (Gerring, 2007).

Single case studies can be categorized as descriptive, exploratory and explanatory regarding their research strategies and objectives (Somers, 2014). In this study, my strategy is to represent the refugee situation in Turkey as a descriptive case study with the aim of elaborating an understanding of sovereign's practices concerning refugees. Accordingly, the crucial function of descriptive case studies is that researchers can interpret the case from this perspective. As a theoretical contribution, it is also possible to elaborate a more nuanced version of the applied conceptualization (Mills, Durepos, & Wiebe, 2010).



In this study, Turkey is chosen to be a single case due to several reasons such as being a neighboring country to Syria, being a state party to the 1951 Convention, and being the country with the highest number of refugees (Table 1). Therefore, it can be considered that Turkey constitutes a unique case for forced migration and exceptional legal arrangements for immigrants.

From the beginning of the outbreak of the Syrian War, the excessive number of Syrians have been displaced both inside and outside of Syria. Among the countries that have been receiving the highest number of Syrians seeking protection, Turkey, Lebanon, Jordan, Iraq, and Egypt have been the firsts respectively, according to the numbers provided by UNHCR (UNHCR, 2019a). As the host of the highest number of Syrians, it is arguable that Turkey deserves a special attention.

Table 1

*Total Syrians of Concern by Country of Asylum*

Location name	Source	Data date	Percentage	Population
Turkey	UNHCR	27 Nov 2019	65.2%	3,691,333
Lebanon	UNHCR	31 Oct 2019	16.2%	918,974
Jordan	UNHCR	1 Dec 2019	11.5%	654,192
Iraq	UNHCR	31 Oct 2019	4.1%	234,831
Egypt	UNHCR	31 Oct 2019	2.3%	129,159
Other (North Africa)	UNHCR	30 Nov 2018	0.6%	35,713

From: “Syria Regional Refugee Response: Total Persons of Concern by Country of Asylum,” by UNHCR, 2019 (<https://data2.unhcr.org/en/situations/syria>)

Second, Syrians who have a valid passport or other kind of assurances such as visas which make it easier to seek asylum in European countries have chosen to flee to Europe or other countries where international protection is guaranteed or refugee status

is granted more easily depending on laws and regulations (RRT, 2015, p. 126). The remaining Syrians, on the other hand, have had to take refuge in the neighboring countries as an immediate solution, where they believed at least to be protected from death and other serious threats (Fargues, 2014; Ostrand, 2015; Sirkeci, 2017). Rather than standing as an option, this decision can be considered as made in a desperate need to protect oneself from serious harm. As such, I think the neighboring countries where Syrians most generally have entered initially are significant in terms of an area of investigation.

Among the neighboring countries, Israel is not an option for Syrians due to the historical and sociocultural differences between the two countries (Plotner, 2014). Other neighbors such as Lebanon, Iraq, and Jordan are not parties to the 1951 Convention Relating to the Status of Refugees, and this makes them unbounded by the principles of this Convention (Tan, 2015). As a result, their treatment to the refugees or the approach to the issue of international protection remain irrelevant in terms of global norms of protection. Turkey, on the other hand, is one of the signatory countries to the 1951 Convention, and bounded by the principles of it (İçduygu, 2015). This is another reason that I have chosen to study Turkey as a single case in this thesis.

Additionally, as a signatory state of the Convention, reserving a geographic limitation to the Convention and undermining its principles by denying a full protection and instead adopting the Temporary Protection Regulation makes Turkey an interesting case in terms of its approach to the issue of international protection (Rygiel, Baban, & Ilcan, 2016).

#### **1.4 Selection of the Material**

This study is designed as a single case study based on qualitative document analysis. Research can benefit from several data collection techniques including interviews, archival research, participant observation and document analysis (Yin, 2006). Documents provide the researcher the empirical data which covers relevant points related to the objectives of research (Bowen, 2009). Same kind of reports were analyzed before by Southcott, in light of Agamben's related concepts including state of exception,

bare life, homo sacer, sovereignty, camp, and refugee (Southcott, 2011). Similarly, reports will be analyzed by utilization of these concepts, in order to elaborate three dimensions which are defined as (1) excluded through a state of exception, (2) deprived of basic human rights, and (3) exposed to death.

The reports used in this study are as follows: Refugee Rights Turkey (2015; 2017; 2018), Asylum Information Database, Country Report Turkey; Amnesty International (2016), No safe refuge: Asylum-seekers and refugees denied effective protection in Turkey; Boček, T. (2016), Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček; WFP (2016), Off-Camp Syrian Refugees in Turkey: A Food Security Report; Birleşik Metal İşçileri Sendikası (2017), Suriyeli Sığınmacıların Türkiye’de Emek Piyasasına Dahil Olma Süreçleri ve Etkileri; ASAM & UN Women (2018), Needs Assessment of Syrian Women and Girls Under Temporary Protection Status in Turkey; Human Rights Watch (2018), Turkey: Mass Deportations of Syrians; International Crisis Group (2018), Turkey’s Syrian refugees: defusing metropolitan tensions; UNICEF (2018), Turkey 2018 Humanitarian Results; Human Rights Watch (2019), World Report 2019, Turkey: Events of 2018; UNHCR (2019) Turkey: Operational Update 2019 June.

The first reason behind the selection of NGO reports for document analysis is that national and international NGOs have not directly involved in Syrian Civil War. For this reason, these organizations can be considered as professional observers which monitor periodically the developments linked to Syrians, and the legal documents and policies of Turkish government.

As the second reason, sometimes policy papers and reports can be only available sources for a descriptive case study (Bowen, 2009). In Turkish case, governmental agencies are less likely to share all details in an interview and they do not tend to disseminate these details via media channels due to the sensitivity of the issue. Hence, especially the reports of international NGOs have a great importance because these international agencies are able to collect information from both domestic actors and refugees in a systematic way.

Thirdly, the reports of NGOs are also easily available on Web, and researchers can obtain the data without the need of permission. The analysis of these materials is less costly and time-consuming. Moreover, documents include the exact details and covers a long period with various events (Bowen, 2009).

One may criticize that the study would have presented an archival research which analyzes published news in Turkish media. However, the objective of the study is to describe the status of Syrians theoretically. The best fitting documents for this objective are the detailed reports of non-governmental organizations which have observed developments including incidents, statements and policies periodically. Turkish media outlets do not share the same objective in terms of gathering all details simultaneously. Journal news generally present a few aspects of a given instance and it is interesting that how the instance is presented. Therefore, it is arguable that archival research can be utilized in discourse or content analysis rather than in a descriptive case study which attempts to unfold aspects of a social phenomenon.

### **1.5 Limitation of the Research**

This study aims to elaborate the effects of the Temporary Protection Regulation on the Syrians who have resided in Turkey at some point since 2014. The aim of the research is to show the consequences of the insufficient implementation or legal shortcomings of the regime, and how this may have caused the Syrians in Turkey to become homo sacers.

While doing this, one limitation of the study may be that it does not aim to explore the circumstances which may have forced Turkey to imperfectly implement the regime. Hence, the practical and financial difficulties of hosting the largest amount of asylum seekers or implementing a rather newly established protection scheme, as well as the positive efforts by Turkey which are worthy of commendation have not been included in the subject of this research. Since the study rather focuses on the negative aspects of the regime which may have created the conditions of becoming a homo sacer, the positive aspects of the regime have been left out. A more detailed and comprehensive

analysis of the issue revealing the strengths and weaknesses of the regime may be a subject of a future research.

Another shortcoming of the research may be the time frames in selection of the reports. Even though some of the reports in early 2015 represent strong examples that might have supported the perspective put forward in this study, they are excluded since they do not effectively represent the operation and effects of the temporary protection regime. This is due to the fact that the reports published in early 2015 were issued only a few months after October 2014, the date the Temporary Protection Regulation has been put into practice. As a result, the reports published within or before the year of 2015 lack a clear understanding of the implementation of the temporary protection regime.

The study has mostly focused on the Syrian temporary protection beneficiaries who have been residing outside the camps. This is mostly due to the fact that almost 99 percent of the Syrians within Turkey have been living outside the camps (UNHCR, 2019a). Moreover, the Syrians who have been living in camps have more improved access to basic rights and services provided by the Turkish government such as shelter, food, health, and education. As a result, although the Syrian residents of the camps built by the Turkish government might also be a subject of a study held by an Agambenian perspective, the conditions of Syrians living outside the camps reflect a better example of a zone of exclusion, where the normal condition of law does not apply.

Finally, although the reports are fairly comprehensive given that they contain detailed information regarding dates, legal documents, and article numbers, the discussion chapter has been specifically kept simple and most of the technical information is excluded by focusing rather on the ideas. This is partially due to the existence of studies comprehensively analyzing the legal framework of the temporary protection regime. The aim of this thesis is not to examine the articles of the Temporary Protection Regulation as a juridical text, which has already been performed by several law scholars, but to develop a theoretical point of view to contemplate the Regulation.

## CHAPTER II

### LITERATURE REVIEW AND THEORETICAL FRAMEWORK

In this study, I address the subject of refugees where sovereign decision presents itself in a concrete and obvious way. I aim to approach the subject not only in its practical implications, but also within a theoretical discussion held by Foucault, Schmitt, and Agamben, combined with the concepts of sovereignty, the decision of the sovereign, biopolitics, bare life, and the state of exception. The chapter will be followed by the concepts of homo sacer, refugee, and camp, where the state of exception reveals itself.

I intend to present this within the theory chapter by making an introduction to a discussion centered around Foucault's concept of biopolitics and Agamben's criticism to this by placing Schmittian understanding of sovereignty. Hence, I will utilize the concept of state of exception by Carl Schmitt, as a space where sovereign decision presents itself within a context of biopolitics, which Agamben employed frequently and held as a foundation where he developed his thoughts and concepts. Then, I will present the concept of homo sacer, who, in Agamben's thought, is the main figure illustrating the bare life as the original element of politics. Following the concept of homo sacer, I will touch upon the camp, the place that Agamben defines as the principal biopolitical paradigm of today's politics; and the refugee, who stands as the perfect contemporary exemplar to the figure of homo sacer.

#### 2.1 Sovereignty and the State of Exception

Within the contemporary critical theory, Foucault's interpretation of the transformation of the sovereign power to a population based sovereignty has been appealed as a frequent reference point. However, it can be observed that through the course of history, the handling of the issue of refugee rights presents the fact that the understanding of a territory based sovereignty rather than a population based sovereignty has

always been maintained. For this reason, I will employ the ideas and concepts of Giorgio Agamben who argues that the essence of sovereignty has not been transformed as Foucault suggested, on the contrary, it has always been there as a form of the sovereign decision even before the foundation of the modern state. In fact, Agamben argues, that the similar practices have always been implemented since the times of Ancient Rome, where the figure of homo sacer had represented the bare life in the place the sovereign decision manifests itself.

According to Foucault, the nature of the sovereign power has been transformed starting from the 17th century, inasmuch as it derives its essence not from territorial sovereignty or legal order as it used to do, but from the biological, i.e. the living population (Foucault & Ewald, 2003). Eventually, Foucault argues, the natural life has become valuable to the sovereign power, and transformed into an instrument of the state which led to the biopolitics of the human race:

the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary. Their supervision was effected through an entire series of interventions and *regulatory controls: a biopolitics of the population* (Foucault, 1990, p. 139).

Foucault states that before the modern age, sovereign power had come into existence as the decision maker on life or death; from the modern age onwards, however, the benefit of the sovereign power is not in taking life away, but actually in maintaining, prolonging, and enhancing the life itself (ibid., 135). For the very reason that life is prioritized and instrumentalized and that the biological life is valued, Foucault described this new form of power as biopower, which resulted in the “governance of men” (ibid., p. 102). He characterized the *divergence of modern biopower from the sovereign power* as “a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them” (ibid., p. 136). Hence, Foucauldian understanding of biopolitics is more of a positive association of life with the power, wherein has been a transformation within the essence of sovereignty: “power that exerts a positive influence on life, that

endeavours to administer, optimize, and multiply it” (ibid., p. 137). On the other hand, Foucault described the sovereign before the modern age as a negative one, the one that makes submit and destroys (ibid., 136). The sovereign power before the modern age exercised its power within juridical and territorial mechanisms, however, as Foucault suggests, the new form of power focuses on the productive capacity of life (Heron, 2011, p. 36).

Agamben challenges against Foucault’s approach to biopolitics in several respects. First of all, Agamben argues that Foucault did not develop a unitary evaluation of power (Agamben, 1998, p. 4). He suggests that Foucault abandoned the traditional institutional understanding of power — the sovereign power, in favor of an understanding of biopolitical power — biopower (ibid., p. 5). Whereas Foucault focused on the power that fosters the productive capacity of life, he neglected the subjectivity of human life actualized by the sovereign power.

Second, Agamben also acknowledged the increasing occupation of bare life within the structures of politics, describing biopolitics as “the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought” (Agamben, 1998, p. 4). However, what Foucault emphasizes dated by the modern age is the “birth of biopolitics”, whereas Agamben approaches the biopolitics of modern age as a continuation of an ancient tradition which has always been in practice, but has increasingly come to light from the modern era onwards.

Third, Foucault did not touch upon “the exemplary places of modern biopolitics: the concentration camp and the structure of the great totalitarian states of the twentieth century” (ibid.). To Agamben, concentration camps are the most concrete space in which sovereign practices biopolitics, as camps enable a state of exception where anything is possible physically and legally justified based on the decision of the sovereign. For this reason, Agamben suggests that Foucault should have dwelled upon the concentration camps and the structure of totalitarian states, which present the maintenance of a Schmittian understanding of sovereignty.



Carl Schmitt (2005, p. 6) defines sovereign as the one “who decides on the exception”. ‘To decide’ is the key concept here, since it is the emphasis within the nucleus of sovereignty, not to govern as what Foucault suggests. This is a strong argument because of the fact that it implies that the basis of sovereignty is not to rule or govern, but to decide on the exception. He suggests that the essence of sovereign lies within the idea that it is the sovereign who decides on the exception, who is able to take the necessary measures to terminate a state of exception, and who is the unique authority capable of these decisions (ibid., 13). In Schmitt’s terms, it is the exception itself which enables the matter of sovereignty (ibid.).

Likewise, sovereign is the only one who can decide what is ‘normal’ and what is not. Schmitt argues that for a legal system to be meaningful, there needs to be a condition of normality, and a sovereign, who judges on the conditions and circumstances to the normality (ibid.). The reason that a state of exception is ever established is preserving and maintaining this normality. According to Schmitt, exception is when the normality and the ordinary rule of law is suspended. He argues that sovereign does not interfere when everything is in order; sovereign only needs to employ the exception when there is an anomaly. In other words, sovereign decides on the exception only when there exists a threat to the state’s security.

In line with Schmitt’s above argument, Agamben suggests that exception should not be utilized constantly since it is formulated by Schmitt as a temporary condition. However, Agamben states that the exception is a way of legitimization of power and the sovereign consistently resorts to it and creates it (Agamben, 2000, p. 5). Whereas Schmitt articulated the state of exception as an unforeseen and necessary interference into the normal rule of law; Agamben maintains that what constitutes contemporary politics is the exception and not the rule if exception is constantly present to sustain the normality (Agamben, 2005, p. 51).

What Agamben argues differently than Schmitt is that through the state of exception, the sovereign power continuously manages and rebuilds the boundaries of law. As a result of this reconstruction, sovereign constantly resides within this indistinct space

which cannot be limited by any legislative framework. In other words, Agamben asserts that today, the state of exception has arrived its maximum implementation throughout the world. He argues that states neglect international law whereas creating a permanent state of exception within their territories, though, still maintain that they implement the law:

The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law (Agamben, 2005, p. 87).

To Agamben, the topological structure of the exception is formulated as “included in its exclusion”, as he refers as the paradox of sovereignty (Agamben, 1998, p. 82). The sovereign is outside the law since it is able to suspend it or create a state of exception, meanwhile, it is inside the law since it derives its legitimacy from the law. Within the state of exception, sovereign deconstructs the law and deceives the distinction between inside and outside. This space, according to Agamben is a “zone of indistinction”, a “juridical vacuum” within which the sovereign creates the state of exception (Agamben, 1998, p. 122). The sovereign is beyond the law, while also the one to create the law as the monopol authority to decide. Whatever his decision is, becomes the rule.

According to Agamben, the decision of the sovereign is based on bare life, which in Agamben’s terms is the “originary political element” (2005, p. 88). Sovereign is the ultimate authority over the decision on the bare lives of human beings and decides on whom to keep alive and whom to abandon to death. Within the state of exception, life, which should have normally been under the protection of the sovereign, is now excluded from the political sphere by the sovereign himself and reduced to the status of bare life (Murray, 2011, 181). Whoever is within the state of exception finds himself “at the mercy” of the sovereign power (Minca, 2011a, p. 15).

In his book *Homo Sacer: Sovereign Power and Bare Life* (1998), Agamben aims to elaborate that the two understandings of the sovereign power, traditional institutional and biopolitical, intersect. One of the major conclusion of his study is that the core of

the sovereign power has always been “the inclusion of bare life in the political realm” (ibid., p.6). Biopolitics, he argues, has always been the practice of sovereign power: “the production of a biopolitical body is the original activity of sovereign power. In this sense, biopolitics is at least as old as the sovereign exception” (ibid.). Agamben argues that although it is the worthiest among all other discussions, the biological concept of life has remained unquestioned within the contemporary political discussions even within the context of biopolitics (Agamben, 2000, 6). Agamben attaches great significance to biopolitics, based on the reason that according to him, the production of bare life is the fundamental activity of the sovereign power (Agamben, 1998, 181). Unlike Foucault who thought biopolitics as a contemporary transformation occurred within the essence of sovereign activity, Agamben argues that biopolitics has always been at the center of sovereign activity enabled by the state of exception, even before the foundation of the modern state (ibid., p. 6).

## **2.2 Bare Life, Homo Sacer, and the Refugee**

Frequently in his political thought, Agamben makes reference to the term ‘bare life’ — which he borrowed from Walter Benjamin, who defined it as “the bearer of the link between violence and law” (Agamben, 1998, p. 65). Agamben brings bare life to his own understanding wherein he thinks it as the original subject of sovereignty (ibid., p. 90). He reformulated his understanding of bare life with the utilization of two ancient Greek terms describing life: *zoe* and *bios*. The word *zoe* represents natural life which can also be thought as biological life, whereas *bios* means political life, which is also referred to as qualified life (De Boever, 2011b, p. 39). In Agamben’s own terms, two different meanings of life in ancient Greek were: “*zoe*, which expressed the simple fact of living common to all living beings (animals, men, or gods), and *bios*, which indicated the form or way of living proper to an individual or a group” (Agamben, 1998, p. 1). In other words, on one hand, *zoe* is the life within home that has no quality other than simply being alive and no relation to law; on the other hand, *bios* is the life which politically exists outside the home and has qualities peculiar to the citizens of a state.

Agamben has originated his conception of different forms of life from Aristotle, who, in his masterpiece *Politics* (1252), characterized the distinction between *zoe* and *bios* within his understanding of the birth of the *polis*. To Aristotle, the *polis* was “born with regard to life, but exists essentially with regard to the good life” (as cited in Heron, 2011, p. 37). In other words, although politics was born with regard to simple life, which is *zoe*; the actual subject and element of the politics has been *bios*, which is politically qualified life. This differentiation between the two lives naturally necessitates and brings the separation and exclusion of *zoe* from *bios*. This means that the politics is not a place for *zoe*, hence, it has been excluded from the political sphere. This exclusion, according to Agamben, is the very ground of the politics (ibid., p. 38).

The exclusion of *zoe* from the political space, Agamben suggests, creates bare life: “Neither human nor animal, neither *zoe* nor *bios*, bare life is a life stripped of its form of life” (De Boever, 2011a, p. 30). Distinct from the two forms of life, bare life emerges from the detachment of *zoe* from *bios* and represents the decisive component of the politics: “The fundamental activity of sovereign power is the production of bare life as originary political element and as threshold of articulation between nature and culture, *zoe* and *bios*” (Agamben, 1998, p. 181). Agamben defines this sovereign activity, which is the creation of bare life, as biopolitics.

Through its very exclusion from the political space, in fact, bare life is included within the politics. This is due to the fact that creation of bare life is the fundamental activity of the sovereign power, hence, is the very foundation of the politics. It is included in the sense that it emerges within the very center of the political sphere, albeit through its very exclusion. Here, Agamben reminds the contrast within the definition of life in its ancient meaning, between natural life (*zoe*) and politically qualified life (*bios*). According to Agamben, *bios* includes *zoe*, while at the same time it excludes *zoe*. The practice of detachment and exclusion of life (*zoe*) from its form (*bios*) by hand of political power, creates bare life (Agamben, 2000, 3). Agamben describes the “inclusive exclusion” of bare life in political life as the politics being the space wherein *zoe* “had to be politicized” by turning into *bios* (ibid., p. 7). Hence, bare life is included in the politics “solely through an exclusion” (p.11). In other words, unless *zoe* transforms

into bios, it does not have a quality. Zoe needs to be contained by bios, which means an inclusion, although also an exclusion since zoe does not individually exist anymore and is removed from the political space.

The *bios politicos*, the qualified form of existence, differentiates and extracts the human out of the bare life. By taking part within the political realm, bios is inclusive of the juridical political machinery of the state through representation and political rights. Through the original activity of sovereign, on the other hand, zoe is excluded from the political sphere, and it is neither zoe nor bios anymore, rather a bare life which the sovereign authority produces to maintain itself. Through the state of exception, the sphere of bare life increasingly starts to coincide with the sphere of politics. As a result of this, “exclusion and inclusion, outside and inside, bios and zoe, right and fact, enter into a zone of irreducible indistinction” (Agamben, 1998, p. 9). Within this irreducible indistinction where opposite extremes become indistinguishable, bare life is actually not simply left outside the law, but disregarded by the law. Being abandoned by law means being unprotected and threatened (ibid., p. 28-29). This is a threshold where inside and outside of the law is indistinguishable, and bare life cannot be determined whether to exist inside or outside of it (ibid.).

The main conception behind the biopolitical thought of Agamben can be summarized through his following argument: “The fundamental categorial pair of Western politics is not that of friend/enemy but that of bare life/political existence, zoe/bios, exclusion/inclusion” (Agamben, 1998, p. 12). Throughout his studies, he aims to elaborate that the establishment of Western politics has been made possible by means of an exclusion of bare life by the sovereign authority. The terms exclusion and sovereign exception bring us to the concept of ‘exception’, which constitutes one of the most important elements in Agamben’s thought. To him, the basis of the sovereignty is to be sought “in the sovereign's preservation of his natural right to do any thing to anyone” (ibid., p. 106). This understanding of sovereign is biopolitical, and the sovereign who preserves the right to do anything to anyone, is also the one to enable the state of exception. The relation of the sovereign with bare life is materialized within the state of exception: “at once excluding bare life from and capturing it within the political order,

the state of exception actually constituted ... the hidden foundation on which the entire political system rested" (ibid.).

Agamben associates the concept of bare life with the Ancient Roman figure *homo sacer*: "an obscure figure of archaic Roman law, in which human life is included in the juridical order ... solely in the form of its exclusion" (Agamben, 1998, p. 8). To Agamben, *homo sacer* is the perfect and the profound example of bare life, that is, both inside and outside the law within an indeterminate space. In the following section, the Agambenian concept of *homo sacer* will be demonstrated within the context of sovereign exception and biopolitics.

Agamben aims to answer the following question: what is the life of *homo sacer* and how does it enable us to understand the politics? The answer lies in the bare life, which is "the life of *homo sacer* (sacred man), who may be killed and yet not sacrificed" (Agamben, 1998, p. 8).

Translated as 'sacred man', *homo sacer* was the person in ancient Rome who had been sentenced due to a crime, and was not allowed to be sacrificed within a religious activity; and, anyone who killed him was not to be condemned of murder (Agamben, 1998, 71). Agamben (1998, 183) describes this person as follows:

He has been excluded from the religious community and from all political life: he cannot participate in the rites of his gens, nor ... can he perform any juridically valid act. What is more, his entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land. And yet he is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditioned threat of death. He is pure *zoe*, but his *zoe* is as such caught in the sovereign ban and must reckon with it at every moment, finding the best way to elude or deceive it. In this sense, no life, as exiles and bandits know well, is more "political" than his.

*Homo sacer* is the man who is removed from the *bios*, left outside the juridical order, and reduced to the state of bare life. *Zoe* is natural life, whereas *homo sacer* is the man from whom *bios* has been withdrawn and has been reduced to the status of bare life.

How then, homo sacer is related to the question of modern politics according to Agamben? The answer lies in the first political activity of the sovereign, which is the creation of biopolitical body. It is the sovereign who decides on whether a person could be classified as a political subject or merely a biological being. Individual who has been excluded from the political sphere, i.e. homo sacer, is now reduced to a form of life which can only be characterized as bare life, and sovereign recognizes it solely as a biological being. Homo sacer, hence, is the primary form of life which “preserves the memory of the originary exclusion through which the political dimension was first constituted” (ibid., p. 83).

Homo sacer is included in the sphere of sovereign rule in the ability of sovereign to punish or abandon him, while he is also excluded by being deprived of his rights and freedoms. The prohibition to kill a free person is now suspended in the case of homo sacer, by his being excluded from the law. The same case is applicable in his prohibition to be sacrificed, i.e. his exclusion from the divine law. The life of the homo sacer, however, is not a life which is unrelated to law and city. It is the “threshold of indistinction and of passage between animal and man, physis and nomos, exclusion and inclusion” (ibid.). He is in the state of uncertainty, the state of exception, which is a space of sovereign decision (1998, p. 83). This is the place where killing without impunity is legitimate, and homo sacer is included within this space by its very own exclusion. The whole process is considered as the generation of bare life, the original activity of the sovereign. As a perfect example revealing the relationship between life and the sovereign, Agamben calls therefore the homo sacer as “the mute carrier of sovereignty, the real *sovereign subject*” (Agamben, 2000, 112-13).

While homo sacer is the man who could be killed with impunity, he was also sacred. Here Agamben draws attention to the paradox within the essence of bare life, inasmuch as it has been excluded from the political sphere whereas it is also the fundamental necessitation of the state to preserve itself. Homo sacer is the figure at the opposite extreme symmetry of the sovereign (ibid., p. 84). Both of them are undecidable; they are simultaneously inside and outside the juridical order, within a “zone of indistinction” (ibid.).

Although the sacredness of homo sacer has been quite an area of discussion among the political theorists and theologians, Agamben instead draws attention to the “double exclusion” of homo sacer, from divine and ordinary law, as a result of which he is exposed to violence (1998, p. 82). His death cannot be classified as sacrifice or homicide, that is, there is a zone of indistinction between the two.

Within the sacredness of homo sacer, Agamben tries to illuminate how sovereignty and homo sacer is connected. To him, sacredness is the initial inclusion of bare life within the legal structure, and bare life is the life of homo sacer dependent on the sovereign decision (ibid., p. 85). While in modern era the sacredness of life is regarded as a fundamental right against sovereign power, it is in fact life’s subjection to sovereign decision and its exposure to death (p. 105). In archaic Roman law, the sacredness meant “destined to die” (Agamben, 2000, 117). For this reason, homo sacer’s significance in Agamben’s thought is in the consideration that “not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element” (p. 88). The fact that the bare life being the original element and being politicized means its “abandonment to an unconditional power of death” (ibid., p. 90). The exclusion of bare life, according to Agamben, means that “anyone may harm him”, or he may even be considered as “already dead” (p. 105).

Agamben points out the aftermath of World Wars, the rise of totalitarian states, and the concentration camps, and asks the following question: “why democracy ... proved itself incapable of saving zoe, to whose happiness it had dedicated all its efforts, from unprecedented ruin?” (1998, p. 10). Agamben aims to answer this question and explain the rise of totalitarian states by pointing out the nature of the relationship between bare life, the life of homo sacer, and the sovereign. By referring to the concentration camps of totalitarian era, Agamben suggests that “Nazism and fascism ... transformed the decision on bare life into the supreme political principle” (p. 10).

Agamben tries to elaborate the modern era’s political question through an analogy between the camp, and political sphere. He describes the camp as any “space that opens up when the state of exception starts to become the rule” (Agamben, 2000, 38). One



of the major conclusions of Agamben is that today, the main biopolitical paradigm of the Western politics it is not city anymore, but camp, “the nomos of modernity”, where again bare life is at stake (p. 181). As the space where bare life, the life of homo sacer, is produced, the following paragraphs will illuminate the concept of camp, and the refugee who exists within the state of exception.

Agamben aims to answer the question: “what is camp and its juridico-political structure?” (Agamben, 1998, p. 166) He suggests that by camp, he does not mean a concrete space such as Nazi concentration camps, but more of any space where bare life is produced (Minca, 2011b, p. 41).

Agamben evaluates the emergence of camps within a historical context, and discovers that camps were not emerged from the ordinary law, but rather from the state of exception (Agamben, 2000, p. 37). He exemplifies this by the initiation of Nazi legislation as a preventive measure to intercept threats to the state’s security, while at the end, turned into a permanent state of exception (ibid.). State of exception which in normal circumstances a temporary measure that suspends the law, takes form of a permanent nature and stays outside the ordinary law. Camp, as a result, is the place where the state of exception is not an exception anymore, but the rule (ibid.). In Agamben’s words: “if sovereign power is founded on the ability to decide on the state of exception, the camp is the structure in which the state of exception is permanently realized” (ibid., p.39).

Since camp is the place within a state of exception and where normal condition of law does not apply anymore, nothing is impossible within it (Agamben, 1998). Agamben exemplifies camps and the state of exception by referring to the US detention centers such as Guantanamo and Abu Ghraib. To him, these do not represent the boundaries of state power, rather, they present the structure and foundation of the state power, that is, state of exception and production of bare life (Whyte, 2010, p. 136). The inhabitants of the camp walk into a zone of indistinction between law and lawlessness, inside and outside, where any kind of legal protection had diminished (Agamben, 1998, p. 40):

Inasmuch as its inhabitants have been stripped of every political status and reduced completely to naked life, the camp is also the most absolute biopolitical space that has ever been realized—a space in which power confronts nothing other than pure biological life without any mediation.

Agamben aims to answer the question asking how people could have been stripped of their rights in such a degree that any violation against them is not considered as a crime. He answers this question by acknowledging that, if camp is the space for bare life where state of exception is realized and anything is possible, then each time there is a space as such, we may call it a camp “regardless of the nature of the crimes committed in it and regardless of the denomination and specific topography it might have” (p. 40-41). The regulating principle of the camps is not the rule of law, but the decision of the sovereign, or the police (p. 41).

Whereas traditionally the nation-state had been constituted by “three elements — territory, order, and birth”, according to Agamben, camp is the fourth element which have joined into the three: “The increasingly widening gap between birth (naked life) and nation-state is the new fact of the politics of our time and — what we are calling "camp" is this disparity” (p.43).

Agamben argues that as the constant inhabitant of camps and being left outside the three elements of the nation-state, refugee is the supreme figure representing the Archaic figure of homo sacer. He makes reference to the work of Arendt, who touched upon the refugee problem in the aftermath of World War II, and states that her analysis keeps its validity in today's world (Agamben, 2000, p. 16). Since the outbreak of the refugee crisis after the World Wars, lots of the refugees rather opted for being stateless instead of going back to their homelands (p. 16). This is also true today, for those whose return would mean threat to their lives and security. From the beginning of the twentieth century, especially between 1915 and 1933, European states had started to introduce legislations which denaturalized their citizens as a result of which there had been countless amount of stateless persons and refugees (p. 17). Since then, many international non-governmental organizations, which claim in their nature to have essen-

tially a humanitarian character, have sought ways to address the refugee issue. However, whenever there have been a mass presence of refugees, the international community have revealed themselves as useless or inefficient in addressing the problem (ibid.). As a result, the problem was left out to the police and humanitarian organizations.

The reason of the incapability of the international society to handle the issue is for Agamben (i) the non-liability and inefficiency of bureaucratic mechanisms, (ii) the obscurity of the notions of nativeness within the legislative frameworks of the nation-state (ibid. p, 18). Here, Agamben draws attention to Arendt's study regarding the rights of citizen vis a vis the rights of refugee, a discussion that will further be illustrated in detail in the next section. He suggests that, paradoxically, it is the refugee who should have been granted human rights more rightfully than anybody, whereas instead it put the modern politics into a crisis (ibid.). He goes further to argue that given the decline of nation-state "the refugee is perhaps the only thinkable figure for the people of our time and the only category in which one may see today ... the forms and limits of a coming political community" (ibid.).

Agamben emphasized that "Nation-state means a state that makes nativity or birth [*nascita*] (that is, naked human life) the foundation of its own sovereignty" (p. 20). This means that the rights of a person is inalienable as long as the person belongs to a nation-state, otherwise, people who have nothing but being human have no protection of their rights. This is, according to Agamben, due to the fact that the constitution of the nation-state does not articulate such thing as the pure human, and the refugee has been regarded as a temporary figure (p. 19). Agamben makes a striking conclusion through the following argument:

When their rights are no longer the rights of the citizen, that is when human beings are truly *sacred*, in the sense that this term used to have in the Roman law of the archaic period: doomed to death (ibid., p. 21).

This paradox inherent within the essence and the international manifestations of human rights, wherein the non-citizens remain unprotected and are "doomed to death",

is discussed by Hannah Arendt. With reference to her thoughts, the following chapter will try to answer questions, such as: what kind of a paradox does the human rights embodies within, what is the relationship between nation state, citizens, and human rights, what rights do stateless people or refugees hold vis a vis the inalienable human rights. The discussion held in response to these questions are noteworthy in their clarification of Agamben's conceptualization of camp, refugee, and the relation of bare life with the sovereign power within a state of exception.

## CHAPTER III

### HUMAN RIGHTS PARADOX OF REFUGEES

In this chapter, I will address the international approach to the issue of human rights and the paradox embodied within the essence of the concept of human rights — a discussion held by Hannah Arendt — to whom Agamben has made references throughout his arguments. After the projection of the international approach to refugees and Arendt's discussion, I will present Turkey's approach to the issue of refugees and make a short summary of the Temporary Protection Regulation. As the final element within this chapter under the section entitled as the current state of research, I will present the recent research regarding the refugees studied in relation to Agambenian concepts such as bare life, the state of exception, sovereignty, and especially, homo sacer.

Hannah Arendt addressed the same distinction on human life held by Agamben, i.e. zoe and bios, from a different perspective whereas together they may be thought as eventually completing the pieces of a greater argument (De Boever, 2011b, p. 39). Arendt argues that the life in the private sphere — in Agamben's terms, we may call it zoe — threatens the life in the political sphere — i.e. bios. Because she argues, that people naturally born with complete differences, qualities, and inequalities could be brought to a level of equality solely by “law of equality”, which could be possible only on the grounds of political life (Agamben, 1998, p. 4). A common world, that is to say, could only be built with the equals of man. Even though Agamben's formulation of zoe and bios bears a great resemblance to Arendt's differentiation of private life and political life, Arendt comprehended a private life which is completely out of the political space (Aytaç, 2011, p. 267). Agamben, on the other hand, maintained rather an inclusive form of life - bare life - which has always been at the heart of political sphere. Whether from the perspective of Agamben or that of Arendt's, it is clear that the human rights is granted only to some people, restricted by the idea of nation-state and citizen. People other than citizens, on the other hand, can be considered to be lucky to attain

some rights which are condescended by nation-states. All in all, this signifies that human beings cannot be thought independent from the sovereign's decision and calculations, and human life is a space where sovereign acts and decides.

Arendt (1973, p. 294) revealed the discrepancy that human rights embodied, in the sense of the crisis experienced in the aftermath of the First World War, especially for the stateless people, minorities, and migrants. Before this crisis, it was exceptional for the nation states to naturalize individual people who refuged. After the WWI, nation states considered repatriation or naturalization as the solution to the mass influx of refugees. However, they realized the impossibility of realizing this and, as a result, the problem of refugees had deteriorated. The problem of refugees thus became a threat to the basis of the nation state, and the solution produced by nation states had become deportation (ibid.).

These people in question had first lost their homeland, and then the political authority to provide protection to them. Within a world that comprised of the family of nations, losing the political protection meant being excluded from the entire polity altogether (ibid., p.300). Arendt stressed:

The calamity of the rightless is not that they are deprived of ... (human rights) which were designed to solve problems *within* given communities-but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them (ibid., p.296).

From the very beginning, according to Arendt, the idea of the definition of human rights being independent from any political reference in itself was contradictory, since these rights had actually developed as an original element of political representation (ibid.). It indeed originated from the right to govern, hence, was impossible to be thought as independent from the state or the sovereign, and there has to be a nation as well as a command of people so as to be able to speak of the rights of humans. Human rights emanated at around the same time as the rise of nation states, and each nation state had entitled nobody but its own people with those rights, since every person had assumed to be belonging to one of them. These rights disappears immediately after

their holder loses citizenship, or in case she has never held a citizenship in the first place. As a result, there are no institutions or authorities to protect and defend the rights of the people who are without a state. Even the states whose constitutions are based upon the so called human rights fail to carry out these allegedly inviolable rights for the people who are not citizens (Arendt, 1973, 291-92).

Arendt then brings us to the question of people without a state or the protection of a state, inasmuch as they are forced to live outside the family of states, a community, and they are left naked with only their natural inborn characteristics and deficiencies. Since, she argues, they are not participants of a common world, “they begin to belong to the human race in much the same way as animals belong to a specific animal species” (Arendt, 1973, 302). A person losing his opportunity to express the individuality of himself which could have been otherwise possible by being involved in a political community reveals the same paradox which deprivation of human rights embodies:

The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general — without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself — and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance (ibid., p.302).

Unlike Arendt who read the division of man and citizen within the international texts of human rights as a paradoxical phenomenon; Agamben approached this distinction rather as a consistent totality which is exclusively intended in the bio political activity of the sovereign: “Contrary to our modern habit of representing the political realm in terms of citizens' rights, free will, and social contracts, from the point of view of sovereignty only bare life is authentically political” (Agamben, 1998, p. 106). Looking from this perspective, Agamben argues, enables us to comprehend the dynamics of biopolitics as well as the nature of the relationship between bare life and the sovereign.

Arendt (1973, p.280) argues that even though the right to asylum has managed to operate in the society of nation-states, “it was felt to be an anachronism and in conflict

with the international rights of the state.” For this reason, she asserts, the right of asylum does not explicitly appear in any domestic juridical statement, constitution, international treaty, and even the League of Nations Covenant (ibid.). Without a national identity or a social belonging, a human being is not allowed to possess human rights in practice. In any case, it has not been the rights of human in the first place, it has always been the rights of citizen.

### **3.1 International Approach to the Issue of Refugee**

The right to asylum has not been regarded as a basic human right by international society, but more as a humanitarian and moral duty that states shoulder voluntarily (Peker & Sancar, 2001, p. 8). Nation states recognize the right to asylum only within the context of their national laws or bilateral agreements in accordance with their sovereign rights. For this very reason, from the beginning of the recognition of human rights by international society to this date, the entitlement of the right to asylum has not been guaranteed, and asylum seekers can be understood as being deprived of the full protection of legal and juridical mechanisms (ibid.).

As supposed to be a basic human right, we may trace the right to asylum back to the 1789 Declaration of the Rights of Man and Citizen, which addresses the rights as conferred to the citizens of a state rather than being inclusive all men and women (Arendt, 1973). After this, the 1948 Universal Declaration of Human Rights (UDHR) was acknowledged, which on paper was including all human beings as “entitled without any discrimination to equal protection of law” (UN General Assembly, 1948, Article 7). Following this declaration, the most prominent document referring to the rights of refugees, signed by many of the European states, is 1951 UN Convention for the Status of Refugees (Geneva Refugee Convention) and later the 1967 New York Protocol. Even though there has been remarkable efforts to acknowledge the right to asylum, considering that there has been a strong tradition of nation-state since the foundation of modern state, all of the efforts made by the society of states has remained incapable of approaching the issue of human rights without the lenses of nation, birth, and citizen (Kale, 2017). The nationality issue has always been and is to remain there, resulting in



human rights to be addressed in two different set of understandings: rights entitled to citizens and rights entitled to others. As Arendt asserts: "For so long time considered under the image of a family of nations, had reached the stage where whoever was thrown out of one of these tightly organized closed communities found himself thrown out of the family of nations altogether" (Arendt, 1973, p.293-294).

Within the 1789 The Declaration of the Rights of Man and of the Citizen, refugee and citizen are differentiated in front of the law. The Declaration presupposes in its very title that there are two types of subjects - or lives, as Agamben would have suggested - life of the citizen's, and non-citizen's (ibid.). These two lives are implied to differ in terms of their rights and freedoms, and there is no equality between them before the law (ibid.). Whereas the declaration states that there are natural, inalienable, and sacred rights of man, the rights of non-citizens are held separately from that of the citizens; they do not come with birth (ibid.). This means that birth does not qualify a person to acquire natural rights if the person is outside the boundaries of a nation-state.

Arendt questions how and why the natural and innate rights lose their essence when it comes to people who are not citizens (ibid.). Refugees are regarded as humans reduced to bare life, whereas citizens are represented politically and included in the polis, regarded as bios. Refugees and camps represent the relationship between zoe and bios, bare life and bios politicos, as well as the inconsistency within the nature of human rights, which bases upon the differentiation between human and citizen. The human (refugee) is remained in the limbo of the sphere between law and lawlessness, inside and outside, zoe and bios (Agamben, 2000, p. 15). This is a state of exception created by the sovereign who derives its differentiative power from birth, as implied in the very definition of citizenship (ibid.). The most important thing distinctive to a refugee is that s/he does not have the status of a citizen and reveals the dynamics between politics and bare life. They are deprived of nation-birth link, and hence citizenship and basic human rights (ibid.).

In 1951, in order to approach refugee issues, the 1951 UN Convention for the Status of Refugees (Geneva Refugee Convention) and the 1967 New York Protocol were

formed so as to shield individuals who wish to take refuge in the European countries. Together with the 1948 Universal Declaration of Human Rights (UDHR), the 1951 Convention and 1967 Protocol can be considered to outline a legal structure for the international protection of refugees. Although limited and not binding, the rights of refugees and obligations of the contracting states were defined in an unquestionable way within the 1951 Convention (Kale, 2017). Kale (ibid., p.59) states that, in the original text, there are broad range of obligations on the states in the sense that the rights should be provided to the refugees “almost” as equally as the rights of the citizens of those states (ibid.). It was also pointed out in the Convention that in order for any solution to a refugee issue to be successful or at least satisfactory and to prevent conflicts between the signatory states, there needs to be a sense of an international cooperation and a balanced burden sharing. Even though a clear account on burden sharing was not determined in the Convention, there has been efforts by the UNHCR to stress on the significance of the burden sharing principle (ibid.).

According to the Amnesty International (Amnesty International, 2014b), the burden-sharing can be carried out mainly in two ways: resettlement and financial assistance. Resettlement means relocating the refugees in countries where they will have the chance to pursue their lives in a dignified way, as a person, by providing extra care for their livelihood, personal situations, health or security concerns (ibid., p.7). This practice also helps reducing the burden on the countries where large number of refugees take shelter. Financial assistance, on the other hand, is provided to those countries which are hosting refugees, through the medium of several humanitarian support programs or development agencies, coordinated by the UN. Humanitarian assistance programs in general help refugees to be ensured food, health, education, and shelter (ibid.). However, the signatory states have shown no willingness to specify more obvious rules and regulations which set the framework to the burden sharing principle (Kale, 2017, p.60). Kale emphasizes that the lack of adoption of this principle caused a “free rider” problem within the signatory states which in return negatively affected the progress towards achievements on refugee protection. Due to this problem, states

which are hosting large number of refugees, such as Turkey, are stuck in tough situations wherein their efforts remain incapable of encountering the problems caused by high volume of refugees or meeting the basic humanitarian needs of those people.

1951 Refugee Convention is an evidence to the fact that refugees are allowed to hold much less and limited rights in comparison to the citizens (Yılmaz, 2018). Even this convention which was adopted particularly for refugees implies that the refugee rights are not equivalent of the rights of citizens. The Convention explicitly states that the signatory states “shall accord to refugees the same treatment as is accorded to aliens generally” (UNHCR, 1951). In other words, maximum treatment for the refugees could be possible only to the level of aliens of that country, not the citizens. The European states’ response to the Syrian refugee issue has been criticized by scholars and international NGOs in so many respects (Amnesty International, 2014a). Although UNHCR has taken the lead in management of the international humanitarian response to the flow of refugees, its efforts remain inadequate for handling the situation or even preventing it to get worse. Consequently, much burden is shouldered by countries such as Turkey which opened its doors to a large number of Syrians.

### **3.2 Turkey’s Approach to the Issue of Refugees**

Turkey is one of the signatory countries to the 1951 Geneva Refugee Convention which drives implications on how to approach to those who are seeking asylum. However, just as many other signatory states, Turkey has agreed to become a party with a geographical limitation (Latif, 2002). In other words, Turkey has agreed to accept as regular refugees only those who are coming from the European territories. Although later on most of the signatory states opt out for geographical limitation, Turkey still has not abolished it. According to Latif (2002, p.21), in addition to financial concerns, the aim of Turkey in keeping this limitation was cutting out political economic obstacles by restraining refugee flows from unstable regions such as Middle East and Asia, where Turkey believed a refugee inflow will be “a potential threat to its security” (ibid.). As a result, even today Turkey is not obliged to grant protection to people who are fleeing from countries other than European borders.

As Kale (2017, p. 64) states in her article, “Turkey implements the 1951 Convention in a way that non-European refugees’ applications are processed, but if refugee status is granted they are resettled to third countries”. Although, the mass influx of people from Syria since 2011 has forced Turkey to come up with an additional solution, and in 2014, the Law on Foreigners and International Protection (LFIP), No. 6458 has been put into effect. This law involves a few different types of statutes which grants foreigners different kinds of protection, mainly as “international protection” and “temporary protection” (ibid.).

There are three main types of foreigners in Turkey who are considered to be under international protection. These include (1) refugees, (2) conditional refugees, (3) foreigners under subsidiary protection (Latif, 2002). Although refugee status is only granted to those who are fleeing from European countries, conditional refugee status is given to those who are outside of the European countries, on condition that they will be resettled to a third country. Foreigners who can neither be a refugee nor a conditional refugee but are in a serious threat are regarded as the one in a subsidiary protection (ibid.). Additionally, people who apply to international protection but has not yet qualified for it also are provided with a protection determined by the Directorate General of Migration Management (DGMM). Temporary protection, on the other hand, is not an international protection but a separate kind than these three kinds of protection, and is granted in situations when there is a mass influx of people escaping from their countries. In the Temporary Protection Regulation, it is clearly stated that being under a temporary protection does not mean that the person of interest is qualified to be under international protection ("Geçici Koruma Yönetmeliği," 2014; Kale, 2017).

In March 2016, EU and Turkey has signed a deal in order to control irregular refugee traffic to the European borders (Rygiel et al., 2016). According to the deal, Turkey has agreed to accept the irregular migrants that had passed to European borders, and in exchange of each irregular migrant, one Syrian would be resettled to European countries. While European Commission presented that this way the deaths resulting from irregular crossings through seas, Turkey’s gain was going to be liberalization of visa restrictions for Turkish citizens, and a financial support of 3 billion Euros with regard

to refugees' needs in Turkey (ibid.). However, this deal has been highly criticized since it undermines the obligations and responsibilities of European states vis a vis the 1951 Convention (Poon, 2016). It has also been defined as inhumane by several international NGOs on the grounds that Turkey was not a safe country for the refugees due to lack of clearly defined boundaries for international protection of refugees, and shortcomings of the temporary protection regime (Amnesty International, 2016).

### **3.3 Temporary Protection Regulation**

Temporary Protection Regulation is a secondary legislation dependent on LFIP, and subject to the terms and conditions and normative framework of LFIP (Ineli-Ciger, 2015). Temporary protection is an immediate protection that is developed to address the mass influx of people to the state borders. This protection is granted in cases where individual assessment of people becomes impossible due to the large number of applications. It is an interim remedy to meet the urgent needs of people who are forced to leave their own countries and are not able to return due to serious threats, where at the same time granting international protection one by one is not possible (Ineli-Ciger, 2017).

In European Union, Temporary Protection Directive was passed in 2001, ten years after the conflicts in Bosnia and Kosovo by the member states to meet the protection needs of people wherein there is a mass influx (Ineli-Ciger, 2016). In Turkey, the Temporary Protection Regulation was passed in 2014 as a response to mass influx of Syrians to the Turkish borders. Under this regulation, temporary protection status is granted to Syrians coming to Turkey's borders.

Temporary protection regime being implemented in Turkey has three fundamental elements according to its legal framework (Sarı & Dinçer, 2017). The first element is accepting those who are fleeing to Turkey by implementing an open door policy and providing them a chance to legal stay, even though they have entered to Turkish borders illegally. The second one is the protection from refoulement. The last element is meeting the basic and urgent needs of individuals who are seeking protection.

The extend of the legal rights provided to Syrians under temporary protection are quite narrow. This has become a particular area of criticism among scholars (Yıldız & Uzgören, 2016). Considering the response given by European states, Turkey's response has been the most responsible and right-minded one (ibid.). However, it has shortcomings and limitations when it comes to the protection of people's rights or meeting their basic needs (Rygiel et al., 2016).

First of all, temporary protection status does not guarantee Syrians citizenship, a long term residency, or the right to apply to asylum (ibid.). The temporary protection status only enables Syrians a temporary residency, as a result, their voluntary return to Syria or their resettlement to other countries remain as only long term options available (Kale, 2017). According to many scholars, the first option, the end of the Syrian War does not seem to be realized at any time soon (Erdoğan, 2015; Kirişci, 2014). The second option of resettlement, on the other hand, is quite limited and statistically very marginal with only few cases implemented (Ulusoy & Battjes, 2017). Between 2014 and 2019, the number of Syrians who had been resettled to third countries is 15K out of 3.6 million registered Syrians in Turkey (DGMM, 2019a). Resettlement option is also difficult for it depends on the initiatives of third countries (RRT, 2018, p. 128). Moreover, the decision on the eligibility of an individual under temporary protection to apply for a resettlement can only be made by the Turkish authorities (Ineli-Ciger, 2015).

Second, the Regulation does not guarantee the right to apply for an international protection (ibid). The regulation articulates that the international protection applications of the beneficiaries will not be put into practice unless the temporary protection status terminates (ibid.). This deprives the Syrians of the right to a qualified future dignified with an extensive and full recognition of their rights. Furthermore, since there is no limitation to the duration of temporary protection status within the Regulation, there is an uncertainty regarding the future of the beneficiaries and they cannot prepare to a future where they cannot foresee (ibid.).

Other than the two long term solutions which are the end of the war and resettlement option, the situation of the Syrians in Turkey can be considered as so ambiguous that they are not able to enjoy the standards of a basic human life. Baban et al. (2016) argue that according to their personal contact with Syrians as well as several NGO reports, “this restrictive framework, which has created conditions of precarity within Turkey, is one of the most important reasons why Syrians choose to undertake dangerous journeys to Europe to claim refugee status”.

Another drawback with the temporary protection is that although the regulation guarantees provision of social and economic support as well as basic needs such as health, shelter, livelihood, and education, the initiatives regarding the acquisition of these services are given to the responsibility of individual ministries (Ineli-Ciger, 2015). Additionally, the extend and coverage of social rights remain unclear, and this causes the state representatives in different cities to evaluate them in various ways, leading to inconsistent practices in provision of social services (ibid.). As Erdoğan (2015) suggests, as may the social acceptance be important for the integration of Syrians within Turkey, establishment of the extend of their rights as well as the obligations of the government bears greater significance.

Yıldız & Uzgören (2016) claim that rather than a rights-based approach, Temporary Protection Regulation adopts a service-based approach which means accounting fundamental rights such as shelter, freedom of movement, education, health, employment as “services”. This creates a problems in terms of the recognition of the rights of Syrians. First of all, it deprives them from their ability to claim their basic rights due to the ambiguity it contains. Second, these services are left to the vaguely defined obligations of the state authority which leaves them vulnerable to the grace of the authorities. Third, this approach does not assure the durability of the services provided, since they may be ceased at any time. Finally, within the scope of these services, there is no clear right to employment as the access to labour market is highly limited (ibid.).

There are other studies examining the extend and coverage as well as the accessibility of services provided to the Syrians under temporary protection in Turkey. Bilecen &

Yurtseven (2018) investigated the healthcare system of Turkey and its accessibility to the Syrian beneficiaries. The study explores three basic obstacles to the access of Syrians to health care: registration, navigation of the system, and language barriers (ibid.). Another study conducted by Uyan-Semerci & Erdoğan (2018) analyzes the accessibility of education to the off-camp Syrians. The study reveals that the enrollment rate among the Syrian children in Turkey is between 15-30 percent and this rate especially decreases for off-camp Syrian children, especially due to the poverty problem.

As will be further evaluated within the research chapter of this study, the legal framework of the Temporary Protection Regulation is problematic given the ambiguity that it contains. Furthermore, this ambiguity creates a negative impact on the daily lives on Syrians in Turkey in addition to their ability to access to the basic rights and services.

### **3.4 Current State of Research**

Several scholars have studied the figure homo sacer in regarding the subject of migration and refugees. Rajaram & Warr addressed the issue of irregular migration in Australia, Malaysia, and Thailand in light of the conceptual figure homo sacer, aiming to test Agamben's theory (Rajaram & Grundy-Warr, 2004). The scholars present that the territorial limitation to human rights issues causes spaces of exclusion, and refugees and irregular migrants are captured within this state of exception as homo sacers.

Some studies have aimed at extending the scope of Agamben's homo sacer from the material and objective issues toward the spheres of rhetoric and discourse. Zembylas points to the Agamben's theory of biopower and the concept of homo sacer in order to elaborate a discourse analysis on how immigrants, asylum seekers, and immigrants have been represented as the other in citizenship education curricula. Zembylas argues that it can be examined through inclusion/exclusion mechanisms which remain immigrants as homo sacer and resulted in the disavowal of the other (Zembylas, 2010).

Media outlets also contributes to these inclusion/exclusion mechanisms. Dykstra claims that Western media overlook the individual stories of refugees and silence these people in the face of governments, international organizations and non-governmental



organizations. The approach of media toward refugees justifies the abandonment of the rule of law and the exercise of state of exception upon refugees. It implies the denial of the agency of refugees and the preventions of these people from demanding their rights. Even when refugees are presented from a humanitarian perspective, they are only the subjects who need the help of the NGOs (Dykstra, 2016).

Accordingly, a lot of researchers have applied Agamben's critical theory in order to address how the sovereign exercises the state of exception upon immigrants through diverse legal arrangements and practices. Diken argues that asylum seeker status exemplifies the concept of *homo sacer*. Those who are under this situation have become the exact figure on which the power of the sovereign has been embodied. They have remained only as "men" without any access to political life. Via socio-political mechanisms, several basic human rights of asylum seekers have also been suspended. For example, even if the freedom of movement is a fundamental right which is acknowledged in international conventions, refugees are not able to mobilize and move without permission (Diken, 2004).

In Germany case, Zeveleva argues that the categorization of refugees in camps refers to a conceptual linkage between national identity and biopolitics. Thanks to the definition of non-members of the state, the sovereign has managed to maintain German national identity (Zeveleva, 2017). Zannettino insists that immigration policies of Western countries like Australia and their practices such as detention can be considered as the continuation of Nazi concentration camp which were described as the very example of the state of exception by Agamben. Refugees are demonized within a biopolitical paradigm (Zannettino, 2012). From a nuanced view, Ramadan asserts that other political actors including religious leaders and NGOs help to the state in order to maintain several policies such as the state of exception in camps and the exclusion of refugees from political life in Lebanon case (Ramadan, 2013).

Hanafi & Long studied the state of exception in the Palestinian refugee camps in Lebanon (Hanafi & Long, 2010). They argue that due to an absence of a legal framework

regulating the camps in Lebanon, socio-economic circumstances and standards of living of the residents of these camps were marginally low. Furthermore, the security of the residents were threatened. According to the authors, these are originated from the state's introduction of state of exception within these camps, by excluding Palestinians of their rights, at the same time, including them as a risk to the security of state.

Gordon also studies the state of exception within a context of migrants (Gordon, 2010). The study discovers the factors building the state of exception in post-apartheid Africa, and the ways in which especially the 'black' foreigners from Africa are exposed to maltreatment, xenophobia, and exploitation where they are clearly not dependent on normal rules of law.

Hönig (2014) investigates the state of exception applied to the irregular migrants in Europe. He touches upon the importance of territories, and how the othering of irregular migrants in Europe created a state of exception demonstrating itself within the practices of discrimination by means of legislations and practices.

Pope & Garrett (2013) also studied irregular migrants and their status as homo sacers existing within a state of exception. Investigating the decisions of US courts and comparing the treatment and punishment of citizens that of the non-citizens, the authors of the study argue that the non-citizens of the US does not hold the same rights as the citizens (Pope & Garrett, 2013). They assert that the detention conditions of illegal immigrants as well as their deprivation of the right to counsel constitute a great example of what Agamben called a state of exception and a homo sacer.

Another study by Civelek has examined the Syrian "refugees" in Turkey in light of the ideas of Foucault, Arendt, and Agamben (Civelek, 2017). Even though Civelek has utilized the ideas of Agamben throughout the study, she basically has founded her analysis on the Foucauldian biopolitics. She has valuable contributions to the literature by revealing the biopolitical relationship between the refugees and the sovereign. However, I think her study has a shortcoming in the sense that her analysis does not put enough emphasis on the temporary protection regime, or the temporary protection status; which has a great significance considering its effects and drawbacks. Even

though she acknowledges the effects of the regime on the lives on the Syrians, she rather keeps referring them as refugees and this approach is also observable in her analysis of the topic. As a result, she rather focuses on the changing discourse of the Turkish government vis a vis the Syrians, and the biopolitical problematic behind its approach to the issue.

Another study by Ongur and Zengin has focused on Syrians in Turkey within the theoretical framework of Agamben (Ongur & Zengin, 2019). They criticize the recent studies for approaching to the issue of Syrians in terms of the biopolitical attitudes of Turkey's ruling party AKP (Justice and Development Party). The authors of the study suggest that the biopolitical attitude of Turkey toward Syrians originates from the Kemalist era's politics of sovereignty, considering the original adoption of geographical limitation to the 1951 Convention.

The emphasis on homo sacer is due to the fact that its association with the subject of refugee has been Agamben's main focus interpreting the modern politics. Inasmuch as Agamben insistently argues that the foundations of the modern state of today's can be traced back to the originary foundation of the sovereign power of the ancient times, the connection of an ancient figure homo sacer to a modern figure — refugee — comes as no surprise.

Even though Agambenian concepts have been frequently used as a theoretical framework to the refugee issue, I think the figure of homo sacer deserves much more attention than it has already been paid in the literature within the context of Turkey. Hence, the aim of this work is to contribute to the growing literature of homo sacer. The main contribution of this study to the literature is that it addresses the figure of homo sacer in an elaborative way, by introducing three dimensions to the figure: its (1) exclusion through a state of exception, (2) deprivation of basic rights, and (3) exposure to death. In the following discussion chapter, I will present the empirical examples in reference to the reports published by non-governmental organizations, in order to discuss the relevant dimensions of homo sacer.

## CHAPTER IV

### RESEARCH: DIMENSIONS OF HOMO SACER

In this chapter, I will address the issue of Syrians in Turkey under temporary protection through the perspective that Agamben has developed. Their legal status and standard of life hold as a strong example to the figure which Agamben called homo sacer. Whether they live inside or outside the camps which have been referred as temporary accommodation centers, their state of existence is within the camp, which Agamben referred as any space where state of exception is realized and bare life – the life of homo sacer – is produced.

One of the aims and the most important contribution of this study to the literature is to apply the case of Syrians under temporary protection in Turkey into a descriptive case study. The mechanism that could frame this descriptive case study as distinctive and original is to examine the case at hand within a framework of several dimensions. On this account, this multidimensional descriptive analysis will enable tools to evaluate similar subsequent cases in the future. Inasmuch as Agamben approaches the subject of homo sacer from multiple dimensions, the methodological and scientific objectives of this study corresponds with the theory of Agamben.

Considering that the description made by Agamben regarding the homo sacer is not simple but complex and multifaceted, it is best to handle this subject within a multidimensional single case study. Within this framework, I employed the following three dimensions to contextualize the ancient Roman figure of homo sacer, which I think are the most significant characteristics defining the term.

First of all, it will be useful to remember the definition of the term homo sacer made by Agamben, which in its original terms in ancient Rome meant *sacred man* (Agamben, 1998, p. 183):

excluded from the religious community and from all political life: he cannot participate in the rites of his gens, nor ... can he perform any juridically valid act. What is more, his entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide ... he is at every instant exposed to an unconditioned threat of death.

In light of this description of homo sacer, I argue that in order to be able to characterize a person as a homo sacer, there needs to be three basic elements. The first dimension is that the homo sacer has been excluded by the sovereign from the ordinary operation of law through a state of exception and held outside the law. In case of Syrian Refugees in Turkey, the Temporary Protection Regulation resonates the situation in which the normal condition of law does not apply and there is a new form of law decided by the sovereign. The second dimension of homo sacer is the deprivation of human rights which can be assumed as basic although tagged as innate and inalienable by the family of nations. There are vaguely defined articles put forward in the regulation which delimitate basic rights and freedoms of Syrians under temporary protection in Turkey. The third and the last dimension is the element in its very own definition that homo sacer is the one who can be killed by anyone without impunity, in other words, what Agamben called as his exposure to death. Although not literally but sometimes is literally, there are cases where rejection, detention, evacuation, and even deportation of Syrians can be observed in Turkey, which, in some cases result in deaths.

Following the introduction of each dimension of homo sacer, I will discuss the case of Syrians in Turkey within Temporary Protection Regulation in light of these dimensions. I will analyze the implications and consequences of the regulation, including the legal limitations to the status of temporary protection as well as the practical difficulties that the beneficiaries have been facing. In doing this, the reports issued by several international organizations after the entry of Temporary Protection Regulation into force as of October 2014 will be utilized. The reports that are being utilized are based on generalizable tendencies rather than individual cases.

#### 4.1 Excluded through a State of Exception

As emphasized in Schmitt's definition of sovereign, the sovereign is the one who decides on the state of exception. Sovereign creates the normality and the exception to that normality, and it is the monopoly on the decision regarding what is inside and what is outside the law. Similarly, the sovereign is the one who decides whether a person can be considered as bare life, whether who can be kept inside or outside the law. Bare lives are obliged to comply with the sovereign's decision on life and death.

Homo sacer is the person in ancient Roman Law who is kept outside the state protection due to a crime that he has committed. Homo sacer is the bare life and the biological body in which the sovereign decision reigns and the exception becomes the rule. It is the sovereign's monopol authority to decide whom to keep alive and whom to abandon to death. Hence, homo sacer is the concrete representation of the sovereign's discretion on the decision on life and death, inside and outside, inclusion and exclusion. Therefore, Agamben calls homo sacer as "the real sovereign subject" (Agamben, 2000, 112-13).

Walter Benjamin (1989, p. 248) emphasizes that we are living in a state of exception, which has got beyond the exception and started to become the rule, i.e. the normality. Agamben argues that in the camp, the state of exception is the normality. As quoted before, Agamben summarizes the relationship between state of exception and the camp as "the camp is the space that opens up when the state of exception starts to become the rule" (2000, 38). The exception provides the sovereign a justification mechanism to legitimize its unlawful actions. This can be arranged by a new regulation or arbitrarily since it is inherent in sovereign authority's foundation to impose or suspend law or to decide what is lawful and what is not. According to Nikolopoulou (2000) the relation of bare life to law:

is not merely a theoretical exaggeration. It is, according to Agamben, a lived relation currently experienced by many people on our planet, be they ethnic refugees, prisoners, or mentally ill or physically incapacitated patients, all of whom are unable to decide their fate, and all of whom depend on the clemency or punishment of the law (p.128).

Whyte (2010, p. 135) elaborates that the state of exception does not necessarily mean a place of complete lawlessness, but may also mean a state where there is a new rule of law enforced undermining the ordinary law. It is rather a state of ambiguity between law and lawlessness. Hence, “the sacred man, which can be killed but not sacrificed ... is inscribed in the logic of exception” (p. 113). State of exception is “the originary structure in which law refers to life and includes it in itself by suspending it” (Agamben, 1998, p. 26).

I argue that the Temporary Protection Regulation is a state of exception brought into force by the sovereign authority which reduces the Syrians to homo sacers. The first and main problem with the regulation is that it is a law issued by the sovereign which basically justifies an official ‘exemption’ of asylum seekers who are not originating from European countries. Just like homo sacer who “finds himself in a position both inside and outside the law, at the mercy of the sovereign exception” (Murray, 2011, p. 15), Syrians in Turkey are not left out of the law. They are subjected to a secondary law, in which on paper they have rights, albeit different than that of the citizens or of European refugees. They exist on a threshold where inside and outside of the law cannot be differentiated since they are not completely abandoned by the law considering that they are protected under the Temporary Protection Regulation. They are excluded by the sovereign from the ordinary law, through their very inclusion by means of a secondary law which is the Temporary Protection Regulation.

As mentioned in the previous chapters, although the majority of the international texts related to the right to asylum do not regard refugees as equal to the citizens, they at least advocate for the treatment of refugees in a similar way with that of the aliens of a particular state. In Turkey’s case, however, the geographic limitation to 1951 Convention explicitly entails a basic discrimination in its treatment of aliens, by excluding non-European foreigners who are seeking protection. Although there has been efforts by UNHCR for the removal of this limitation, Turkey insists on keeping it (Kale, 2017).

Normally, Turkey grants conditional refugee status to those who are not originating from Europe, however, due to the Temporary Protection Regulation, Syrians are not even granted conditional refugee status but a temporary and ambiguous protection without a durable solution to residency issue and socioeconomic needs. Moreover, there is an uncertainty on the behavior of Turkish state regarding its treatment to the Syrians. The following section will elaborate the uncertainty and arbitrariness caused by the temporary protection regime. In this context, the dimension discussed within this part which is the exclusion of homo sacer within a state of exception will be analyzed within three parts. These are respectively (i) unpredictability of future, (ii) cessation of temporary protection status, and (iii) arbitrary detention decisions against Syrians. In the first part, I will elaborate the unpredictability and arbitrariness within the legal status of Syrians under temporary protection, caused by the sovereign who is the supreme decision maker. In the cessation and detention parts, I will discuss the cessation and detention procedures held by the Turkish state, which creates even more arbitrariness and adds up to a state of exception where normal rule of law is suspended. Within each part, I will present relevant cases that were reported by non-governmental organizations.

#### **4.1.1 Unpredictability of Future**

Within the framework of the Temporary Protection Regulation, the people who are under temporary protection are not considered to be under a type of international protection status. As a result, they do not have full access to the rights that are standardized and guaranteed for refugees within 1951 Refugee Convention. As suggested before, Turkey excludes non-European asylum seekers from being granted an international protection within Turkey. The regulation explicitly builds that the foreigners under temporary protection are not allowed to apply to other type of international protection in Turkey (RRT, 2015, p. 106).

There is no specification on the duration of the temporary protection status provided by the Turkish state. It depends on the decision of Turkish state for how long the people under temporary protection will be allowed to reside in Turkey. It is within the state's



decision that the temporary protection status will be suspended or limited “in the event of circumstances threatening national security, public order, public security and public health” (“Geçici Koruma Yönetmeliği,” p. 106, as cited in RRT 2015). This measure is denounced as extensive and ambiguous since it does not specify what constitutes a threat to state order and security (RRT, *ibid.*). If the temporary protection status of a beneficiary is cancelled or expired for some reason and the person remains unprotected, the regulation still does not assure that a person can apply to international protection even after the expiry or the cancellation of the status (p. 108). Furthermore, temporary protection status is also not equivalent to and “may not lead to a long term residence permit” (*ibid.*). In other words, the temporary protection status is not an international protection status, does not guarantee a stay within the borders of Turkey, and may be cancelled or expired at anytime depending upon an arbitrary decision made by Turkish state.

Moreover, whereas foreigners under international protection in Turkey are eligible to become a citizen after 5 years of residence, the ones under temporary protection are not. By the numbers provided by Turkish Ministry of Interior, as of August 2019, 90K out of the 3.6 million registered Syrians in Turkey have been conferred citizenship since 2014 (Mülteciler Derneği, 2019). While half of this number corresponds to Syrian children who had been unaccompanied in Turkey, it also includes Syrians who have arrived in Turkey before 2011 and who hold valid residence permits or meet other criteria to become a citizen (RRT, 2018, p. 124). This leaves only a very limited number of Syrians under temporary protection status who have managed to acquire citizenship. Moreover, children born in Turkey are not granted citizenship and they remain as stateless. According to a report by Refugee Rights Commission of the Grand National Assembly, the number of stateless children in Turkey has been totaled to 276K as of October 2018 (TBMM, 2018).

The unpredictability of the future and unstableness of their legal status cause Syrians under temporary protection to significantly lose their prospects of future. The position of Syrians is unconditionally depends on the disposal of the Turkish state, including the extend of their rights and the duration of their status.

Although the Regulation somewhat satisfies the provision of urgent, basic, and short term needs; it remains incapable of providing a long term secure environment to the expectants of a qualified future (RRT, 2015, p. 16). The RRT report discusses that the Regulation “explicitly precludes any prospect of long term legal integration for ‘temporary protection’ beneficiaries” (ibid.). The report concludes that the prospects to a successful legal integration and the protection of temporary protection beneficiaries are quite low, and the regulation “fails to provide a sufficiently secure and predictable legal status to persons concerned” (p. 127). One of the problems is the arbitrariness legitimized by the regulation regarding the duration, suspension, and termination of the regime. The second most concerning reason is its failure to grant the beneficiaries access to a process of international protection in cases even when they are deprived of their temporary protection status (ibid.).

According to the Article 4 of EU Temporary Protection Directive, the duration of the temporary protection status may be at most three years (The Council of the European Union, 2001). After three years, the beneficiaries should be granted a permanent type of international protection or any other form of a legal stay (ibid.). However, in Turkey, there is no limitation or definition in the regulation regarding the duration of the temporary protection status. This means that the Syrians in Turkey may have to live in a temporary legal status for an indefinite time, may it be five or ten years, or even more. As a result, they are not able to foresee when their privation and deprivation of certain basic human rights might end. As long as they are granted a temporary legal status, their lives are on hold and within a space of limbo depending on the arbitrary decisions made by the sovereign.

#### **4.1.2 Cessation**

Cessation is a termination of the temporary protection status provided to a beneficiary. There are three possibilities where a temporary protection status of a beneficiary may be ceased. Cessation takes place when a beneficiary (1) voluntarily leaves Turkey, (2) finds protection within a third country, or (3) is resettled to a third country (RRT, 2018, p. 114).

The voluntary return should be made under delicate circumstances where the exact preference of a beneficiary on his return to his home country is well understood (ibid.). On the other hand, Syrians in Turkey usually do not have enough information provided by the officials on the consequences of their voluntary return (Istanbul Barosu, 2019). On paper this should take place within an interview in presence of a DGMM official, a representative from UNHCR and an NGO, and ideally a lawyer (RRT, 2018, p. 114). However, usually there are no lawyers and representatives from UNHCR or NGOs in practice (ibid.). Whereas 315K Syrians have been returned to their home countries according to the numbers provided by the Ministry of Justice as of March 2019 (ibid.), UNHCR has reported to have observed the interviews of 62.5K families since 2016 (UNHCR, 2019b). In most of the cases, the beneficiary who wants to return to Syria is accommodated until being left at the border (RRT, 2018, p. 114).

Reportedly in the detention facilities, i.e. Removal Centers, Syrians have usually been signing the voluntary return documents under the pressure of Turkish authorities, where no interview had taken place at all (RRT, ibid.). Furthermore, according to the comments made by several lawyers, the conditions and maltreatment within the Removal Centers claimed to be a pressure mechanism to force-sign voluntary return documents (ibid., p. 91). In addition to these, from June 2018 until September 2018, a practice took place in Istanbul where DGMM asked Syrians if they would want to return to Syria in case they were provided with a funding (ibid.). There are examples where some Syrians have had their status ceased after being forced to sign “voluntary return document” unwittingly of its meaning and consequences (ibid.).

It is in discretion of DGMM to decide whether a former beneficiary will be granted their temporary protection status back or not after having left and attempting to reenter to Turkey. However, it is reported that these people did not possess enough information regarding the consequences of their leave (RRT, 2018, p. 115). The RRT (2017) reports that there are some cases where a number of Syrians’ temporary protection status had been ceased due to their attempts to visit Syria. Some Syrians in border provinces had left Turkey for several personal reasons and when they came back, their protection status were ceased.

There have been cases where the status of beneficiaries was ceased and they were not allowed to re-attain basic rights which were guaranteed in the regulation (RRT, 2018, p. 115). For instance, there are almost 500 Syrian former temporary protection beneficiaries in Mardin, who do not have any protection since their status were ceased after their reentry to Turkey (ibid.). Furthermore, after EU-Turkey readmission deal, UNHCR reported that by the end of 2016, only 12 of 82 readmitted people had been able to regain their temporary protection status (UNHCR Greece, 2016). UNHCR (ibid.) also informed that they were not able to contact other readmitted individuals due to the holdbacks caused by Turkish authorities in the detention centers.

Although the Temporary Protection Regulation provides temporary protection beneficiaries an appeal chance against unfavorable decisions made regarding cessation, in practice, they do not have an easy and free access to legal assistance (RRT, 2018, p. 114).

#### **4.1.3 Detention**

Regarding detention within the scope of temporary protection, there are three kind of detention possibilities. The first one is of the people who are excluded from the temporary protection status; the second is of the beneficiaries of temporary protection on such circumstances depending on the LFIP; the last one is a prosecution of de facto detention which neither bases upon the Temporary Protection Regulation nor LFIP (p. 117).

As for the first category of detention, even though the regulation does not have explicit arrangements regarding detention of people under temporary protection, it has some articles which form basis for detention of those who are excluded from temporary protection. Since it does not require “an administrative detention decision in accordance with the LFIP”, this category of detention is regarded as unlawful and in case it is put into practice, it would be violating Article 5 ECHR (p. 117).

This kind of detention procedure works for those that are excluded from being a beneficiary and who “may be accommodated” in camps functioning basically as detention

centers, while waiting to be sent to their home country (ibid.). On the one hand, people who are excluded as a beneficiary or not eligible to a legal residence will not be deported owing to non-refoulement principle. On the other hand, they may discover themselves in detention, “without the benefit of a duly issued detention decision and the accompanying legal and procedural safeguards” (p. 118). The report (ibid.) explicitly considers that these practices are arbitrary and unlawful and in violation of Turkish Constitution (Article 16), International Covenant of Civil and Political Rights (ICCPR) (Article 9), and ECHR (Article 5).

The second category of detention is under LFIP regarding those temporary protection beneficiaries a) who are to be deported and b) whose application of international protection is in progress. The third category of detention is de facto, and is applied to beneficiaries of temporary protection who were caught trying to cross to European Union territories. The de facto detainees do not fall into any of the above mentioned categories, and were kept in one of the camps named as temporary accommodation centers in Düziçi district, a camp which DGMM had been using as a detention center since October 2015 and classified as a Removal Center (Boček, 2016). These practices had been criticized by humanitarian agencies on accounts that they have no legal grounds (ibid., p. 120).

According to a “fact finding mission” made by a European Council representative in 2016, inhabitants of Düziçi Osmaniye camp were not allowed to leave, and some of them reportedly had not left the camp for more than a month (Boček, 2016). This is due to a de facto detention practice that proceeded until the early 2017, initiated by Turkish authorities after EU and Turkey reached an agreement regarding readmission of Syrian illegal migrants from Europe to Turkey (RRT, 2017, p. 121).

#### **4.1.4 Conclusion**

Homo sacer, and its contemporary example, the refugee, are the the real subjects of the sovereign as being included and excluded from the law simultenaously. In the case of Syrians under temporary protection in Turkey, on the one hand, Syrians are included

in the law through the regulation. On the other hand, they are excluded from the law by the limitations and the exceptional practices stemming from the regulation.

In order to evaluate how Syrians are excluded through a state of exception, it is essential to examine the implications of the Temporary Protection Regulation. First of all, there is a complete uncertainty regarding the future of Syrians in Turkey, since the non-refoulement is not explicitly guaranteed by the regulation. Second, temporary protection status is at the risk of being ceased by an arbitrary decision taken by the authorities. There are reported cases where many Syrians were forced to sign voluntary return documents which should have been signed under the presence of a lawyer, and representatives from UNHCR and a NGO. Third, a specific and detailed information about the detention is missing within the Temporary Protection Regulation. Therefore, the detention of Syrians has usually no legal basis, and Syrians are kept by Turkish officials in an arbitrary way without the access of a legal representative. Legal arrangements including Turkish Constitution (Article 16), International Covenant of Civil and Political Rights (ICCPR) (Article 9), and ECHR (Article 5) have been violated by these practices.

All in all, the exceptional limitations on three sub-dimensions show that Syrians can be considered as *homo sacers* who are excluded through a state of exception. In comparison with Turkish citizens and the other foreigners, Syrians' future directly depends on the decisions taken by the sovereign power. The ambiguity within the Temporary Protection Regulation also creates a permanent uncertainty for Syrians in terms of being at the risk of cessation and detention.

#### **4.2 Deprived of Basic Human Rights**

The second significant dimension of *homo sacer* is the fact that he has been deprived of basic rights and freedoms. *Homo sacer* is the person who is marginalized by the sovereign and separated from the rest of the people, i.e. citizens. He cannot be considered as a citizen anymore nor can he possess any kind of rights which were granted peculiarly to the citizens by the sovereign authority. In Agamben's terms, "his entire existence is reduced to a bare life stripped of every right" (1998, 183).

As Agamben illustrates, in ancient Roman law *homo sacer* “has been excluded from the religious community and from all political life: he cannot participate in the rites of his gens, nor ... can he perform any juridically valid act” (1998, 183). Here, *homo sacer* is being excluded both from religious community, political realm, and citizenship. While he has no political representation, he is also excluded from the divine law since sacrificing him within a religious ritual is also prohibited. He is deprived of his rights which only citizenship could provide. He is a form of life which is reduced to a bare naked life.

It is possible to approach the condition of Syrian refugees from the biopolitical perspective. Even if Turkey has adopted a humanitarian approach and applied an open door policy to the Syrians escaping from the atrocity of the sovereign power in their homeland, the Temporary Protection Regulation is so flexible that it is not adequate for the principles of non-refoulement, human rights, and international protection (Civelek, 2017, p. 27). The position of refugees is fragile within a new state or territory where they took refuge in order to start a new life and demand protection. In the place where the refugee is actually represented and where she escaped from, she may still be considered as a citizen. However, within the place where she seeks asylum from a new sovereign authority, she lives in a camp — whether literally or hypothetically — and is not represented politically (*ibid.*).

According to UNHCR, a permanent solution to the problem of people in need of protection could be one of the three options (Amnesty International, 2016). First, a person could return their home country only under the circumstances that the home country is safe. Second option is the resettlement to a third country. The last one is the full integration of the foreigners to the hosting country. Since, in the case of Syrians in Turkey, the first option have hardly been possible and the resettlement rate has been especially low, the only possible option remains is the full integration of foreigners to the hosting country where their access to basic rights and freedoms must be assured (*ibid.*, p. 18). The access to basic rights and freedoms can be achieved more possibly through an extensive international protection status which secures a long term living standard, rather than a temporary one.

The scene reveals that the Syrians under temporary protection in Turkey hardly have access to a permanent solution since there is a long road ahead for their integration to Turkey. This is especially due to the fact that the temporary protection is not an international protection which could provide a long term integration opportunity for asylum seekers. Furthermore, ever since the Turkish authorities have realized that the Syrian War does not seem to end soon and Syrians in Turkey are to remain for several more years, they have decided to close the borders to new asylum seekers and started to implement refoulement strategies for the ones inside Turkey, rather than developing a comprehensive integration strategy (Yeni Akit, 2018). Consequently, Syrians in Turkey are being deprived of a right to live, not to mention a permanent solution to their situation.

Amnesty International (2016) suggests that Turkey could not adequately meet the basic humanitarian needs of Syrians especially who are outside the camps. The report argues that:

With state authorities unable to meet people's basic needs – in particular shelter – combined with the significant barriers that people experience in achieving self-reliance, the reality is that Turkey is failing to provide an environment where asylum-seekers and refugees can be guaranteed the ability to live in dignity (p.23).

Rygiel et al. (2016, p. 318) also suggest that the temporary protection status makes Syrians unprotected with regard to security, poverty, and exploitation. Their standards of life is unsafe and unsteady, with a reduced access to citizenship, permanent residency, and legal labour (ibid.). The Temporary Protection Regulation puts Syrians in Turkey “in dire situations that leave them languishing in legal and social limbo with insufficient rights” (ibid., p. 319). Civelek (2017, p. 27) describes the condition of refugees through her following statement:

Economically in a void, s/he is also devoid of certain kinship due to war and migration. ... Her/his social role is ambiguous, identity formation is disrupted, and personal relations are uncertain and unstable. The refugee is in a situation where one cannot look back to those left behind, and the new has not fully emerged yet; living on a threshold where one has almost completely detached herself/himself from the



past, and the future has yet nothing to promise. For threshold dwellers, new opportunities and available spaces are all temporary.

In the following sections, I will present cases where Syrians under temporary protection in Turkey have been deprived of some basic rights. In this respect, I have chosen to employ seven subtopics which have been widely used within the reports published by nongovernmental organizations. These are respectively (i) shelter, (ii) freedom of movement, (iii) health care, (iv) right to employment, (v) right to education, (vi) legal assistance, and (vii) guarantees to vulnerable groups. The reason that I have used these subtopics as the main reference points within the second dimension — which is, the deprivation of homo sacer of basic human rights — is because these are regarded as standards that should be provided as to be able to mention a sufficient presence of basic human rights. These subtopics are based on the standards provided by the Asylum Information Database (AIDA), which is organized by the European Council on Refugees and Exiles (ECRE). AIDA claims to “(seek) to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice” (RRT, 2018, p. 2). For this reason, I have utilized these standards of protection throughout my discussion of the deprivation of basic human rights.

#### **4.2.1 Shelter**

According to the Temporary Protection Regulation, Syrians under temporary protection are not provided with a state-provided accommodation, except camps (RRT, 2015). These camps were constructed by AFAD (Disaster and Emergency Management Authority) as delegated by the regulation. Later on, the administration and responsibility of the camps have been transferred to the DGMM.

It is dependent on the decision of DGMM whether a person will be living in the camps or outside of the camps through his or her own means (RRT, 2018, p. 130). In case the person will be living outside the camps, she will be designated to a city decided by DGMM (ibid.). Even though a small number of registered Syrians live in the camps built by AFAD, most of them live outside the camps. According to the latest numbers

by DGMM (2019a), 64 thousand Syrians have been reported to live in camps as of August 22, 2019. The remaining approximately 3.6 million Syrians are living outside of camps in cities determined by the DGMM. There are also an estimated of 400K unregistered Syrians living outside of the camps (ICG, 2018).

The rate of Syrians residing in camps under temporary protection had been 11.5 percent at the end of 2015. This percentage had decreased to 6.7 by the end of 2017. Six camps had been closed in 2018, and by the midst of August 2019, the rate has been decreased to 1.7 percent. Temporary protection beneficiaries who have left camps whether willingly or due to a requirement are usually having difficulties in obtaining rights and services outside the camps (ASAM UN Women, 2018, p. 25).

RRT report described the harsh conditions where a number of Syrian beneficiaries outside the camps had been experiencing (RRT, 2018, p. 131). They had been reportedly living in buildings which were abandoned as a result of transformation schemes. The housing situations were quite unhealthy and most of the beneficiaries had been in poor economic conditions, as a result of which they had to reside in these houses in groups. These houses had been reportedly “small, dark, humid, and unhealthy” which caused several health problems (ibid.).

Vast majority of the Syrians outside the camps who have poor economic conditions tend to reside in “basements, warehouses, and storage and shanty houses closed with plastic or nylon covers” (ASAM UN Women, 2018, p. 21). Many Syrians in Ankara, Hatay, Mersin, and Adana have been living in nylon tents (ibid.). According to a research study conducted in Gaziantep by the University of Gaziantep, 6.6 people reside in each house, and 30 percent of the houses accommodate more than one family (RRT, 2018, p. 132).

#### **4.2.2 Freedom of Movement**

The Temporary Protection Regulation authorizes the DGMM to restrain the temporary protection beneficiaries from their freedom of movement. During the announcement of the Temporary Protection Regulation, Council of Ministers used to decide whether the

regime will be operated in specific provinces or in across the country. After the presidential system took over in 2018, LFIP has been revised in furtherance of “Presidency” instead of Council of Ministers. As stated previously, in cases where there is a perceived threat determined by the regulation, the Presidency has the authority to limit or suspend the rights of temporary protection beneficiaries who reside in Turkey at that point. These articles contribute to the limitations put on the freedom of movement of Syrians and restrict their movement to a specific region (RRT, 2015, p. 128).

The report points out that other than a perceived threat, failure to comply with any of the obligations defined by Presidency may result in limitation or suspension on temporary protection status as well as detention (*ibid.*). There are other obligations, such as being have to reside in particular residential area where the DGMM determined as appropriate, be it a city, a camp, or any other accommodation. The report emphasizes that these provisions obviously limit the freedom of movement of Syrians (*ibid.*).

In addition to the legal frameworks put forward regarding the limitation on the freedom of movement, government authorities imposed requirements that limited the freedom of movement of Syrians in practice. In August 2015, a directive was issued by the DGMM which introduced policies that would control and prohibit the travel of temporary protection beneficiaries within Turkey (*ibid.*, p. 129). They were asked to stay in the cities where they are registered to. Moreover, this directive had not still been made available to the public at the time 2015 RRT report was written. The limitation to stay in the registered provinces is still being implemented as of August 2019.

One of the practices implemented to control the movement of Syrians had been frequent controls on highways by police and warnings issued to travel companies (*ibid.*, p. 129). People had been sent to the cities where they are registered, in case they are caught trying to travel to other provinces without a written arrangement from DGMM. The law enforcement officers had started to prevent free movement of Syrians, notably the ones who wanted to travel from the southern regions of the country to the west (RRT, 2018, p. 126). Getting permission from DGMM for the purpose of traveling

cities outside of the registered province has become problematic even more than before (Boček, 2016, p. 11).

Additionally, there were more frequent unannounced visits by security officers to the addresses of Syrian beneficiaries (ibid.). Additionally, the provision suggests that it may be required from the temporary protection beneficiaries to appear in government offices and regularly report their presence with a signature. If a beneficiary omits this requirement for three times, her temporary protection status may be ceased (RRT, 2018, p. 127). However, this had not been put into practice due to the large population of Syrians (ibid., 2015, p. 129).

These exercises have become effective especially due to the attempts of illegal crossings to European borders by Syrians, in the hope of going to countries where applying for an international protection is possible (Boček, ibid.).

According to the regulation, foreigners under temporary protection may be provided with an exit permission by DGMM in pursuance of a temporary or permanent visit to a third country whether with the intention of resettlement or family reunion. There is a provision in the regulation which provides for a chance for temporary protection beneficiaries to apply for a reunification with their family members outside of Turkey. However, RRT (2015) report emphasizes that “the wording and specifics of this provision do not indicate strictly a right to family reunification on the part of beneficiaries. It is rather worded as a possibility subject to the discretion of DGMM” (p. 136).

The writers of the RRT report also elaborate that they had not been witnessed to any reunification incident actually put into practice as of 2016 (ibid.). Also, it is reported that people who tried to attain an exit permission uncommonly experienced obstacles and delays (p. 125). Furthermore, between 2017 and 2018, the Provincial Directorate for Migration Management (PDMM) had almost completely stopped taking family reunification applications from temporary protection beneficiaries unless they were to resettle in a third country and the family member were not present (RRT, 2018, p. 126).

### 4.2.3 Health Care

In addition to the restrictions on the freedom of movement, there is also a restriction on the Syrian temporary protection beneficiaries' right to a free health care. Except for medical emergency situations, the Syrians in Turkey are only allowed to use health care services in the cities where they have legal residence. In cases there is a short supply or when it is necessary due to medical capacity issues, a temporary protection beneficiary may be allowed to get health care services in other cities. Other than these, Syrians under temporary protection may benefit from free health care services, according to the Temporary Protection Regulation.

Bilecen and Yurtseven (2018, p. 114) articulate that even though Turkey has granted Syrian beneficiaries an access to free health services, this does not necessarily mean guaranteed access to these services since there are still obstacles and difficulties. There are three main challenges for Syrians under temporary protection, namely: registration, navigation, and language.

In order to be able to benefit from a free health care, the registration process of temporary protection status must be completed, otherwise, the Syrians could only access to emergency services (*ibid.*). Due to the pitfalls experienced during the registration process of Syrians, the Foreign Identification Numbers (FIN) of the temporary protection beneficiaries have not been consistent. Before the Temporary Protection Regulation was put into force, the Syrians were registered with a FIN starting with digits of 98. After the regulation was put into effect, the FINs for the beneficiaries starts with the digits of 99. The Syrians whose FIN does not start with 99 have difficulties accessing the health services since they seem as if they are not registered as temporary protection beneficiaries (2018, p. 118; RRT, 2018). As Syrians whose FINs start with 98 were not informed in advance and there were delays in registration processes, they were not able to receive medical care (*ibid.*).

Other reasons for the limited access to health care services have been difficulty of accommodating into a new system, and language barriers which especially make it more challenging to overcome problems with health (*ibid.*). Another problem faced by

Syrians, according to a study made by Kaya & Kır a  (Kaya, 2016, p. 28), is that some of the pharmacies reportedly have stopped providing Syrian beneficiaries free medicine, due to financial ambiguity experienced with AFAD.

#### **4.2.4 Right to Employment**

According to LFIP, foreigners in Turkey who hold a refugee status do not have to apply for a work permit. They have the right to work just as citizens of Turkey do, without a permission. The foreigners under temporary protection, however, do not automatically have a right to work. They need to be granted a work permit in order to be able to work, and they will be able to access the labour market only after 6 months following their registration as a temporary protection beneficiary (Council of Ministers, 2016; RRT, 2018, p. 133).

According to 2015 RRT report (RRT, 2015), although temporary protection beneficiaries have a right to apply for a work permit offered by the regulation, this permit is beyond the direct control of Syrians. In other words, Syrians cannot directly apply for a work permit, only an employer may apply on their behalf if it is not a self-employment. Employers' application on behalf of a temporary protection beneficiary is also subjected to several terms and conditions determined by the regulation (*ibid.*).

Furthermore, it is in discretion of the Ministry of Labour and Social Security to limit the distribution of work permits to foreigners, depending on "sectoral, geographical, and general economic conditions" (*ibid.*, p. 135). Foreigners have also been omitted from being employed in a number of jobs and professions. According to the statistics by the Ministry of Labour and Social Security, as of March 2019, 32K Syrians out of 3.6 million have been granted work permits (BBC T rk e, 2019) (UNHCR, 2019a).

There are other restrictions imposed by the Ministry of Family, Labour and Social Services within The 2016 Regulation on Work Permits of Foreigners under Temporary Protection. For instance, while the beneficiaries are exempted from acquiring work permit to work in agriculture and livestock sector, the Ministry may restrict the cities

where beneficiaries can work (RRT, 2018, pp. 133-134). The Ministry may also suspend distributing

work permits in cities “which are notified by the Ministry of Interior to be risky in terms of public order, public security or public health” (Council of Ministers, 2016, Article 7(2)).

As a result of legislative restrictions, Syrian beneficiaries’ access to labour market has been very limited, and their level of awareness about the system is quite low (RRT, 2018, p. 136). Syrians have mostly been working informally and they are vulnerable to exploitation by employers (Rygiel et al., 2016).

Regarding the working conditions of Syrians, long hours of work and low wages are of primary importance. Most of the Syrian beneficiaries work more than 11 hours a day and are paid 38 TRY (RRT, 2018, p. 136). Whereas there are usually poor safety and health environment in work places, the wages are also lower when compared to the Turkish workers (ibid.). According to a report issued by Birleşik Metal İşçileri Sendikası (2017, p. 54) regarding the condition of Syrians in Istanbul textile sector, the ratio of employees gaining lower than the minimum wage is 20 percent for Turkish citizens whereas it is 46 percent for Syrians.

A report issued by the World Food Programme (WFP, 2016, p. 1) suggests that almost 33 percent of the Syrians who are living outside the camps are food insecure, while the remaining 66 percent are at risk. The report establishes that the major factor producing the food insecurity has been restricted access to labour market. Working in seasonal and temporary jobs results in 90 percent of the off-camp Syrians to struggle to live below the food poverty line (ibid.).

The significance of the problem is summarized as follows: “Food insecure and vulnerable households cope with the situation through adapting severe livelihood coping strategies that have a detrimental impact on lives and livelihoods” (ibid., p. 1). The report suggests that the 90 percent of the interviewees appeal to consumption based coping strategies such as consuming cheaper food, limiting the number of meals or the

size of the portions (ibid., p. 7). However, 38 percent of them appeal to “emergency or crisis livelihood coping”, which are irreversible strategies (ibid.). This means jeopardizing future productivity, such as being have to depend on their children to work, or sell their productive assets which could generate income.

Syrian children in Turkey are usually working in agricultural and textile sectors. Whereas 29 percent of the Syrian employees of the textile industry are Syrian children, they are reported to be working for 12 hours a day for 300 TRY a month according to the statement made by Turkish Medical Association (RRT, 2018, p. 137).

Due to the vaguely defined labour rights under the Temporary Protection Regulation, Syrians under temporary protection have usually been working illegally and become insecure against the risks of abuse and exploitation. Even though in normal circumstances the government should have fined employers for employing informal workers, it had turned a blind eye to the undeclared employment of Syrians (Amnesty International, 2014b, p. 21). As the Syrians’ stay in Turkey has gradually become definite, on the other hand, informal employees have become a problem. This has made Syrians vulnerable to the decisions of detention, deportation, and suspension of their status.

#### **4.2.5 Right to Education**

In the camps resided by temporary protection beneficiaries, the children that are at school age have access to a free education provided by the Turkish government. These education facilities offer education in Arabic by Syrian instructors and referred as “temporary education centers” (ibid., p. 132). They are supervised by the Ministry of Education of Turkey.

Syrian children who reside outside of the temporary accommodation centers, i.e. camps, however, do not have free access to Arabic education provided by the Turkish government. They have two options: either attending a Turkish public school which instructs in Turkish language, or accessing a paid education in Arabic language by



attending a Syrian private school (ibid.). Although, the validity of certificates and diplomas provided by these private Syrian education centers are at risk of being questioned by the Provincial Directorate of Education (ibid., p. 133).

It is estimated that 25 percent of Syrian children who are out of the temporary accommodation centers and who are at school age do not attend school, however, it is reported that this rate differs between different provinces (Kaya, 2016, p. 26). In Istanbul, this rate is 14 percent (ibid.). According to the survey conducted by Kaya & Kırac (ibid., p. 27) with the Syrian families whose children have been unable to attend school, 26 percent of these children has to work; 20 percent of families cannot financially support the education expenses; and 14 percent “stated that schools do not accept them because of insufficient space for their children at the local public schools.”

According to the UNICEF data as of December 2018, an estimated number of 400,000 Syrian children with a temporary protection status in Turkey have not been attending school (UNICEF, 2018). Rygiel et al. reports that “Language barriers, financial difficulties, and discrimination are usually the most common reasons why Syrian children stop attending school” (Rygiel et al., 2016, p. 318).

#### **4.2.6 Legal Assistance**

The Regulation assures the beneficiaries of a right to be represented by a lawyer against unfavorable decisions made by Turkish state (p. 121). In reality, however, there is a significant shortage of lawyers and bar associations that could provide legal assistance, especially in the southern districts where a considerable number of refugees reside. As a result, only a few temporary protection beneficiaries had been actually benefiting from legal aid due to financial constraints and lack of competence (ibid.). In 2017, only 35-40 Syrians had been able to benefit from legal aid provided by Hatay and Adana Bar Associations due to large number of Syrian population (RRT, 2017, p. 119).

The Temporary Protection Regulation also assures the accessibility of personal files to beneficiaries and their lawyers, except the “information and documents pertaining

to national security, public order, protection of public security, prevention of crime and intelligence” (ibid.). The report describes this limitation as “excessively broad, blanket space of exception” which restricts the ability of legal representatives to obtain necessary information needed to support their clients (ibid.).

Another problem with the accessibility of legal assistance had been regarding the attainment of the power of attorney from Notary offices in order to be able to get represented by a lawyer. Since Notary offices did not consider any identification documents other than passports valid, the certification of legal act between the beneficiary and his lawyer could not be constituted. Even though some workarounds were built to address this problem, at the end of 2015, a consistent practice of validation of identification documents had not yet been established throughout the country. This affected people who were possessing nothing but temporary protection identification document, people who were excluded from temporary protection, and the ones waiting to be deported (p. 122).

#### **4.2.7 Guarantees to Vulnerable Groups**

In normal circumstances, it is a legal obligation to assign a legal trustee to unaccompanied children in accordance with Turkish Civil Code. However, according to the RRT report (2017) there has been an absence of a legal guardian accompanying children under temporary protection who had been unaccompanied during their stay in Turkey (p. 123).

The Temporary Protection Regulation addresses to Turkish Law for practices regarding the treatment of women who are experienced or at risk of any kind of violence ("Geçici Koruma Yönetmeliği," 2014). The same procedures and regulations as regarding the Turkish women applies to women under temporary protection. In order to be protected from future occurrences of violence, women may take shelter in women’s shelters operated by the state or NGOs. However, as these shelters host both foreign and Turkish women, the quantity and capacity of the shelters are not enough to cover all women under risk. As a matter of fact, in consequence of the capacity problems

faced within the shelters, women who had been subjected to violence are prioritized over the ones who are at risk of violence.

Additionally, the report suggests that even though it is not obligatory to hold a valid ID, in practice, temporary protection IDs were required to be able to be admitted to shelters (p. 124). Additionally, despite laws regulating these issues, in practice there is also no safe and reliable mechanism to protect women under temporary protection from early or polygamous marriages, owing to a list of disadvantages such as Syrian women's lack of information and shortage of legal assistance (ibid.).

#### **4.2.8 Conclusion**

The second dimension demonstrates the limitations on basic human rights of Syrians in comparison with regular refugees in Turkey and Turkish citizens. The seven sub-dimensions under this dimension empirically shows that Syrians face with arbitrariness and uncertainties due to their exceptional status under the Temporary Protection Regulation.

First of all, Syrians have difficulties with regard to living conditions especially in shelter and accommodation. Whereas the overwhelming majority of Syrians live outside the camps, they need to secure a settlement option without any support by the Turkish government. Therefore, most Syrians are striving to survive below basic living standards and in poor conditions: the average household number is 6.6 people, and almost one-in-three apartments host more than one family.

Second, Syrians' freedom of movement is directly limited by public authorities to the cities where they are registered. The process of family reunification is not clear and Syrians face several obstacles trying to reunite with their family members. Additionally, Syrians' access to healthcare is limited in parallel to the geographical limitation on their freedom of movement. Furthermore, they have experienced problems in terms of registration, navigation and language in their efforts to access healthcare services.

Fourth, one of the most critical issues that the regulation failed to guarantee is the employment right of Syrians. Syrians in Turkey are not allowed to apply for a work

permit on their own without an employer's application. The right of employment is also geographically and sectorally limited. As a result, the number of Syrians who have acquired a work permit has only remained at about 32,000. Most Syrians work irregularly and as cheap labor force in informal sectors, and they are vulnerable to exploitation by their employers. Syrian children are also being exploited in several sectors, especially textile industry in where 29 percent of Syrian workers are under the age of 18.

Fifth, the right to education for Syrian children is also exceptional in Turkey due to underlying issues within the regulation. Even though Syrians are considered as temporary residents, Syrian children are forced to pursue their education in Turkish language rather than in Arabic language guided by Syrian curriculum. At least 25 percent of Syrian children in Turkey do not attend to school.

Sixth, due to the inadequacy of legal services provided by the government, the right of Syrians to acquire legal assistance through lawyers and bar associations is limited. The ambiguity and vagueness of Temporary Protection Regulation allow exceptionally and arbitrarily the public authorities to limit the rights of Syrians in accessing the legal files and information about their cases. In the seventh and final issue, the services provided for vulnerable groups are not sufficient. There are several problems concerning this issue, especially the absence of a legal trustee to unaccompanied children.

To conclude, being an ambiguous document, the Temporary Protection Regulation is prone to manipulation through exceptional practices which can be argued in violation of the basic human rights. It has serious deficiencies in terms of accommodation, travel, health, work, education, legal assistance and protection of vulnerable groups.

### **4.3 Exposed to Death**

In Agamben's definition, homo sacer is in a condition where he can be killed by anyone who will not be penalized due to this homicide. This is a clear exemplification of the sovereign decision on the exclusion of a person from the state body, who is recognized by the sovereign merely as a biological being. While he is excluded from the

sovereign rule by being deprived of rights and freedoms and being held outside the law as his murderer is not put on a trial, he is also included consequently due to the ability of sovereign authority to sentence or abandon him to death. The normal condition of law does not apply when it comes to killing a homo sacer since he is kept outside the ordinary law and held within a state of exception:

anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land. And yet he is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditioned threat of death. He is pure zoe, but his zoe is as such caught in the sovereign ban and must reckon with it at every moment, finding the best way to elude or deceive it (Agamben, 1998, p. 183).

The sacredness as one of the important characteristics of homo sacer, according to Agamben, is his exposure to death (ibid., p. 83). The term sacred meant in its ancient meaning “doomed to death” (Agamben, 2000, p. 21). Homo sacer is the one who is captured within a state of exception where normal conditions of law does not apply. Since he is left outside the juridical order, his murder is not considered a crime. Sovereign is the ultimate authority to decide on the fate of the homo sacer, whether he will live or left to die. He is deprived of his rights and freedoms in a way that he has nothing left but his bare life, which is exposed to an “unconditioned threat of death” (ibid., 1998, p.183).

The Temporary Protection Regulation in Turkey has vaguely defined provisions which fail to provide for a full protection of the people who are in need of protection. Although the first two of the three main elements which underlies the Temporary Protection Regulation in Turkey are respectively (i) admission of those who are in need of protection with an open border policy, and (ii) principle of non-refoulement, the Turkish authorities have failed to consistently meet these two fundamental commitments. Failing to fulfill these two basic commitments have resulted in jeopardizing the security of Syrians. As will be discussed in the following section, arbitrary decisions by Turkish authorities regarding detention and deportation of the beneficiaries and suspension of their status have put Syrians who have sought protection under serious risks. Within the third dimension which is homo sacer’s exposition to a threat of death, I will

present three subtopics which I think leave Syrians in Turkey vulnerable in terms of survival and security. These are respectively (i) admission and registration of Syrians, as, in some cases they were not accepted to the Turkish territories, (ii) suspension of the temporary protection status and deportation decisions, which basically means them sending to death, and (iii) reports of violence against Syrians residing in Turkey by Turkish citizens, which in many cases left unpunished. I think these directly or indirectly expose the Syrians to security threats, and as I will touch upon within the coming paragraphs, sometimes to death.

#### **4.3.1 Admission and Registration**

The Regulation proposes that Syrian nationals who approached to Turkey for protection individually or in a group who are escaping “the events unfolding in Syria” are all suitable for temporary protection (RRT, 2018, p. 112). However, both DGMM and the officials at the border had been interpreting the phrase as if the prospective applicants have to approach straight from Syria. As a result, those who does not approach to Turkey directly from Syria are “excluded from temporary protection regime”, even if they have family members under temporary protection in Turkey (ibid., p. 113). In these cases, these people might be granted short term visa or residence permits which does not grant free health care services. However, there are reported cases where people were not accepted to Turkey and sent back to third countries where they had departed from (ibid.).

2018 RRT report emphasizes that the Temporary Protection Regulation is not comprehensive and clear enough to guarantee the admission to Turkey’s borders (2018, p. 117). This means that Turkish authorities may temporarily or permanently close its borders to people fleeing from Syria “where considerations of national security, public order, public security and public health are deemed to require so” (RRT, 2015, p. 109). In fact, Turkey has declared to have closed its borders to new Syrians running from the atrocities in Syria (Yeni Akit, 2018).

The Regulation also does not secure the acceptance of those who do not possess a legal travel document, and the allowance of those will be dependent on the decision of individual provinces (RRT, 2015, p. 109). In 2018, there were 2,000 Syrians who crossed the borders, yet were not granted temporary protection status. They lived in distorted camps in cold weather, where they could not benefit from services provided to the beneficiaries (RRT, 2018, p. 118)

During the first years of the temporary protection regime, the registration processes of Syrians who were outside of the camps was not consistent and efficient, and this caused the majority of them to reside without a registration or identification, which later on caused several problems (RRT, 2015, p. 114). In 2018, some of the provinces such as Mardin, Hatay, and Istanbul have ceased registering the Syrians for temporary protection, except for vulnerable people (HRW, 2018a).

From 2012 to the end of 2015, there had only been a few cases where people demanding protection individually - not in masses - were legally crossed to Turkey's territories, and these cases were exceptional such as medical or humanitarian emergencies (ibid.). Most of other crossings were made in irregular ways which involved smugglers (ibid.). Between the same dates when there were situations of mass influxes, however, Turkish authorities allowed the entry. In 2015 report (RRT, 2015), it is emphasized that in addition to the restraint on the deportation practices, non-refoulement principle should also hold true for acceptance to or rejection from the territory (p. 109).

After 2016, the entrance into Turkish territories by Syrians fleeing from war has been restricted. Turkish authorities had initiated the construction of a wall on the border with Syria which has been completed in June 2018. Furthermore, surveillance mechanisms have been installed on the wall such as cameras and lightning systems in order to control the inflow of Syrians (RRT, 2018, p. 117). According to the World Report by Human Rights Watch, the Turkish borders have been "effectively closed to new asylum seekers" (HRW, 2019).

Only in March 2019, the authorities declared that they had opened a transition zone at the border with Afrin district (RRT, ibid.). In spite of the wall, Syrians have still been

trying to cross borders to Turkey with even harder circumstances than before, such as being have to “climb the wall or to bribe guards” (ibid.). According to the statistics retrieved from DGMM, the number of irregular crossings captured or prevented by Armed Forces within the interval of 2014-2019 has been totaled to approximately 275,000 (DGMM, 2019b).

There are claims made by Human Rights Watch regarding incidents of repulse, serious injuries, even killings by Turkish border guards during attempts of crossings by Syrians (HRW, 2018b). HRW reported: “Turkish security forces have routinely intercepted hundreds, and at times thousands, of asylum seekers at the Turkey-Syria border since at least December 2017” (ibid.).

According to the interviews conducted by HRW with Syrians regarding their unsuccessful attempts to cross the border, 18 out of 21 people reported that they had to cross by means of smugglers (ibid.). The interviewees reported 137 interceptions practiced by border officials after their entry into Turkish borders, between the dates of December 2017 and March 2018. Some Syrians informed that they did not even try to cross the borders due to the risk of being killed or wounded by Turkish guards during shootings. Other people asserted that 14 people were killed and 18 were injured by the guards (ibid.). As a result, lots of people have been stuck in between Turkish borders where they are not welcome and Syrian cities where they face unconditional threat of death.

World Report by Human Rights Watch (HRW, 2019, p. 559) suggests that Turkish authorities have explicitly declared that the borders will not be opened to people fleeing from the conflicts in Idlib. They have rather built displacement camps controlled by Turkey within Syrian borders (ibid.).

#### **4.3.2 Suspension and Deportation**

According to the Temporary Protection Regulation, it is in Presidency’s discretion whether to grant the status of temporary protection in the face of a mass influx or to set a duration for it or not. The Presidency also reserves the rights to limit or suspend



the temporary protection regime “for a specific time or indefinitely” in such circumstances where there is a perceived threat (p. 127).

Regarding the termination of temporary protection regime altogether, the regulation has listed a number of possibilities in which the former beneficiaries of temporary protection “may” be subjected to a specific course of conduct. The former beneficiaries of temporary protection may end up being (1) ordered to return their country of origin, (2) granted international protection status on an individual or group basis, (3) allowed for enduring stay in Turkey in a form of legal stay other than international protection. There is no guarantee for these people to their right to apply to international protection (ibid.).

Temporary protection beneficiaries are guaranteed from refoulement decisions within the framework of the regulation. Although, due to the emergency decree of 2016, a provision has been made in February 2018 to the regulation. This provision has suppressed the guarantee of non-refoulement by anticipating that a refoulement decision “may be taken at any time during the international protection proceedings” (RRT, 2018, p. 123).

Deportation decision may take place under the following circumstances: “(i) leadership, membership or support of a terrorist organisation or a benefit-oriented criminal group; (ii) threat to public order or public health; or (iii) relation to terrorist organisations defined by international institutions and organisations” (ibid.).

In 2018, there have been increasing amount of deportation cases of Syrian temporary protection beneficiaries based upon aforesaid scenarios (UNHCR, 2007). There are cases where Turkish courts have refused to cease deportation decisions on the grounds that there were escape risks of the beneficiaries (ibid.). If, in normal circumstances, a Syrian under temporary protection whose deportation decision is made were represented by a lawyer and able to pursue legal proceedings, deportation decisions would have been unquestionably ceased (ibid.).

In normal circumstances, after a deportation decision is made, the person in question is sent to the DGMM with the intention of deportation. The DGMM investigates the case, and the deportation decision is made by the relevant governorate. Within this process, the person may appeal to the administrative court and request the cancellation of the decision ("Geçici Koruma Yönetmeliği," 2014). At the same time, the person may file an individual application to the constitutional court on the grounds that her basic rights are being violated. On the other hand, Syrians are usually not able to initiate the judicial process since they are unaware of their rights to appeal to courts and to demand a lawyer. As a result, most of the time the decision is finalized and the person is deported.

### **4.3.3 Reports of Violence**

There have been situations where there was a tension between Syrians and local inhabitants. Following these incidents, there are reported cases where Syrians have been evacuated from the provinces en masse (RRT, 2018, p. 132).

In 2019, seven Syrian families in Mardin were sent threat letters, asking them to leave the area within a week (ibid.). In 2018, following an aggression on their shops, Syrians in a settlement of Elazığ were exposed to racism and were advised to leave Artuklu district. In Denizli, upon the capture of six Syrians due to assault allegations, 927 Syrians were cleared from the Kale neighborhood to be protected from lynching attempt by the local inhabitants (ibid.).

There are cases where mass lynching attempts were reported. According to a report by International Crisis Group (ICG, 2018, pp. 2-3), in 2017 alone there had been 181 cases of tension and violence between Syrians and the local inhabitants. Syrians have ended up being evacuated following some of these incidents (RRT, 2018, pp. 132-133).

Syrians are most of the time held responsible for any conflict occurring between themselves or the citizens of Turkey (ibid.). The conflicts between local inhabitants and Syrians usually result in Syrians being evacuated or deported without an administrative

decision (ibid.). If they try to enter Turkey's borders after deportation, they are in danger of being killed, without consequences (Amnesty International, 2016).

#### **4.3.4 Conclusion**

Temporary Protection Regulation has failed to guarantee the security and well-being of Syrians. The two main principles of the migration policy with regard to Syrians have not been satisfied while occasionally been violated. These are the admission of Syrians to the borders in line with the open border policy, and the principle of non-refoulement. The three sub-dimensions under "Exposed to Death" describe the vulnerability of Syrians in terms of security, violence, and even death.

Homo sacer refers to the status in which an individual is seen only as life of a human being deprived of political rights and stripped of human rights, and would be easily killed without any punishment. In contemporary times, the permanent risk of being under the threat of death is arguably one of the characteristics that define the status of a refugee. In the case of Syrians under temporary protection in Turkey, admission and registration processes are prone to exceptions and inconsistencies, and the regulation does not fulfill the guarantees emanating from the principle of non-refoulement. Syrians are also reportedly being targeted by the local inhabitants.

First of all, in terms of registration, those who approached to the Turkish frontiers without a legal travel document have faced with obstacles in obtaining a legal status. In addition, the exceptional regulations and disorganized hierarchy of the bureaucratic agencies occasionally resulted in frustration of registration and settlement processes, which hindered basic human rights and brought about the risk of being evacuated or deported.

Second, the ambiguity within the wording of the Temporary Protection Regulation allows authorities to limit Syrians' rights and suspend their status exceptionally. Along with the regulation, Turkish courts are generally likely to have a rigid approach in ceasing suspension and deportation decisions. During these incidents, Syrians do not

have any knowledge about the procedures and their status is usually ceased or suspended without them having the chance to approach to courts.

Third, social tension between local inhabitants and Syrians has been on the rise. Syrians have also experienced collective violent attacks and mass lynching attempts. Following the intergroup tensions, there are reported cases where Syrians were evacuated from their neighborhood and sometimes deported from the Turkish borders. During the deportation processes, it is reported that Syrians who had involved in these conflicts were forced to sign voluntary return documents and sent back to Syria.

All in all, neither the Temporary Protection Regulation nor the accompanying open border policy do not guarantee a proper process for admission and registration of Syrians. The uncertainty stemming from the regulation easily facilitates the exceptional practices of public authorities with regard to the status of Syrians.

## CHAPTER V

### DISCUSSION

The case of Syrians under temporary protection allows to develop a theoretical discussion regarding the implications of the sovereign's decisions and practices that define what is exceptional. This legal framework renders Syrians unable to apply for any permanent status such as asylum seeking or citizenship. Furthermore, it causes an uncertain process in which Syrians become more dependent on the decision of the sovereign concerning their current situation and future in Turkey. Therefore, the legal status of Syrians, their rights and subsequently their living standards differ from both ordinary Turkish citizens and the other immigrants due to this "exceptional" legal arrangement. Theoretically, it is possible to conceptualize the temporary protection as a state of exception through an Agambenian perspective, based on legal differences and its implications on private life.

Agamben argues that the refugee is the very contemporary example of homo sacer for whom the sovereign creates the state of exception. In this regard, the concept of homo sacer is considered as applicable to the refugee case. Based on the definition of this concept, there are three dimensions to the figure of homo sacer. First of all, refugees cannot participate in political life and their legal status unconditionally depends on the decision of the sovereign as they exist within a state of exception. Second, their rights are more limited in comparison to the citizens of a state. Third, they are exposed to a threat of death since they are vulnerable in face of the decisions taken by the sovereign.

These three dimensions can be conceptualized as the characteristics of homo sacer within a given social phenomena. From this framework, it is considerable that these necessary characteristics would be quite helpful in defining and conceptualizing a case as the case of homo sacer. Therefore, as a contribution, the three-dimensional conceptualization of the homo sacer can be applied to similar cases in future research.

Syrians under temporary protection in Turkey is quite suitable to be studied as a case of the multi-dimensional conceptualization of homo sacer. First of all, Syrians are excluded by the sovereign from the ordinary implementation of Turkish law. The Temporary Protection regulates the legal status of Syrians in a way totally decided by the sovereign as an exception.

The second dimension of homo sacer designates a group of people who are unable to access the services due to the limitation of basic human rights. In Turkey, defined and easily changeable articles of the Temporary Protection Regulation led to the limitation of Syrians' basic rights and freedoms. The third dimension is that homo sacer can be considered as the one who is exposed to the threat of death by being the one who could be killed by anyone with impunity. In Turkish case, it is reported that Syrians are being rejected at the border and are vulnerable to evacuation and deportation while occasionally are shot to death by border guards, without any consequences.

In the research chapter, all these three dimensions of homo sacer were discussed as per the case of Syrians in Turkey under temporary protection. Both the implications of the Temporary Protection Regulation and the practices of the sovereign were analyzed. The reports provided by international organizations and other NGOs were utilized in order to depict the situation of Syrians vis a vis the three dimensions of homo sacer.

In order to discuss the findings under these three dimensions, which are generalizable across cases, thirteen context-specific sub-dimensions are created with the aim of elaborating a profound description of the case of Syrians in Turkey under temporary protection. These sub-dimensions are going to illustrate the extent of the exception based on the sovereign's legal regulations, decisions and practices. With the aim of elaborating a generalizable framework, these sub-dimensions are also divided into two categories as full exception and partial exception. This is conducted through an assessment of the degree of exception concerning the status of Syrians under temporary protection in comparison with the status of Turkish citizens. Analysis and findings are summarized in the tables below.

Table 2

*Three Sub-Dimensions under the First Dimension of Homo Sacer: “Excluded through A State of Exception”*

Sub-Dimensions	Observed Legal Arrangements and Practices	Extent of Exception
Unpredictability of Future	<ul style="list-style-type: none"> <li>• The temporary protection status is not an international protection status</li> <li>• Syrians cannot apply to international protection</li> <li>• No specification on the duration</li> <li>• Easy cancellation depending on an arbitrary decisions made by Turkish state</li> </ul>	Full Exception
Cessation of the temporary protection status	<ul style="list-style-type: none"> <li>• Ambiguous articles regarding cessation</li> <li>• Syrians usually do not have enough information provided by the officials on the consequences of their voluntary return: their status is ceased</li> <li>• Syrians signing voluntary return documents under the pressure of Turkish authorities</li> </ul>	Full Exception
Detention	<ul style="list-style-type: none"> <li>• Syrian were reported to be detained for no legal grounds due to the lack of arrangements in Temporary Protection Regulation; arbitrary decisions by Turkish police and officials without legal and procedural safeguards for Syrians</li> <li>• Practices violating Turkish Constitution (Article 16), International Covenant of Civil and Political Rights (Article 9), and ECHR (Article 5)</li> </ul>	Full Exception

Agamben employs the definition of sovereign elaborated by Schmitt: sovereign is the one to decide on the exception. In this regard, the sovereign also determines who will be considered as bare life, in other words, which group or person be put inside or outside the law. Homo sacer as the real subject of the sovereign, illustrates this decision about inclusion and exclusion from the law at the same time.

Today, refugees represent the figure of homo sacer since it is the nation-states who decide whether to accept people into their borders and include them within the ordinary

law or to exclude them by leaving them bound by principles outside the ordinary law. They are inside the law, but permanently with the risk of being outside the law. Governments tend to change or suspend legal arrangements concerning the refugees. In Turkey's case, the Temporary Protection Regulation can be considered as the concrete example of the state of exception. Syrians under temporary protection are excluded from the Turkish polity by the sovereign. Their exclusion through a state of exception as the first dimension of homo sacer conceptualization can be discussed specifically under three sub-dimensions.

First, the regulation leads to an unpredictable future for Syrians. As not being an international protection status, the regulation does not guarantee the non-refoulement principle for Syrians. It also does not specify any duration for the temporary protection status in Turkey. Syrians' future is directly at the hands of Turkish government and it is arguable that Syrians have faced full exception in terms of their future.

Second, the regulation allows officials to cancel the status of Syrians through arbitrary decisions. The sovereign also practices the cessation process of this status in an exceptional manner. Most Syrians are not provided detailed information about the consequences of their voluntary return and many of those who signed the voluntary return documents were reportedly forced by the officials. Third, the regulation does not contain any specific arrangement in terms of detention procedures. For this reason, Syrians were reported to be detained for no legal grounds through arbitrary decisions by Turkish police and officials without legal and procedural safeguards. The arbitrary detention procedures also violate Turkish Constitution (Article 16), International Covenant of Civil and Political Rights (Article 9), and ECHR (Article 5). As a consequence of these violations, the Syrians are within full exception with regard to cessation of the temporary protection status and detention procedures.

Finally it is possible to argue that Syrians as homo sacers are excluded through a state of exception. Differently from the Turkish citizens and even regular refugees in Turkey, their status are temporary and dependent on the sovereign's decision. The legal regulation concerning Syrians does not have enough specification for legal protection



against the risks of cessation and detention. This arbitrariness gives rise to unfavorable decisions and practices by authorities and results in a fully exceptional status for Syrians regarding the first dimension of homo sacer conceptualization.

The second dimension of homo sacer conceptualization illustrates how the life standards of Syrians are limited in comparison to the Turkish citizens due to their deprivation of basic human rights (Table 3). Despite the open door policy implemented by the Turkish government during Syrian Civil War, Syrians have experienced the limitation of basic human rights almost in a systematical way. Accordingly, seven sub-dimensions depict that Syrians under temporary protection are devoid of basic human rights.

First of all, the overwhelming majority of Syrians under temporary protection have been living outside the camps and their need of shelter and accommodation is not satisfied by the Turkish government. Most Syrians live in poor conditions within a state of destitution. Many Syrians have been living basements, warehouses, and even shanty houses closed with plastic or nylon covers. They are forced to live in small apartments with an average of 6.6 people per house. Moreover, almost one-in-three houses is shared by more than one family.

There is no juridical regulation that forces Turkish government to constitute residential settlements for each of the 3.7 million Syrians; however, with regard to principles of basic human rights, the government is responsible to provide accommodation for those who are living under unfortunate standards and poor conditions. Additionally, 1982 Turkish constitution defines the Turkish state as a social (welfare) state having the obligation of providing basic living standards for all citizens. Therefore, even though it is not necessary for Turkish government to build apartments for Syrians, their status is partially exceptional in terms of shelter and accommodation due to the fact that most Syrians outside the camps live in poor economic standards.

Table 3

*Seven Sub-Dimensions under the Second Dimension of Homo Sacer: “Deprived of Basic Human Rights”*

Sub-Dimensions	Observed Legal Arrangements and Practices	Extent of Exception
Shelter	<ul style="list-style-type: none"> <li>• Syrians are not provided with accommodation, except camps; 3.6 million Syrians living outside camps</li> <li>• Most Syrians live in basements, warehouses, storage and shanty houses; average household number is 6.6 people; 30% of houses host more than one family</li> </ul>	Partial Exception
Freedom of Movement	<ul style="list-style-type: none"> <li>• Syrians have to reside in particular residential area</li> <li>• Restricted travel within Turkey, with permission</li> <li>• No guarantee of family reunification</li> </ul>	Full Exception
Health Care	<ul style="list-style-type: none"> <li>• Syrians are only allowed to use health care services in the cities where they have legal residence</li> <li>• Barriers in accessing health care: registration, navigation, and language.</li> </ul>	Full Exception
Right to Employment	<ul style="list-style-type: none"> <li>• Syrians do not automatically have a right to work, only an employer may apply on their behalf</li> <li>• Sectors and destinations to work are restricted</li> <li>• Syrians working informally and vulnerable to exploitation by employers: 11 h/ a day for 38 TRY; 29% of the Syrians in textile industry are children working for 12 h/ a day for 300 TRY/ a month</li> </ul>	Full Exception
Right to Education	<ul style="list-style-type: none"> <li>• No Arabic education provided by the government</li> <li>• Limited paid education in Arabic language in Syrian private education centers. Validity of certificates and diplomas provided by these centers are at risk of being questioned by the Turkish government</li> <li>• 25 percent of Syrian children do not attend school</li> </ul>	Full Exception
Legal Assistance	<ul style="list-style-type: none"> <li>• The shortage of lawyers and bar associations</li> <li>• Regulation restricts the ability of lawyers to obtain necessary information needed to support their clients</li> </ul>	Full Exception
Vulnerable Groups	<ul style="list-style-type: none"> <li>• Absence of legal trustee to unaccompanied children</li> <li>• Lack of shelters for women who are experienced or at risk of violence</li> </ul>	Full Exception

Fourth sub-dimension is one of the most critical rights which is the right to employment. While Syrians are not allowed to apply for a work permit on their own, only an employer can apply on behalf of Syrian employees, for a limited number of sectors in several provinces. As a consequence, only about 32,000 Syrians have work permit and most Syrians work irregularly. They are vulnerable to exploitation by employers: in comparison with Turkish citizens, Syrians are more likely to be seen as cheap labor force with an average of 11 work hours a day in exchange for a payment of 38 TRY a day. The exploitation of child labor is another problematic issue. According to a report by an NGO, Syrian children constitute the 29 percent of Syrian labor force in the textile sector in Turkey. Regarding their limited rights and their implications, the unquestionable disadvantageous status of Syrians in labor market depicts the fully exceptional status of Syrians.

Fifth sub-dimension is one of the most controversial issues concerning Syrians' rights. Turkish government is generally appreciated since more than 60 percent of Syrian children have been integrated to Turkish primary public schools by Turkish government. However, this kind of policy points to another dilemma. Even though Syrians are seen as temporary residents in Turkey and are still the citizens of Syrian Arab Republic in line with the legal protection document, Syrian children cannot continue their education in Arabic as per their own education system. Although Turkish government allowed the facilitation of a few number of private Syrian education centers, it is also unpredictable whether the validity of certificates and diplomas provided by these centers will be questioned by the government. In this regard, it can be stated that the status of Syrian students in Turkey constitutes a full exceptional case for two reasons: first, an important part of Syrian children are out of education system; second, there is limited education in Syrian curriculum and Arabic language.

Sixth, Syrians have also limited access to legal assistance due to the shortage of lawyers and bar associations. Another issue is that even a Syrian does have a legal representative, public authorities can easily limit the representative's access to the files of the Syrian beneficiary and information about their cases on the basis of the Temporary

Protection Regulation. The shortage of legal assistance and the limitation of the access to legal documents point out to the the full exceptional status of Syrians.

Finally, Turkish government is also insufficient to provide guarantees to vulnerable groups among Syrians. Normally, unaccompanied children should be assigned a legal trustee during their stay in Turkey, however, in practice there is an absence of a legal trustee to unaccompanied Syrian children. Additionally, it is reported that many Syrian women who have experienced or have been at risk of violent behavior have very limited access to the shelters provided by the government and non-governmental organizations. These limitations on the vulnerable Syrians' immediate rights reveal the full exception regarding Syrians' status.

All in all, except the rights of shelter and accomodation of Syrians, the limitations of seven sub-dimensions reveal that Syrians under temporary protection are deprived of basic human rights in comparison with Turkish citizens. In terms of shelter and accomodation, the reason of partial exception lies on the fact that the responsibility to fulfill accommodation is shared not only by Turkish authorities, but also Syrian individuals themselves.

Agamben illustrates homo sacer as the person who could easily be killed in Ancient Rome without any penalization. Theoretically, it implies that it is the decision of the sovereign that excludes an individual from the political community and leaves him only as a biological being. In contemporary era, it can be said that refugees incessantly face with the unconditioned threat of death. In Turkey's case, the Temporary Protection Regulation have failed to guarantee full security and well-being for Syrians. The two main principles of the migration policy regarding Syrians have not been satisfied and occasionally violated, which are the admission of Syrians who flee from Civil War in line with open border policy, and the principle of non-refoulement. The three sub-dimensions of "Exposed to Death" dimension are going to describe the vulnerability of Syrians in terms of security, violence and even death in detail.

Table 4

*Three Sub-Dimensions under the Third Dimension of Homo Sacer: “Exposed to Death”*

Sub-Dimensions	Observed Legal Arrangements and Practices	Extent of Exception
Admission and Registration	<ul style="list-style-type: none"> <li>• Turkish authorities may temporarily or permanently close its borders to people fleeing from Syria; the construction of a wall on the border</li> <li>• Incidents of repulse, serious injuries, even killings by Turkish border guards during attempts of crossings by Syrians</li> <li>• The Regulation also does not secure the acceptance of those who do not possess a legal travel document (2,000 Syrians who crossed the borders, yet were not granted temporary protection status)</li> <li>• The registration processes of Syrians who were outside of the camps was not consistent and efficient, and this caused the majority of them to reside without a registration or identification, which later on caused several problems</li> </ul>	Full Exception
Suspension and Deportation	<ul style="list-style-type: none"> <li>• Vague definition of suspension in the Regulation: to limit or suspend the temporary protection regime “for a specific time or indefinitely” in such circumstances where there is a perceived threat</li> <li>• Temporary Protection Regulation has suppressed the guarantee of non-refoulement; Turkish courts have refused to cease deportation decisions</li> <li>• Syrians are usually not able to initiate the judicial process since they are unaware of their rights to appeal to courts and to demand a lawyer</li> </ul>	Full Exception
Reports of Violence	<ul style="list-style-type: none"> <li>• Intergroup conflicts between Syrians and local inhabitants: ended up with mass lynching attempts</li> <li>• Syrians can easily be evacuated or deported after these incidents</li> </ul>	Full Exception

First of all, Turkish authorities tend to limit the rights of Syrians concerning admission and registration processes. Syrians coming to Turkey from a third country are excluded from the scope of the temporary protection even if their family members reside in Turkey. Turkish borders are effectively closed to the Syrians and a wall has been constructed at the border to prevent entries. Serious injuries and killings were reported by international organizations during the intervention of Turkish border guards against the Syrians who attempted to cross the border. The regulation is rigid in terms of granting temporary protection status to those who came from Syria without a legal travel document. In terms of registration, the administrative processes including registration and identification are not well-organized between responsible agencies of the bureaucracy and it resulted in inconsistencies and inefficiencies. Particularly, the majority of Syrians who live outside the camps have experienced difficulties due to these problems and faced with the risk of being evacuated or deported. Regarding the uncertainties and inconsistencies in admission and registration processes of Syrians, the Temporary Protection Regulation and its implementation force Syrians in a state of exception.

Second, regarding the suspension of the temporary protection status and deportation decisions, it is arguable that due to the vaguely defined articles within the regulation, the temporary protection status of Syrians have been prone to be limited or suspended by Turkish authorities for a specific time or indefinitely in a fully exceptional way. Furthermore, while non-refoulement principle has not been guaranteed by the Temporary Protection Regulation, Turkish courts also tend to refuse ceasing deportation decisions. Along with the restrictive approach, most Syrians have a lack of knowledge regarding their rights and not able to initiate the judicial process against the unfavorable decisions taken by the Turkish state.

Third, Syrians have occasionally experienced collective violent attacks by local inhabitants. Small fights between younger groups and misinformed accusations turn into mass violent incidents and lynching attempts. In comparison with the locals involved in these incidents, Syrians as a group can easily be evacuated from their settled neighborhoods or even deported. They are forced sign the voluntary return documents by

authorities after these incidents. Therefore, as compared to Turkish citizens, the approach of public authorities toward Syrians is totally exceptional.

Table 5

*All Dimensions and Sub-Dimensions of Homo Sacer Conceptualization*

Dimension	Sub-Dimension	The Extent of Exception
Excluded through A State of Exception	Unpredictability of Future	Full Exception
	Cessation	Full Exception
	Detention	Full Exception
Deprived of Basic Human Rights	Shelter	Partial Exception
	Freedom of Movement	Full Exception
	Health Care	Full Exception
	Right to Employment	Full Exception
	Right to Education	Full Exception
	Legal Assistance	Full Exception
	Guarantees to Vulnerable Groups	Full Exception
Exposed to Death	Admission and Registration	Full Exception
	Suspension and Deportation	Full Exception
	Reports of Violence	Full Exception
3 DIMENSIONS	13 SUB-DIMENSIONS	FULL EXCEPTION: 12 PARTIAL EXCEPTION: 1

In sum, as a theoretical and empirical conclusion, the status of Syrians under temporary protection in Turkey is analyzed and discussed through the conceptualization of homo sacer. In line with three-dimensional conceptualization, thirteen sub-dimensions are created which are derived from Turkish case. With the concern of generalizability, the degree of exceptional status of Syrians is assessed by two categories named respec-

tively as full exception and partial exception in a comparison with the status of ordinary citizens and other immigrants. In this regard, future studies would benefit from these dimensions to identify similar features of a given phenomenon. These two categories would be also helpful to researchers in assessing the degree of exception concerning the decisions made by sovereign in a particular case.

According to the findings, the case of Syrians under temporary protection in Turkey can be regarded almost as an ideal-typical example of homo sacer. It is found that in twelve out of thirteen sub-dimensions, the extent of exception on the status of Syrians is full. In a nutshell, Syrians under temporary protection in Turkey are excluded through a state of exception which make Syrians' future uncertain and being at the risk of detention, they are deprived of their basic human rights including work, education, health, legal assistance and immediate services for vulnerable groups, and they are exposed to death regarding their admission and registration, suspension and deportation processes and the reports of violence.



## CHAPTER VI

### CONCLUSION

In this study, the Temporary Protection Regulation and its legal and practical implications on the Syrians in Turkey has been analyzed in light of the political philosophy of Giorgio Agamben. The main question of the study may be formulated as follows: What are the dimensions of homo sacer, and how can the Syrians under temporary protection in Turkey may be considered as homo sacers in consideration of these dimensions?

There are studies that discuss the situation of refugees in Western and non-Western countries in different aspects. However, they have mainly focused on the refugees in camps. Nevertheless, the overwhelming majority of Syrians in Turkey are currently living outside the camps. Furthermore, differently from the refugees in Western countries, the legal status of Syrians cannot be defined as neither a refugee nor an asylum-seeker. They have been granted temporary protection status without a standardized way of access to Turkish citizenship. Therefore, it is arguable that the situation of Syrians under temporary protection in Turkey is a new social phenomenon which requires a specific descriptive case study illuminated by Agambenian concepts.

Additionally, most of the aforementioned research have been focused on the issue of irregular migration which may have resulted in a justification of the utilization of a state of exception by respective governments. Turkey's case, however, represents a unique example in the sense that Syrians taking refuge in Turkey are not irregular migrants who are uninvited by government, on the contrary, even though they are not granted an international protection status, they are still legal residents of Turkey within the framework of Temporary Protection Regulation.

This study aims to elaborate how and in which ways the Syrians in Turkey might be considered as homo sacers. The main contribution of this study to the literature is its identification of dimensions constituting the figure of homo sacer. The study concludes

that there are three dimensions to the figure of homo sacer. These are homo sacer's (i) exclusion through a state of exception, (ii) deprivation of basic human rights, and (iii) exposition to death. By the use of the three dimensions, this study shows how the Syrians under temporary protection in Turkey may be regarded as homo sacers. This is conducted through the employment of thirteen sub-dimensions respective to each dimension of homo sacer. The categorization of each sub-dimension whether as full exception or partial exception facilitated the assessment of Syrians as *homines sacri* vis a vis the status of regular refugees in Turkey as well as the Turkish citizens. Likewise, this categorization makes it beneficial for future research to analyze similar cases where sovereign decision generates bare lives which Agamben emphasized as being best exemplified by the figure of homo sacer.

The first dimension develops that homo sacer is the one who is excluded through a state of exception created by the sovereign power. He is excluded from both divine and ordinary law within a state of exception constituted by the sovereign. He is not allowed to perform any juridically rightful act which solely the citizens of a state would enjoy. He exists with nothing but his bare life and his life and rights, which together constitute his legal existence, are not protected by a sovereign authority. Just like homo sacer, the Syrians in Turkey can be considered as being excluded from the normal condition of law since they are not granted an international protection as the standards of international human rights would suggest, but a temporary one.

The geographical limitation put forward by Turkey may be regarded as a state of exception where Turkish state preserves its right to choose those who will be eligible as a refugee and those who will not. Here, the decision of the sovereign reveals itself and demonstrates that it is the sovereign who decides on the exception and it is also the sovereign who decides who is eligible as a refugee or not. According to the Foucauldian understanding of biopolitics, states identify their citizens by assigning them citizenship ID numbers, in order to effectively manage their biological bodies as instruments of the state body. Agambenian understanding of biopolitics, on the other hand, envisions a biopolitics in which the sovereign decision on exception is at stake, where

the sovereign creates state of exceptions by assigning temporary protection beneficiaries foreign ID numbers, i.e. FINs, in order to differentiate and exclude them from its citizens. The sovereign includes the temporary protection beneficiaries within its political body, by means of their exclusion.

It can be argued that in normal circumstances the ‘temporary’ protection of individuals who cannot be categorized neither a refugee nor a conditional refugee should be an exceptional phenomenon. However, the case of Syrians under temporary protection in Turkey has revealed a condition where the exception has become the rule. Within this state of exception, any attitude towards Syrians — whether it is a limitation of their legal rights or provision of inadequate basic human rights — is considered as normal, legitimized by the fact that they have been only temporarily protected. The legal limitations of the Temporary Protection Regulation and vaguely defined legal rights under the regime puts Syrians in a condition where they are not able to anticipate a stable and secure future. There is no specification on the expiry or termination of the status. It is the sovereign who will decide whether to proceed granting the status or not.

Not only the regulation fails to provide a durable solution, it also denies temporary protection beneficiaries the right to apply for any form of international protection through which they could have enjoyed basic rights and freedoms. Furthermore, the regulation does not guarantee the provision or the continuity of the temporary protection status either. It may be ceased at any time during the temporary protection status in consideration that there may be a — vaguely defined — threat to the state’s security. As a result, the Syrians in Turkey exist within an unpredictable legal status, a permanent state of exception, where their lives are completely dependent on the arbitrary decisions made by the state, and their deprivation may endure for years or indefinitely.

Second, as the figure in the ancient Roman law, *homo sacer* is the one whose basic rights and freedoms are suspended temporarily or permanently. Through his exclusion from law, not only his legal status is outlawed, but also his so called inviolable and inalienable rights is taken away. The Syrians in Turkey may be considered as deprived

of their rights just as the homo sacer, in the sense that the Turkish state does not adequately meet basic rights and freedoms of Syrians. The Temporary Protection Regulation is quite flexible regarding the provision of basic rights, in fact, the rights are mostly referred as “services” in a vague definition. Syrians in Turkey are allowed to have rights guaranteed by the Temporary Protection Regulation, however, these rights may be withdrawn any time in accordance with the strategies and calculations of the Turkish state. The drawback within this is not the changing interests of the Turkish state. It is rather that whereas allegedly claimed as innate by the international texts of human rights, the rights of individuals who are under the protection of a state is conditionally dependent on the perception and the decision of a state. This is a strong indication that the human rights are not innate, but are earthbound. Should an individual is disqualified from the citizenship of a state, or even is a citizen, though of another state, she cease possessing the supposedly natural rights.

Most of the off-camp Syrians have been living with only a limited access to the services provided such as employment, health, and education. Since Turkish state provides no option to citizenship or a proper international application, their legal integration is the only means possible through which they will be able to enjoy a qualified life with the full recognition of their rights. However, they are deprived of most of the basic rights which a citizen could enjoy. Syrians have considerably limited access to legal assistance against the unfavorable decisions made by the state. They are substantially restricted in terms of their freedom of movement. Additionally, they have been vulnerable in terms of security, poverty, and exploitation. They exist as bare lives in a state where they have no rights guaranteed by a state authority.

Without a state provided shelter, many Syrians have been trying to find shelter by their own means, and lots of them are living in dire conditions, such as nylon tents, basements, shanty houses (ASAM & UN Women, 2018, p. 21). They have obstacles and difficulties in accessing the health care services (Kaya, 2016). They do not automatically have a right to work, instead, they need to apply for a work permit via their employers. The employers prefer employing Syrians illegally, which causes them to be vulnerable to exploitation with long hours of work and low wages with poor working

environments. Many of them are food insecure, and ninety percent are below the poverty line and have to send their children to work to keep them alive. The working Syrian children have been extremely exploited, especially in textile industry where they have to work for 12 hours a day in exchange for a monthly payment of 300 TRY (RRT, 2018). This deprives the children of a chance to enroll to school as well, only 25 of school aged Syrian children attend school (Kaya, 2016). The scene reveals that the Syrians in Turkey are not able to enjoy standards of a life of a citizen, but that of a homo sacer, who has been deprived of his rights and reduced to a state of merely biological life.

Finally, homo sacer is sacred in the sense that he is exposed to an unconditioned threat of death. The sovereign abandons homo sacer to death, by excluding him from the law. He does not exist per se in the eyes of the state, hence, his death is of no significance. Unless his existence is political, i.e. recognized by the law of the sovereign, his life is only nominal just as other biological beings. He exists in a state where he may be killed by anyone without consequences.

Just like homo sacer, the Syrians in Turkey have been left vulnerable to death, in the sense that there are cases where they have been denied access to territory, faced detention, deportation, and termination of their status. Denying access to Syrians means leaving them vulnerable to serious threats of injuries and even possibly to death. In fact, some of them have reportedly been injured by the Turkish guards who had been trying to prevent them from entering the territories and some of them are shot to death, without any consequences (Human Rights Watch, 2018a). Deportation also means sending Syrians to an “unconditioned threat of death”. In spite of the existence of non-refoulement principle, Syrians have been forced to sign voluntary return documents and sent to Syria where the war still continues (Human Rights Watch, 2018b). The logic of any kind of international protection, whether temporary or not, is to protect first and foremost the life of an individual, whereas the Temporary Protection Regulation fails to secure an assuring set of rules to protect lives. Furthermore, the implementation of the regime demonstrates that the regime has failed to deliver its promise in

this regard. Being exposed to threat of death and having left to die, Syrians have a great resemblance to Agamben's figure of homo sacer.

In conclusion, one of the acknowledgements of this study is that Arendt's evaluation of the relationship between nation-state and human rights preserves its validity even in today's world. Even if there are legislative frameworks or international organizations which seem to advocate for the human rights, these prove to be incapable of protecting those who are without a state since the rights of humans mostly depend on the existence of a citizenship. This brings forth the argument made by Agamben in his book *Means Without End* (2000, pp. 3-4), where he imagined a form-of-life, a "life that can never be separated from its form, a life in which it is never possible to isolate something such as naked life". This form-of-life can be thought as the life which cannot be captured within a sovereign exception and whose biopolitics in this sense is not possible. Remembering once again Agamben's definition of the refugee as "perhaps the only thinkable figure for the people of our time and the only category in which one may see today ... the forms and limits of a coming political community", it could be the subject of future research where — instead of bare life — the refugee is redefined within the borders of a form-of-life (ibid., p. 16). It may be an interesting area of study to discover the possibilities wherein the refugee is reformulated as a form-of-life and redefined the boundaries of biopolitics, sovereignty, and life.

## REFERENCES

- Agamben, G. (1998). *Homo sacer: Sovereign power and bare life*: Stanford University Press.
- Agamben, G. (2000). *Means without end: Notes on politics* (Vol. 20): University of Minnesota Press.
- Agamben, G. (2005). The state of exception. In A. Norris (Ed.), *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer*: Duke University Press.
- Amnesty International. (2014a). *Struggling to Survive: Refugees from Syria in Turkey*. Accessed 12.11.2019. Retrieved from: [https://www.amnestyusa.org/files/eur\\_440172014.pdf](https://www.amnestyusa.org/files/eur_440172014.pdf)
- Amnesty International. (2014b). *Syria: Left out in the cold: Syrian refugees abandoned by the international community*. Accessed 12.11.2019. Retrieved from <https://www.amnesty.org/download/Documents/208000/mde240472014en.pdf>
- Amnesty International. (2016). *No safe refuge: Asylum-seekers and refugees denied effective protection in Turkey*. Accessed 12.11.2019. Retrieved from <https://www.amnesty.org/en/documents/eur44/3825/2016/en/>
- Arendt, H. (1973). *The origins of totalitarianism* (Vol. 244): Houghton Mifflin Harcourt.
- ASAM & UN Women. (2018). *Needs Assessment of Syrian Women and Girls Under Temporary Protection Status in Turkey*. Accessed 12.11.2019. Retrieved from: <http://www.un.org.tr/needs-assessment-of-syrian-women-and-girls-under-temporary-protection-status-in-turkey/>
- Aytaç, A. M. (2011). *Kitlelerin ruhu: siyasal ve sosyal kuramda kalabalık tahayyülleri*: Dipnot Yayınları.
- BBC Türkçe. (2019). *Türkiye'de kaç Suriyeli var, en çok Suriyeli nüfusu hangi şehirde yaşıyor?* Accessed 12.11.2019. Retrieved from <https://www.bbc.com/turkce/haberler-turkiye-49150143>
- Benjamin, W. (1989). *Theses on the Philosophy of History*. 245-255.
- Bilecen, B., & Yurtseven, D. (2018). Temporarily protected Syrians' access to the healthcare system in Turkey: Changing policies and remaining challenges. *Migration Letters*, 15(1), 113-124.

- Birleşik Metal İşçileri Sendikası. (2017). Suriyeli Sığınmacıların Türkiye’de Emek Piyasasına Dahil Olma Süreçleri ve Etkileri: İstanbul Tekstil Sektörü Örneği. Accessed 12.11.2019. Retrieved from <http://www.birlesik-metal.org/kitap/gocmen2017.pdf>
- Boček, T. (2016). Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees. In.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative research journal*, 9(2), 27-40.
- Civelek, Y. (2017). Biopolitical problematic: Syrian refugees in Turkey. In *Turkey's Syrians: Today and Tomorrow* (pp. 23-44): Transnational Press London.
- Council of Ministers. (2016). *Regulation on Work Permits of Foreigners under Temporary Protection*. (2016/8375). Retrieved from <https://www.ref-world.org/docid/582c71464.html>
- De Boever, A. (2011a). Bare life. In A. Murray & J. Whyte (Eds.), *The Agamben Dictionary* (pp. 30-31). Edinburgh: Edinburgh University Press.
- De Boever, A. (2011b). Bios. In A. Murray & J. Whyte (Eds.), *The Agamben Dictionary* (pp. 39-40). Edinburgh: Edinburgh UP.
- Della Porta, D. (2008). 11 Comparative analysis: case-oriented versus variable-oriented research. *Approaches and methodologies in the social sciences*. Cambridge University Press. 198-222.
- Denzin, N. K., & Lincoln, Y. S. (2008). *Strategies of qualitative inquiry* (Vol. 2). Sage Publications.
- DGMM. (2019a). Geçici barınma merkezleri içinde ve dışında kalan Suriyeliler. Accessed 12.11.2019. Retrieved from <https://www.goc.gov.tr/gecici-koruma5638>
- DGMM. (2019b). Yıllara Göre Yakalanan Düzensiz Göçmenlerin Uyruk Dağılımı. Accessed 12.11.2019. Retrieved from [shorturl.at/aeuP8](http://shorturl.at/aeuP8)
- Diken, B. (2004). From refugee camps to gated communities: biopolitics and the end of the city. *Citizenship studies*, 8(1), 83-106.
- Dykstra, T. A. (2016). Assemblages of Syrian suffering: Rhetorical formations of refugees in Western media. *Language, Discourse & Society*, 4(7), 31-48.
- Erdoğan, M. M. (2015). Türkiye'deki Suriyeliler: Toplumsal kabul ve uyum: İstanbul Bilgi Üniversitesi Yayınları.



- Fargues, P. (2014). Europe must take on its share of the Syrian refugee burden, but how?
- Flyvbjerg, B. (2006). Five misunderstandings about case-study research. *Qualitative inquiry*, 12(2), 219-245.
- Foucault, M. (1990). *The history of sexuality: An introduction, volume I*. Trans. Robert Hurley. New York: Vintage.
- Foucault, M., & Ewald, F. (2003). " Society Must Be Defended": *Lectures at the Collège de France, 1975-1976 (Vol. 1)*: Macmillan.
- Franzese, R. J. (2007). Multicausality, Context- Conditionality, and Endogeneity. In *The Oxford handbook of comparative politics*.
- Geçici Koruma Yönetmeliği, 2014/6883 C.F.R. (2014).
- George, A. L., Bennett, A., Lynn-Jones, S. M., & Miller, S. E. (2005). *Case studies and theory development in the social sciences*: mit Press.
- Gerring, J. (2007). The case study: what it is and what it does. In *The Oxford handbook of comparative politics*.
- Gerring, J. (2008). Case selection for case- study analysis: qualitative and quantitative techniques. In *The Oxford handbook of political methodology*.
- Gerring, J., & Cojocaru, L. (2016). Selecting cases for intensive analysis: a diversity of goals and methods. *Sociological Methods & Research*, 45(3), 392-423.
- Gordon, S. L. (2010). Migrants in a state of exception. *Transcience Journal*, 1(1), 3-21.
- Hanafî, S., & Long, T. (2010). Governance, governmentalities, and the state of exception in the Palestinian refugee camps of Lebanon. *Journal of Refugee Studies*, 23(2), 134-159.
- Heron, N. (2011). Biopolitics. In A. Murray & J. Whyte (Eds.), *The Agamben Dictionary* (pp. 36-39). Edinburgh: Edinburgh UP.
- Hönig, P. (2014). States, Borders and the State of Exception: Framing the Unauthorised Migrant in Europe. *Etnofoor*, 26(1), 125-145.
- Human Rights Watch. (2018a). Turkey Stops Registering Syrian Asylum Seekers [Press release]. Accessed 15.11.2019. Retrieved from <https://bit.ly/2uq5FWg>

- Human Rights Watch. (2018b). Turkey: Mass Deportations of Syrians. Accessed 18.11.2019. Retrieved from <https://www.hrw.org/news/2018/03/22/turkey-mass-deportations-syrians>
- Human Rights Watch. (2019). *World Report 2019, Turkey: Events of 2018*. Accessed 18.11.2019. Retrieved from <https://www.hrw.org/world-report/2019/country-chapters/turkey>
- Ineli-Ciger, M. (2015). Implications of the new Turkish law on foreigners and international protection and regulation no. 29153 on temporary protection for Syrians seeking protection in Turkey. *Oxford Monitor of Forced Migration*, 4(2), 28-36.
- Ineli-Ciger, M. (2016). Time to Activate the Temporary Protection Directive: Why the Directive can Play a Key Role in Solving the Migration Crisis in Europe. *European journal of international law*, 18(1), 1-33.
- Ineli-Ciger, M. (2017). Protecting Syrians in Turkey: A Legal Analysis. *International Journal of Refugee Law*, 29(4), 555-579.
- International Crisis Group. (2018). Turkey's Syrian Refugees: Defusing Metropolitan Tensions. Accessed 20.11.2019. Retrieved from [shorturl.at/ftHmV](http://shorturl.at/ftHmV)
- Istanbul Barosu. (2019). İstanbul Barosu İnsan Hakları Merkezi Olarak İl Göç İdaresi İle Gerçekleştirdiğimiz Toplantıya İlişkin Açıklama [Press release]. Accessed 20.11.2019. Retrieved from [shorturl.at/fquZ6](http://shorturl.at/fquZ6)
- İçduygu, A. (2015). Syrian refugees in Turkey: The long road ahead. *Washington, DC: Migration Policy Institute*. Accessed 12.11.2019. Retrieved from <https://www.migrationpolicy.org/research/syrian-refugees-turkey-long-road-ahead>
- Kale, B. (2017). The Limits of an International Burden-sharing Approach: The Syrian Refugee Protection Crisis and Its Consequences on Turkey's Refugee Policy. *Perceptions*, 22(4), 55-84.
- Kaya, A. K., Aysu. (2016). *Vulnerability assessment of Syrian refugees in İstanbul April 2016*. Accessed 12.11.2019. Retrieved from <https://data2.unhcr.org/en/documents/download/54518>
- Kirişçi, K. (2014). Syrian refugees and Turkey's challenges: Going beyond hospitality: Brookings Washington, DC. Accessed 12.11.2019. Retrieved from <https://www.brookings.edu/research/syrian-refugees-and-turkeys-challengesgoing-beyond-hospitality/>
- Latif, D. (2002). Refugee policy of the Turkish Republic. *The Turkish Yearbook*, 33(1), 1-29

- Levy, J. S. (2008). Case studies: Types, designs, and logics of inference. *Conflict Management and Peace Science*, 25(1), 1-18.
- Lijphart, A. (1971). Comparative politics and the comparative method. *American Political Science Review*, 65(3), 682-693.
- Mahoney, J., & Goertz, G. (2006). A tale of two cultures: Contrasting quantitative and qualitative research. *Political analysis*, 14(3), 227-249.
- Mills, A. J., Durepos, G., & Wiebe, E. (2010). *Encyclopedia of case study research: L-Z; index* (Vol. 1): Sage.
- Minca, C. (2011a). Abandonment/Ban. In A. Murray & J. Whyte (Eds.), *The Agamben Dictionary* (pp. 15-17). Edinburgh: Edinburgh University Press.
- Minca, C. (2011b). Camp. In A. Murray & J. Whyte (Eds.), *The Agamben Dictionary* (pp. 41-43). Edinburgh: Edinburgh University Press.
- Murray, A. (2011). Introduction. In A. Murray & J. Whyte (Eds.), *Agamben Dictionary*: (pp. 1-12). Edinburgh University Press.
- Mülteciler Derneği. (2019). Türkiyedeki Suriyeli Sayısı Mart 2019. Accessed 12.11.2019. Retrieved from <https://bit.ly/2FycEVd>
- Nikolopoulou, K. (2000). Homo sacer: Sovereign power and bare life. *University of Wisconsin Press Journals Division*, 29(93), 124-131.
- Ongur, H. Ö., & Zengin, H. (2019). Reading Agamben backwards: Syrian refugees, biopolitics and sovereignty in Turkey. *Social Science Information*, 58(1), 103-120.
- Ostrand, N. (2015). The Syrian refugee crisis: A comparison of responses by Germany, Sweden, the United Kingdom, and the United States. *Journal on Migration and Human Security*, 3(3), 255-279.
- Peker, B., & Sancar, M. (2001). *Mülteciler ve İltica Hakkı: Yaşamın Kıyısındakilere Hoş geldin Diyebilmek*. Ankara: İnsan Hakları Derneği Yayınları.
- Plotner, C. (2014). If Israel accepted Syrian refugees and IDPs in the Golan Heights. *Forced Migration Review*, (47), 32-34.
- Poon, J. (2016). EU-Turkey Deal: Violation of, or consistency with, international law? *European Papers Insight* of 22 December 2016, 1(3), 1195-1203.
- Pope, P. J., & Garrett, T. M. (2013). America's homo sacer: Examining US deportation hearings and the criminalization of illegal immigration. *Administration & Society*, 45(2), 167-186.

- Rajaram, P. K., & Grundy- Warr, C. (2004). The irregular migrant as homo sacer: Migration and detention in Australia, Malaysia, and Thailand. *International Migration*, 42(1), 33-64.
- Ramadan, A. (2013). Spatialising the refugee camp. *Transactions of the Institute of British Geographers*, 38(1), 65-77.
- Refugee Rights Turkey. (2015). Asylum Information Database, Country Report Turkey. In European Council on Refugees and Exiles (Ed.).
- Refugee Rights Turkey. (2017). Asylum Information Database, Country Report Turkey, 2017 Update. In European Council on Refugees and Exiles (Ed.).
- Refugee Rights Turkey. (2018). Asylum Information Database, Country Report Turkey, 2018 Update. In European Council on Refugees and Exiles (Ed.).
- Rygiel, K., Baban, F., & Ilcan, S. (2016). The Syrian refugee crisis: The EU-Turkey ‘deal’ and temporary protection. *Global Social Policy*, 16(3), 315-320.
- Sari, E., & Dinçer, C. G. (2017). Toward a New Asylum Regime in Turkey? *movements. Journal for Critical Migration and Border Regime Studies*, 3(2). Accessed 12.11.2019. Retrieved from: <http://movements-journal.org/issues/05.turkey/05.sari,dincer--new-asylum-regime-turkey.html>.
- Schmitt, C. (2005). *Political theology: Four chapters on the concept of sovereignty*: University of Chicago Press.
- Sirkeci, I. (2017). Turkey’s refugees, Syrians and refugees from Turkey: a country of insecurity. *Migration Letters*, 14(1), 127-144.
- Somer, M. (2014). Theory-consuming or Theory-producing?: Studying Turkey as a Theory-developing Critical Case. *Turkish Studies*, 15(4), 571-588.
- Southcott, D. (2011). State of exception: An agambenian perspective on the detention of North Koreans in South Korea. *Refugee Law Initiative. Working Paper No:2*. Accessed 12.11.2019. Retrieved from: [https://sas-space.sas.ac.uk/4689/1/RLI\\_Working\\_Paper\\_No.2.pdf](https://sas-space.sas.ac.uk/4689/1/RLI_Working_Paper_No.2.pdf)
- Tan, C. (2015). The Syrian refugee crisis: Conflicts in the making. *Culture and society, IEMed. Mediterranean Yearbook Med*. Retrieved from: [https://www.ie-med.org/observatori/arees-danalisi/arxiu-adjunts/anuari/med.2015/IE-Med%20Yearbook%202015\\_Panorama\\_SyrianRefugeeCrisis\\_Carol-Tan.pdf](https://www.ie-med.org/observatori/arees-danalisi/arxiu-adjunts/anuari/med.2015/IE-Med%20Yearbook%202015_Panorama_SyrianRefugeeCrisis_Carol-Tan.pdf)
- TBMM. (2018). *Uyum ve Göç Raporu*. Accessed 12.11.2019. Retrieved from [https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2018/goc\\_ve\\_uyum\\_raporu.pdf](https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2018/goc_ve_uyum_raporu.pdf)

- Council Directive: 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, 2001/55/EC C.F.R. (2001).
- Ulusoy, O., & Battjes, H. (2017). Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement. *VU Migration Law*(15). Accessed 12.11.2019. Retrieved from: [https://rechten.vu.nl/en/Images/UlusoyBattjes\\_Migration\\_Law\\_Series\\_No\\_15\\_tcm248-861076.pdf](https://rechten.vu.nl/en/Images/UlusoyBattjes_Migration_Law_Series_No_15_tcm248-861076.pdf)
- Universal declaration of human rights, 302 C.F.R. (1948).
- UNHCR. (1951). Convention Relating to the Status of Refugees.
- UNHCR. (2007). Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. *European Human Rights Law Review*, 5, 483.
- UNHCR. (2014). World Refugee Day: Global forced displacement tops 50 million for first time in post-World War II era. *The UN Refugee Agency*. Accessed 12.11.2019. Retrieved from <https://www.unhcr.org/53a155bc6.html>
- UNHCR. (2019a). Syria Regional Refugee Response. *Operational Portal: Refugee Situations*. Accessed 12.11.2019. Retrieved from <https://data2.unhcr.org/en/situations/syria>
- UNHCR. (2019b). Turkey: Operational Update 2019 June. Accessed 18.11.2019. Retrieved from [shorturl.at/ijuGQ](http://shorturl.at/ijuGQ)
- UNHCR Greece. (2016). Response to query related to UNHCR's observations on Syrians readmitted to Turkey. Accessed 12.11.2019. Retrieved from <http://bit.ly/2B5IykY>
- UNICEF. (2018). *Turkey 2018 Humanitarian Results*. Accessed 20.11.2019. Retrieved from [shorturl.at/mqsMZ](http://shorturl.at/mqsMZ)
- Uyan-Semerci, P., & Erdoğan, E. (2018). Who cannot access education? Difficulties of being a student for children from Syria in Turkey. *Vulnerable Children and Youth Studies*, 13(1), 30-45.
- WFP. (2016). Off-Camp Syrian Refugees in Turkey: A Food Security Report. Accessed 12.11.2019. Retrieved from [shorturl.at/gnAC9](http://shorturl.at/gnAC9)
- Whyte, D. (2010). Neo-Liberal State of Exception in Occupied Iraq. In R. M. William J. Chambliss, and Ronald C. Kramer (Ed.), *State crime in the global age* (pp. 34-151).

- Yeni Akit. (2018). Ankara kararını verdi: Suriyelilere kapılarımızı açmayacağız. Accessed 12.11.2019. Retrieved from <https://www.yeniakit.com.tr/haber/an-kara-kararini-verdi-suriyelilere-kapilarimizi-acmayacagiz-515045.html>
- Yıldız, A., & Uzgören, E. (2016). Limits to temporary protection: non-camp Syrian refugees in İzmir, Turkey. *Southeast European and Black Sea Studies*, 16(2), 195-211.
- Yılmaz, S. (2018). Modern Yurttaşlığın İstisnaları: Hannah Arendt ve Giorgio Agamben'in Görüşleri Çerçevesinde İnsan Haklarının Eleştirisinde Mülteciler ve Kamplar. *Ankara Üniversitesi SBF Dergisi*, 73(3), 763-786.
- Yin, R. K. (2006). Case study methods. *Handbook of complementary methods in education research*, 3, 111-122.
- Zannettino, L. (2012). From Auschwitz to mandatory detention: biopolitics, race, and human rights in the Australian refugee camp. *The International Journal of Human Rights*, 16(7), 1094-1119. doi:10.1080/13642987.2012.664136
- Zembylas, M. (2010). Agamben's theory of biopower and immigrants/refugees/asylum seekers: Discourses of citizenship and the implications for curriculum theorizing. *Journal of Curriculum Theorizing*, 26(2), 31-45. Accessed 12.11.2019. Retrieved from: <https://journal.jctonline.org/index.php/jct/article/view/195/83>
- Zeveleva, O. (2017). Biopolitics, borders, and refugee camps: exercising sovereign power over nonmembers of the state. *Nationalities Papers*, 45(1), 41-60.

## APPENDICES

### A. TURKISH SUMMARY/ TÜRKÇE ÖZET

Bu çalışmanın amacı, Geçici Koruma Yönergesi'nin yasal ve uygulamadaki sonuçlarını Giorgio Agamben'in kuramı çerçevesinde incelemektir. Agamben, çıplak hayat ve egemen arasındaki ilişkiyi yaşamın siyasetin merkezine oturduğu biyopolitika açısından inceler. Agamben, hukuki yapılardan egemen eliyle dışlanmış ve ölüm tehdidine maruz bırakılmış bir eski Roma figürü olan homo sacer'ı biyopolitikanın temel öznesi olarak tanımlar. İnsan haklarına içkin olan insan-vatandaş ayrımına Arendt'in yaptığı vurguya da paralel olarak mülteciler, Agamben'e göre günümüzde homo sacer'ı temsil eden en iyi örnek olmuştur. Benzer bir şekilde, bu çalışmanın amacı şu soruyu yanıtlamak olacaktır: "Türkiye'deki Suriyeliler birer homo sacer olarak nasıl düşünülebilir?"

Türkiye'ye yönelik kitlesel göç akımını takiben 2014 yılında Geçici Koruma Yönetmeliği ilan edilmiş ve Suriyelilere temel insan hakları açısından mahrumiyete neden olan geçici koruma statüsü verilmiştir. Bu çalışmada Türkiye, tekil betimleyici vaka çalışması olarak ele alınmış ve bu kapsamda Türkiye'deki Suriyelilerin durumunu inceleyen sivil toplum kuruluşlarının raporları kullanılmıştır. Bu amaçla, homo sacer figürü oluşturulan üç boyutta incelenmiştir: (i) istisna hali aracılığıyla dışlanması, (ii) temel insan haklarından mahrum bırakılması, (iii) ölüm tehdidine maruz bırakılması. Sonuç olarak çalışma, geçici koruma altındaki Suriyelilerin homo sacer figürünü hangi açılardan temsil ettiğini açıklama amacı taşımaktadır.

Türkiye'de geçici koruma altında bulunan Suriyeliler vakası araştırmacılar için önemli bir teorik tartışma konusu niteliğindedir. Egemenin kararları ve faaliyetlerinin söz konusu mülteciler için yarattığı durum ve bunun sonuçlarını istisna hali kavramsallaştırması çerçevesinde değerlendirmek büyük önem taşımaktadır.

Geçici korumanın dayandığı hukuki temel Suriyelilerin sığınma hakkı veya vatandaşlık gibi kalıcı bir statü elde etmelerine yönelik arayışlarının önünü kapatmaktadır. Ayrıca bu hukuki temel Suriyelilerin Türkiye'deki geleceğinde belirsizliğe yol açmakta ve Suriyelileri egemenin alacağı kararlara ve egemenin uygulamalarına diğer göçmenlere kıyasla çok daha bağımlı hale getirmektedir.

Dolayısıyla, oldukça istisnai bir hukuki zemine dayanan geçici koruma çerçevesinde Suriyelilerin hukuki statüsü, kısıtlanan hakları ve düşen yaşam standartları Türkiye'de yaşayan Türk vatandaşlarına ve diğer yabancılara kıyasla farklılaşmaktadır. Teorik açıdan, geçici korumanın getirdiği hukuki statü husundaki farklılaşmayı ve bunun hem kamusal hem de özel alandaki sonuçlarını bir istisnai hal olarak kavramsallaştırmak ve bunu Agamben'in penceresinden değerlendirmek mümkündür.

Agamben'e göre mülteci Antik Roma'daki kutsal insan (*homo sacer*) statüsünün çağdaş örneği olarak düşünülebilir. Antik Roma'da egemen, kutsal insan üzerinden istisnai bir hal oluşturup bu zeminde egemenliğin sınırlarını belirliyordu. Bu kapsamda, mültecileri de son yüzyılda egemenin egemenliğini kurduğu bir vaka olarak ele almak mümkündür. Agamben'in kutsal insan tanımına dayalı olarak mülteciler için üç boyutlu bir kavramsallaştırma geliştirilebilir.

Buna göre ilk olarak, mültecilerin göç ettikleri ülkede bir istisna hali ile dışlanması konusu öne çıkmaktadır. Nitekim mültecilerin bu ülkelerde siyasal hayata katılmaları neredeyse imkansızdır. İkincisi, mültecilerin hakları vatandaşlara göre oldukça sınırlanmış durumdadır. Buradan hareketle, mültecilerin en temel insan haklarından yoksun kaldıklarını ifade etmek mümkündür. Üçüncüsü, mülteciler göç ettikleri ülkelerde şiddet ve ölüm tehlikesiyle daha sık yüzleşmektedir. Mültecileri şiddet olaylarının kurbanı olsalar dahi bu bireylerin her zaman bu olayların azmettiricisi ve/veya sorumlusu olarak görülme olasılığı mevcuttur. Yaşanan şiddet olaylarından sonra mülteciler vatandaşlara göre daha kolay suçlanmaktadır. Ayrıca mülteciler yasal süreç beklenmeden egemen tarafından yaşadıkları yerleşim birimlerinden çıkarılmaya zorlanmakta ve sınırdışı edilme tehlikesiyle yüz yüze kalmaktadır.



Bu üç boyutlu tanım kutsal insan kavramına uygun vakaların karakteristiğini yansıtmakta ve araştırmacıların üzerinde çalışabileceği sosyal fenomenler için yardımcı olabilecek bir ideal tip ortaya koymaktadır. Bu çerçevede, bu üç boyutu herhangi bir vakanın kutsal insan kavramsallaştırmasıyla çalışabilir olup olmadığını değerlendirmek mümkün olabilecektir. Ayrıca bu kavramsallaştırma karmaşık sosyal vakaları anlamak ve ampirik olarak araştırmak için uygun boyutlar ve karakteristikler ortaya koymaktadır. Bu çerçevede bu üç boyutlu kavramsallaştırma teorik ve ampirik bir katkı olarak gelecekteki çalışmalara sunulmaktadır.

Türkiye’de geçici koruma altında bulunan Suriyeliler vakası bu üç boyutlu kutsal insan kavramsallaştırmasıyla değerlendirilebilir bir nitelik taşımaktadır. Birincisi, Suriyeliler geçici koruma statüsüyle birlikte Türk vatandaşlarından ayrıştırılmakta ve siyasi hayattan dışlanmaktadır. Ayrıca geçici koruma Suriyelilerin hukuki statüsünü neredeyse tamamen egemenin iradesine bırakan bir istisnai düzenleme niteliği taşımaktadır.

Kutsal insan kavramsallaştırmasının ikinci boyutu mültecileri kendileri için temel derecede ihtiyaç olan hizmetlere insan hakları üzerindeki kısıtlamalarından ötürü ulaşamayan bir grup birey olarak tanımlamaktadır. Türkiye’deki şartlar incelendiğinde, Geçici Koruma Yönetmeliği’nin muğlak ve karmaşık olarak tanımlanmış maddelerinin Suriyelilerin hakları hususunda belirsizlikler yarattığını, bu belirsizliklerin sürekli istisna halini beraberinde getirdiğini, ayrıca bu maddelerin egemen tarafından değiştirilmeye her an açık olduğunu göstermek mümkündür.

Bunun neticesinde Türkiye’deki Suriyelilerin seyahat, sağlık, eğitim, çalışma gibi pek çok hakları keyfi ve istisnai bir biçimde sınırlanmaktadır. Uluslararası kuruluşların ve sivil toplum örgütlerinin raporlarındaki bulgular da hem hukuki statünün getirmiş olduğu belirsizlikleri hem de günlük hayattaki kısıtlamaları ortaya koymaktadır.

Üçüncüsü, kutsal insan olarak görülebilecek mülteciler diğer gruplara kıyasla şiddet ve ölüm tehlikesini daha yoğun hissetmektedirler. Açık kapı politikası ile hayata geçirilen Geçici Koruma Yönetmeliği’ne karşın birçok Suriyeli Türkiye sınırlarına kabul edilmemiş, Türkiye’nin Suriye sınırına duvar inşa etmesiyle birlikte Suriyelilerin

özellikle sınır dışında tutulması amaçlanmış ve Suriye'deki savaşa ve ölüm tehdidine maruz bırakılmışlardır. Bu süreçte Türkiye'ye düzensiz yollarla girmeye çalışan birçok Suriyeli olmuş ve zaman zaman çıkan kargaşa neticesinde Suriyelilerin Türkiye sınır muhafızları tarafından yakalanarak geri gönderildiği, yaralandığı ve vurularak öldürüldüğü vakalar bildirilmiştir. Ayrıca, yukarıda bahsi geçen kuruluşların raporları ve medya haberleri Suriyelilerin yerel halk tarafından toplu şiddete maruz bırakıldığını ortaya koymaktadır. Söz konusu olaylara karışan Suriyeliler karışmayanlarla ayırt edilmeden topluca yer değiştirmeye zorlanmakta ve olaylara karışan Suriyeliler hukuki süreç beklenmeden gönüllü geri dönüş belgesi imzalatılarak Suriye'ye geri dönmeye zorlanmaktadır.

Bu çalışmada Türkiye'de geçici koruma altında bulunan Suriyelilerin kutsal insan kavramsallaştırması altında üç boyutta incelenmesi hedeflenmiştir. Ayrıca Suriyelilerin vakasını derinlemesine tasvir etmek için söz konusu üç boyutun her birinde yeni alt boyutlar oluşturulmuş ve Suriyelilerin yaşadığı istisnai durumlar değerlendirilmiştir. Ek olarak, Türkiye'deki Suriyelilerin egemenin ortaya koyduğu hukuki çerçeve ve buna dayanan veya dayanmayan uygulamaları neticesinde yüzleştiği istisnai hallerin ne derecede istisnai olduğu sorusu da Türkiye'deki vatandaşların ve diğer yabancıların statü ve haklarıyla kıyaslanarak yanıtlanmaya çalışılmıştır. Bunun sonucunda, oluşturulan üç boyutta yer alan toplam onüç boyutun onikisinde Suriyelilerin tamamen istisnai bir hal içinde olduğu bulgusuyla karşılaşmıştır.

Kutsal insan kavramsallaştırmasıyla ilgili olarak, bu kavramsallaştırmanın ilk boyutunda üç alt boyut oluşturulmuştur. Bunlardan ilki Suriyelilerin istisna haliyle dışlanmasıdır (*Excluded through A State of Exception*). İkincisi Suriyelilerin temel insan haklarından yoksun olmasıdır (*Deprived of Basic Human Rights*). Üçüncüsü de Suriyelilerin ölüm ve şiddet riskiyle yüz yüze kalması ve bu risklere daha açık olmasıdır (*Exposed to Death*).

Agamben egemenliğin tanımı konusunda Carl Schmitt'in yaklaşımını benimsemektedir. Buna göre egemen istisnaya karar verendir. Bu anlamda, egemen çıplak yaşamı, yani, hangi grup ve kişilerin hukukun sınırları içinde veya dışında kalabileceğini de

belirlemektedir. Bu açıdan kutsal insan egemenin egemenliğini üzerinde kurduğu gerçek öznesidir. Nitekim kutsal insan hukukun sınırlarının nerede başlayıp nerede bittiğini tasvir ederken, aynı zamanda da bu sınırları tanımlayan egemenin kim olduğuna işaret etmektedir.

Günümüzde mülteciler ulus-devletlerin egemenliğini ürettiği ve tekrar üretmeye devam ettiği özneler olma niteliği taşımaktadır. Mülteciler hukuki düzenlemelerle bir yandan hukuk kapsamında değerlendirilmektedir. Diğer yandan ise hem hukuki düzenlemelerdeki farklılıklar hem de egemenin hukuku askıya alarak (veya almayarak) getirdiği kısıtlamalarla mülteciler hukuk sınırlarının kapsamının dışında bırakılabilmektedir. Ayrıca hükümetler mülteciler hakkındaki uluslararası düzenlemeleri gözardı edebilmekte, ulusal düzenlemeleri ise kolayca değiştirebilmektedir. Dolayısıyla mültecilerin durumunu bir istisna hali olarak tanımlamak mümkün hale gelmektedir.

Türkiye vakasında, Geçici Koruma Düzenlemesi bu istisna halinin somut bir örneği olarak değerlendirilebilir. Suriyeliler bu düzenleme uyarınca öncelikle egemen tarafından siyasal hayatın dışında bırakılmaktadırlar. Ayrıca bu düzenleme Suriyelilerin haklarını sınırlandırmakta ve egemeni tamamen tek taraflı bir mercii haline getirerek Suriyelileri egemene tamamen bağımlı ve tab kılmaktadır. Dolayısıyla Suriyelilerin bir istisna hali ile hem siyasal yaşamdan hem de hukuk kapsamından dışarıda bırakılabilmelerinin, Suriyelilerin içinde bulunduğu vakanın kutsal insan kavramının ilk boyutu olan “istisna haliyle dışlanma” karakteristiğine uygun bir nitelik taşıdığı iddia edilebilir.

Bu boyut çerçevesinde üç alt boyut oluşturulmuştur. Bunlardan ilki Suriyelilerin geleceğinin belirsizliğidir (*Unpredictability of Future.*). İkincisi Suriyelilerin geçici koruma statüsünün sona erdirilmesidir (*Cessation - Termination of the Temporary Protection Status*). Üçüncüsü de Suriyelilerin gözaltına alınmak için alıkonulmalarınıdır (*Detention.*)

Suriyelilerin geleceğinin belirsizliği hususunda Geçici Koruma Yönetmeliği'ni tartışmak son derece büyük bir önem taşımaktadır. Öncelikle bu düzenleme

uluslararası bir nitelikte değildir. Ayrıca söz konusu düzenleme “geri göndermeme ilkesi” hususunda açık ve net bir garanti sunmamakla beraber, Suriyelilerin Türkiye, Suriye veya bir başka üçüncü ülkedeki geleceği hakkında belirlenmiş bir takvim ve yol haritası da ortaya koymamaktadır. Bunun sonucunda, geri göndermeme ilkesinin belirsizliğiyle birlikte Suriyelilerin geleceği hakkında tek söz sahibi olarak geriye egemen, yani Türkiye hükümeti kalmaktadır. Bu sonuç geleceğin belirsizliği hususunda Suriyelilerin tam bir istisna haliyle karşı karşıya olduğunu yansıtmaktadır.

Suriyelilerin geçici koruma statüsünün sona erdirilmesi konusu da Suriyelilerin tam olarak bir istisna hali içinde bulunduğu diğer bir boyuttur. Geçici Koruma Düzenlemesi Suriyelilerin koruma statüsünün keyfi bir şekilde sona erdirilmesi hususunda bir yaptırım ortaya koymamaktadır. Ayrıca egemen Suriyelilerin statüsünü sona erdirme sürecini tamamen keyfi ve istisnai bir şekilde uygulamaktadır. Konuyla ilgili raporlar incelendiğinde, statüsü sona erdirilen Suriyelilerin pek çoğunun görevli memurlar tarafından gönüllü geri dönüş belgelerini imzalamaya zorlandığı ve bu süreçte hukuki bir destekten yoksun bırakıldığı anlaşılmaktadır.

Suriyelilerin gözaltına alınmak için alıkonulmaları hakkında raporların sunduğu bilgilerin ışığında, Suriyelilerin hukuki bir süreçle birlikte değil, idari birim ve emniyet görevlilerinin aldığı anlık kararlarla gözaltına alındığı söylenebilir. Bu türden gözaltına alma süreçleri Türk Anayasası ve uluslararası anlaşmaların ilgili maddelerini ihlal etmektedir. Söz konusu ihlallerin neticesinde, Suriyeli sığınmacıların diğer gruplara (vatandaşlara ve diğer yabancılara) kıyasla tam bir istisna hali içinde oldukları anlaşılmaktadır.

Sonuç olarak kutsal insan kavramsallaştırmasının ilk boyutu olan “istisna hali ile dışlanma” konusunda Suriyelilerin bu hali tam anlamıyla tecrübe ettikleri söylenebilir. Diğer gruplara kıyasla, geçici korumanın yarattığı belirsizlik ve egemenin kararlarına tamamen bağlı olma durumu içerisindeki Suriyelilerin içinde buldukları siyasal topluluktan bir istisna olarak dışlandıkları ifade edilebilir.

Suriyelilerle ilgili olan geçici koruma düzenlemesinin Suriyelilerin geleceği hakkında net bir tablo ortaya koymaması, Suriyelilerin geçici koruma statüsünün her an sona

endirilebilirliđi ve bu bireylerin hukuki süreç işlemese dahi kamu görevlileri tarafından her an göz altına alınabilir bir durumda olması, Suriyelilerin kutsal insan kavramsallaştırmasının ilk boyutunda tam olarak bir istisna hali ile dışlandıklarını ortaya koymaktadır.

Suriyelilerin hayat standartlarının düşük olması ve insan haklarının getirdiđi imkan ve hizmetlerden tam anlamıyla yararlanamamaları Türkiye’de geçici koruma altında yaşayan Suriyeliler vakasının kutsal insan kavramsallaştırmasının ikinci boyutu olan “insan haklarından yoksunluk” başlığı altında tartışılmasını teorik açıdan zorunlu kılmıştır. Açık kapı politikası uygulayan Türkiye hükümetinin dayandığı yasal düzenleme olan Geçici Koruma Yönetmeliđi’nin yarattığı belirsizlik zemini üzerine kurulu olan istisnai hal kapsamında Suriyelilerin diđer gruplara kıyasla haklarının daha çok kısıtlandığı anlaşılmaktadır

Bu boyut çerçevesinde Türkiye vakasına uygun düşecek şekilde yedi alt boyut oluşturulmuştur. Bunlardan ilki Suriyelilerin barınma hakkıdır (*Shelter*). İkincisi Suriyelilerin seyahat ve hareketlilik özgürlüğüdür (*Freedom of Movement*). Üçüncüsü Suriyelilerin sağlık hakkıdır (*Health Care*). Dördüncüsü Suriyelilerin çalışma ve iç güvencesine yönelik haklarıdır (*Right to Employment*). Beşincisi Suriyelilerin eğitim hakkı (*Right to Education*), altıncısı Suriyelilerin hukuki bilgilendirme ve danışmanlık hizmetlerine yönelik haklarıdır (*Legal Assistance*) ve yedincisi Suriyeliler arasında bulunan dezavantajlı gruplara yönelik sunulan acil hizmetlere yönelik haklardır (*Guarantees to Vulnerable Groups*.)

Suriyelilerin barınma hakkıyla ilgili olarak Suriyelilerin sadece %1.7’lik bir kısmının Türkiye hükümetinin sağladığı kamplarda yaşamlarını sürdürdüğü bilinmektedir. Geriye kalan ezici çoğunluk kendi imkanlarıyla ikamet etmektedir. Türkiye’nin Suriyelilerin tamamını tek tek barınmaları için ev sahibi yapma gibi bir zorunluluđu olmasa da, kendi vatandaşlarına yönelik sosyal devlet politikası uyarınca barınma ihtiyacını karşılamakta güçlük çeken bireylere bu imkanı sağlayan bir aktör olduğu söylenebilir. Fakat Türk vatandaşlarından farklı olarak Suriyelilerin çoğunluđu düşük yaşam standartları içerisinde derme çatma dairelerde yaşamlarını devam ettirmektedirler.

Bazı yerleşim bölgelerinde Suriyelilerin çadırlarda kalmayı sürdürdüğü de ifade edilmektedir. Suriyelilerin ortalama hanehalkı sayısı 6.6'yı bulurken, Suriyelilerin yaşadığı dairelerin %30'dan fazlasında birden fazla aile barınmaktadır. Dolayısıyla Suriyelilerin yaşadığı bu mağduriyet tam anlamıyla egemenin kararlarından kaynaklanmasa da, sosyal devlet olan Türkiye'nin söz konusu yoksunluklara seyirci kalması Suriyelilerin kısmi olarak istisnai bir durum içinde bulduklarını gözler önüne sermektedir.

Suriyelilerin tam anlamıyla tecrübe ettiği istisnai hallerden biri de seyahat ve hareketliliklerine dair getirilen kısıtlamalardır. Suriyeliler kamu otoriteleri tarafından kaydedildikleri ilde yaşamak zorundadırlar. Başka bir ilde seyahat etmeleri izne tabidir. Fakat bu izinler ancak mecburi koşullarda ve yoğun bürokratik işlemler sonucunda verilebilmektedir. Ayrıca Suriyelilerin aile birleşimleri gibi temel hakları da coğrafi kısıtlamalardan ötürü keyfi ve istisnai sınırlamalara tabi tutulmaktadır.

Suriyelilerin haklarının tam istisna haliyle sınırlandırıldığı bir diğer alan ise sağlık hizmetleridir. Seyahat hakkına benzer şekilde Suriyeliler Türk vatandaşlarından farklı olarak sadece buldukları illerde sağlık hizmetlerini alabilmektedirler. Ayrıca Suriyelilerin sağlık sistemine kayıtları konusunda keyfi uygulamalar rapor edilmiştir. Bunun yanında Suriyelilerin yönlendirme ve dil konusunda büyük engellerle karşılaştığı bildirilmiştir.

Dördüncü alt başlık olan çalışma ve iş güvencesine dair haklar konusu Suriyelilerin sonucunda emek sömrüsüyle yüzleşmek zorunda kaldığı tam bir istisna hali teşkil etmektedir. Suriyeliler kendileri adına çalışma iznine başvuramamaktadır. Çalışma izninin verilmesi için işverenler Suriyeli çalışanlarının yerine bu izin için başvuru yapmak zorundadır. İşverenlerin çok azının kaçak çalıştırma yerine tercih ettiği bu süreç coğrafi ve sektör bazlı kısıtlamalara tabidir. Sonuç olarak çalışabilir 1 milyon 800 binden fazla Suriyeli arasından sadece 32 bini kayıtlı olarak çalışma hayatını sürdürmektedir.

Türk vatandaşlarına kıyasla iş güvencesinden yararlanma hususunda oldukça geride kalan Suriyeliler düşük standartlarda çalışabilmektedirler. Suriyelilerin ortalama

çalışma süresinin günlük 11 saat ve günlük kazanç miktarının 38 TL olduğu rapor edilmiştir. Ortalama bir Suriyelinin kazancı asgari ücret seviyesine yaklaşmamaktadır. Ayrıca Suriyeli çocuk işçiler de emek sömrüsüyle karşı karşıyadır. Örneğin tekstil sektöründe çalışan Suriyelilerin %29'u 18 yaş altındadır ve aylık 300 TRY karşılığında günde 11 saatten fazla çalıştırılmaktadırlar. Özetle Suriyelilerin emek piyasasındaki çalışma koşulları tam bir istisna halini yansıtmaktadır.

Beşinci alt başlıkta Suriyelilerin eğitim hakları tartışılmıştır. Türkiye hükümeti Suriyeli çocukların %60'ından fazlasını Türk eğitim sistemine entegre etmeyi başarmış olsa da egemenin bu politika tercihi tam bir istisna haline işaret etmektedir. Geçici koruma statüsü Suriyelilerin bireysel başvuruda bulunarak vatandaşlık veya sığınma hakkı gibi kalıcı bir statü elde etmelerinin önüne geçmektedir. Fakat Suriyelilerin kalıcı olacaklarını kanunen öngörmeyen ve dolayısıyla Türk siyasal hayatının bir üyesi olmalarını istemeyen egemen, Suriyelileri Türk eğitim sistemine dahil ederek, Suriyelilerin kalıcı olmayacakları bir durumda örgün Suriye eğitim sisteminden yararlanma haklarını elinden almaktadır. Arapça dilinde eğitim veren özel kuruluşlara müsaade edilse de, bu kuruluşların vereceği diplomaların gelecekte kabul edilip edilmeyeceği açık değildir. Bunun neticesinde Suriyeliler vatandaşı oldukları Suriye'nin örgün eğitim sisteminden kendi anadillerinde yararlanma hakkını kaybetmişlerdir.

Suriyeliler Türk vatandaşlarına kıyasla hukuki danışmanlık hizmetlerinden yararlanmakta geride kalmaktadırlar. Arapça bilen avukat sayısının azlığı ve baro hizmetlerinin yetersiz kalması Suriyelilerin mahkemelerde alabileceği hukuki desteği kısıtlamaktadır. Ayrıca Suriyeliler dava bilgi ve dosyalarına ulaşmakta engellerle karşılaşabilmektedir. Bu iki bilgiden hareketle Suriyelilerin hukuki süreçlerde tam bir istisna hali içinde olduklarını iddia etmek mümkündür.

Yedinci ve son boyutta Türkiye hükümetinin dezavantajlı Suriyeli gruplara imkan sağlamakta yetersiz kalmayı tercih etmesi tartışılmıştır. Refakatçisi olmayan çocuklara

hukuki destek sağlanması konusunda büyük eksiklikler mevcuttur. Ayrıca şiddete maruz kalan veya bu riski taşıyan kadınlar hususunda hem hukuki hem de barınma desteği sağlanması konularında önemli açıklar bulunmaktadır.

Özetle, insan hakları yoksunluğu hususunda, Türkiye hükümetinin tamamı ile sorumlu olmadığı barınma hakları konusu haricinde, Suriyeliler ülkede bulunan diğer gruplara (vatandaşlar ve diğer yabancılar) göre önemli kısıtlamalarla karşılaşmaktadırlar. Düzenlemenin getirdiği belirsizlik ve egemenin hak ve kanuna dayalı süreçleri işletmekte tam kapasitesini kullanmaması Suriyelileri kutsal insan kavramsallaştırmasının ikinci boyutu olan “insan haklarından yoksunluk” başlığı altında istisnai bir hal içinde olduklarını ortaya koymaktadır.

Kutsal insan kavramsallaştırmasının son boyutunu mültecilerin şiddet ve ölüm riskine daha açık bir pozisyonda olması oluşturmaktadır. Agamben’in atıf yaptığı Antik Roma’daki kutsal insan öldürülmeye her an açıktır ve onu öldüren kimseler herhangi bir cezai yaptırımla yüzleşmeyecektir. Hukukun bu şekilde hem dışladığı hem de egemenin sınırlarını çizdiği bu statü günümüzde mültecilerle tekrar teorik tartışmalara dahil olmaktadır. Egemenin kararı kutsal insanı, yani mültecileri siyasi komüniteden dışlamakta ve sadece bir biyolojik varlık konumuna indirgemektedir. Bunun neticesinde hukuki olarak korunmasız kalan bu kişiler sürekli olarak şiddet ve ölüm riski içerisindedir.

Türkiye’de geçici koruma statüsünde bulunan Suriyeliler kutsal insan kavramsallaştırmasının son boyutu altında tartışılabilir. Geçici korumanın Suriyelilere tam anlamıyla güvenlik sağlamadığı iki nokta üzerinden iddia edilebilir. Bunlardan ilki düzenlemenin açık kapı politikasının sürdürülebilirliğini sağlayamaması, ikincisi de geri gönderilmeme ilkesinin ihlali hususunda sessiz kalmasıdır.

Bu iddiadan hareketle Türkiye’deki Suriyelilerin şiddet ve ölüme karşı korumasızlığı boyutunu daha spesifik bir şekilde ele almak mümkündür. Bu amaçla söz konusu boyut çerçevesinde üç alt boyut oluşturulmuştur. Bunlardan ilki Suriyelilerin kabul ve kayıt



süreçleridir (*Admission and Registration*). İkincisi Suriyelilerin geçici koruma statüsünün sona erdirilmesi ve geri gönderilmeleridir (*Suspension and deportation*). Üçüncüsü de şiddet olayları ve bu olaylara ilişkin raporlardır (*Reports of violence*.)

Suriyelilerin kayıt ve kabulüne ilişkin süreçlerde, Türkiye hükümeti Suriyelilerin haklarını kısıtlama eğilimindedir. Özellikle farklı uygulamalar gerektiren örneklerde bu eğilim daha sık görülmektedir. Örneğin ailesi Türkiye’de koruma statüsünde olan ve üçüncü bir ülkeden gelen Suriyelilere geçici koruma statüsü verilmemektedir.

1951 Cenevre Sözleşmesi uyarınca açık kapı politikası izleyen Türkiye son dönemde sınıra duvar inşa ederek bu politikadan vazgeçmiştir. Fakat Suriye’de iç savaşın devam etmesinden ötürü Suriyeliler halen sınırdan Türkiye’ye geçmek istemektedir. Uluslararası kuruluşların raporlarına göre kaçak yollardan sınırı geçmeye çalışan Suriyeliler Türk güvenlik güçleri tarafından vurulma tehlikesiyle karşı karşıya kalmaktadır. Sınırı kaçak yollarla geçen Suriyeliler ise kayıt ve kabulde zorluklar yaşamaktadırlar. Ayrıca Türkiye hükümeti savaştan kaçan fakat geçerli bir seyahat dökümanı taşımayan Suriyelilerin kayıtları konusunda sert bir yaklaşım içerisindedir.

Ek olarak, kayıt ve kabulde yetkili olan idari birimler arasında yaşanan karmaşalar keyfi ve istisnai uygulamalara yol açmaktadır. Örneğin kamplar dışında yaşayan pek çok Suriyeli ailenin fertlerinin ayrı ayrı illerde kayıt altına alınmasının önüne geçilememiş ve aileleriyle birlikte kayıt olduğu ilden başka bir ilde yaşayan Suriyelileri kaçak statüsüne düşürmüştür. Söz konusu bireyler her an tutuklanma ve geri gönderilme riskiyle karşı karşıya kaldıkları bir sürece sürüklenmişlerdir.

Özetle, geçici korumanın getirdiği belirsizlik ve idari birimler arasındaki uyumsuzluk Suriyelilerin tam bir istisna hali içerisinde kayıt ve kabul süreçlerinde zorluklara neden olmuş ve sonrasında da geri gönderilme riskini ortaya çıkarmıştır.

Suriyelilerin koruma statüsünün sona erdirilmesi ve geri gönderilmeleri konusu da ikinci alt boyut olarak ele alınabilir. Suriyeliler bu konularda da tam bir istisnai hal içindedirler. Geçici Koruma Yönergesi’nin Suriyelilerin statüsünün süresi hakkında

muğlak da olsa bir bilgi vermemesi, Suriyelilerin koruma statüsünün yetkililer tarafından bir süre askıya alınmasına ve kolayca sona erdirilmesine imkan tanıyan bir boşluk doğurmuştur. Ayrıca yönergenin tam olarak garanti etmediği geri gönderilmeme ilkesi pek çok kez ihlal edilmiştir. Suriyelilerin itirazlarının da Türk mahkemelerinde karşılık görmediği vakalar olmuş ve zaman zaman mahkemeler geri gönderme yönünde alınan idari kararlar üzerinde adli yetkilerini kullanmayı tercih etmemiştir. Bunun yanında söz konusu karar ve uygulamalara itiraz eden Suriyeli sayısı oldukça sınırlıdır. Bunun arkasında hukuki danışmanlık hizmetleri hususunda Suriyelilerin geri kalması yatmaktadır.

Diğer bir alt boyut ise Suriyelilerin maruz kaldığı şiddet olaylarıdır. Suriyeliler 2011 yılından bu yana kaldıkları yerleşim bölgelerinde yerli halkla toplu çatışmalar yaşamaktadır. Küçük gruplar arasında çıkan kavgalar veya Suriyeliler hakkında hızlıca yayılan dedikodular ufak çaplı gerginliklerin linç girişimine varacak toplu şiddet olaylarına dönüşmesine neden olmaktadır. Özellikle son dönemde artan siyasi gerginlik ve ekonomik olumsuzluklar Suriyelilerin yerel halk tarafından günah keçisi olarak damgalanmalarını beraberinde getirmektedir.

Bu olaylar sonrasında kamu otoritelerinin tutumları ele alındığında, Türk vatandaşlarına kıyasla Suriyelilerin daha katı muameleye maruz kaldıkları anlaşılmaktadır. Olaylar sonrasında Suriyeliler yaşadıkları mahallelerden zorunlu olarak tahliye edilmekte ve olaya karışan bazı Suriyeliler yasal süreç işletilmeden Suriye'ye geri gönderilmeye zorlanmaktadır. Bu kişilere yetkililer tarafından gönüllü geri dönüş belgeleri zorla imzalatılmak istenmektedir. Sonuç olarak şiddet olaylarında egemenin Türk vatandaşlarına kıyasla Suriyelilere tam bir istisna hali içinde uygulamalarda bulunduğu anlaşılmaktadır.

## B. TEZ İZİN FORMU / THESIS PERMISSION FORM

### ENSTİTÜ / INSTITUTE

Fen Bilimleri Enstitüsü / Graduate School of Natural and Applied Sciences

Sosyal Bilimler Enstitüsü / Graduate School of Social Sciences

Uygulamalı Matematik Enstitüsü / Graduate School of Applied Mathematics

Enformatik Enstitüsü / Graduate School of Informatics

Deniz Bilimleri Enstitüsü / Graduate School of Marine Sciences

### YAZARIN / AUTHOR

Soyadı / Surname : Ütnü  
Adı / Name : Safiye Merve  
Bölümü / Department : Uluslararası İlişkiler

TEZİN ADI / TITLE OF THE THESIS (İngilizce / English) : AN ANALYSIS OF THE TEMPORARY PROTECTION REGULATION FROM AN AGAMBENIAN PERSPECTIVE: SYRIANS IN TURKEY AS HOMINES SACRI

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. \*

\* Enstitü Yönetim Kurulu kararının basılı kopyası tezle birlikte kütüphaneye teslim edilecektir.

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 .....