

KAMU HUKUKU

Araştırma Makalesi / Research Article

# Ukrainians in Turkey: Probable Scenarios Regarding their Legal Statuses\*

Türkiye'deki Ukraynalıların Hukuki Statülerine İlişkin Muhtemel Senaryolar

Hasan Basri BÜLBÜL\*\*

## ABSTRACT

Millions of people have been forcibly displaced after the Russian invasion of Ukraine. Some of them are now hosted in Turkey. The Turkish government has pursued an open-door policy for Ukrainian nationals and announced that it will make their entry and stay of them in Turkey easier. This article analyses the probable legal statuses that Ukrainians can obtain in Turkey. International protection, temporary protection, residence permits, and the situation of people of Turkish descent are then examined respectively. Ukrainians can get refugee status and subsidiary protection provided that they meet the relevant criteria. If they do not wish to apply for international protection, they can avail themselves of residence permits. Short-term residence permit and particularly humanitarian residence permit seem to be the easiest options for most Ukrainians. People of Turkish descent from Ukraine, on the other hand, are subjected to a special regime.

**Keywords:** Ukrainians in Turkey, International Protection, Temporary Protection, Residence Permits, People of Turkish Descent from Ukraine.

## ÖZ

Rusya'nın Ukrayna'yı işgali ile birlikte milyonlarca insan yerinden edildi, bunlardan bir kısmı ise Türkiye'ye geldi. Türkiye Ukrayna vatandaşları için açık kapı politikası izleyip, Ukraynalıların Türkiye'ye giriş ve Türkiye'de kalışlarının kolaylaştırılacağını ilan etti. Bu makalede Türkiye'de bulunan Ukraynalıların kazanabileceği muhtemel hukuki statüler ele alınmaktadır. Bu çerçevede uluslararası koruma, geçici koruma, ikamet izinleri ve Türk soyluların durumu incelenmiştir. Uluslararası koruma başlığı altında Ukraynalılar şartları sağlamaları halinde mülteci veya ikincil koruma statüleri elde edebilirler. Uluslararası korumaya başvurmak istemezler ise kendilerine uygun bir ikamet izninden de yararlanabilirler. Kısa dönem ikamet izinleri ve özellikle insani ikamet izni Ukraynalıların çoğu için en kolay elde edilebilir seçenekler olarak öne çıkmaktadır. Ukrayna'dan gelen Türk soylular ise daha ayrıcalıklı bir rejimden faydalanmaktadır.

\* Makale gönderim tarihi: 03.09.2022. Makale kabul tarihi: 03.10.2022. Hasan Basri Bülbül, "Ukrainians in Turkey: Probable Scenarios Regarding their Legal Statuses", *İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi*, Cilt 9, Sayı 2, 2022, s. xx-xx, <https://doi.org/10.46547/imuhfd.2022.09.2.01>

\*\* King's College London, [hasan.bulbul@kcl.ac.uk](mailto:hasan.bulbul@kcl.ac.uk), <https://orcid.org/0000-0002-3888-5380>.

**Anahtar Kelimeler:** Türkiye'deki Ukraynalılar, Uluslararası Koruma, İkamet İzinleri, Geçici Koruma, Ukrayna'dan Gelen Türk Soylular.

## Introduction

On the 24th of February 2022, the Russian Federation started a full-scale armed conflict against Ukraine in violation of international law.<sup>1</sup> As a result, thousands of people, including civilians, have been killed or injured<sup>2</sup> and millions of people have been forcibly displaced. According to the United Nations High Commissioner for Refugees (UNHCR), more than 12 million people left their homes. Over 7.1 million people have been internally displaced in Ukraine while more than 5.6 million have sought asylum in neighbouring countries.<sup>3</sup> The overwhelming majority of Ukrainians travelled to European countries such as Poland, Romania, Hungary, Slovakia, and Moldova, and then moved to other EU countries where they were granted temporary protection.<sup>4</sup> While this open-door policy of governments toward the Ukrainians is commendable, the question remains as to why similar treatment has not been provided to other people who have been similarly situated.<sup>5</sup>

Turkey has also welcomed Ukrainians since the conflict emerged. The Turkish government has several times announced that the entry and stay of Ukrainians in Turkey will be made easier.<sup>6</sup> In this paper, I will address the probable legal statuses that Ukrainians can obtain in Turkey. Providing relevant informa-

- 1 United Nations General Assembly, 'Aggression against Ukraine', A/RES/ES-11/1, 18 March 2022.
- 2 United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), 'Ukraine: Civilian Casualty Update' <https://ukraine.un.org/sites/default/files/2022-08/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2014%20August%202022%20ENG.pdf> (24.08.2022), ('Ukraine: Civilian Casualty Update').
- 3 UNHCR, Ukraine Emergency, <https://www.unhcr.org/ukraine-emergency.html> (22.08.2022), (Ukraine Emergency).
- 4 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022 (OJ L).
- 5 For discrimination and race element in the treatment of Ukrainians and others see: Bryan Chan Yen Johnson, Kevin Ah-Sen, Philip SS Howard, Ukraine Refugee Crisis Exposes Racism and Contradictions in the Definition of Human, <http://theconversation.com/ukraine-refugee-crisis-exposes-racism-and-contradictions-in-the-definition-of-human-179150> (18.08.2022); Eva Połowska-Kimunguyi, War, Resistance and Refuge: Racism and Double Standards in Western Media Coverage of Ukraine, <https://blogs.lse.ac.uk/mediase/2022/05/10/war-resistance-and-refuge-racism-and-double-standards-in-western-media-coverage-of-ukraine/> (18.08.2022).
- 6 İçişleri Bakan Yardımcısı Çataklı: 24 Şubat'tan bu yana 20 bin 550 Ukraynalı Türkiye'ye geldi, <https://www.independentturkish.com/node/481321/haber/i%CC%87%C3%A7i%C5%9Fleri-bakan-yard%C4%B1mc%C4%B1s%C4%B1-%C3%A7atak%C4%B1-24-%C5%9Fubattan-bu-yana-20-bin-550-ukraynal%C4%B1> (06.06.2022).

tion on Ukrainians in Turkey in part two, I will focus on the legal pathways that Ukrainians could follow in Turkey. In part three, I will analyse the applicability of international protection statuses such as refugee status and subsidiary protection to Ukrainians. This will be followed by some brief notes on the likelihood of temporary protection for Ukrainians in Turkey. Then, in part four, I will move on to residence permits and will focus in particular on short-term and humanitarian residence permits. Finally, I will engage with the special regime designed for the people of Turkish descent, which is applicable to Meskhetian Turks (*Ahıska Türkleri*) and Crimean Tatars (*Kırım Tatar Türkleri*) arriving from Ukraine.

### I. Some Relevant Information on Ukrainians in Turkey

There are different records with regards to the numbers of Ukrainians in Turkey. On May 5, 2022, Ukrainian consul general in Istanbul announced that over 70.000 Ukrainians has moved to Turkey.<sup>7</sup> Four days later, the President of Turkey, stated that the number of Ukrainians who had arrived in Turkey was more than 100,000.<sup>8</sup> Recently, on June 3, 2022, the Ukrainian Ambassador to Turkey said that 150,000 Ukrainians had entered Turkey since the beginning of the war.<sup>9</sup> He then added that there have been returns to Ukraine and the current number of Ukrainians who are still in Turkey is around 50,000.<sup>10</sup>

These differences in numbers are mostly related to the course of the armed conflict in Ukraine. Initially, as the war intensified in various parts of the country, more people fled. However, particularly after the Russian forces withdrew from Kyiv area and the conflict has mostly concentrated in the eastern and southern part of Ukraine, some Ukrainians have chosen to return their homeland.<sup>11</sup> Indeed, the UNHCR data demonstrates that over 4.7 million border crossings to Ukraine have been recorded since 28 February 2022.<sup>12</sup>

7 Ukrayna'nın İstanbul Başkonsolosu: 70 bin Ukraynalı Türkiye'ye taşındı, <https://www.ukrhaber.com/blog/ukraynanin-istanbul-baskonsolosu-70-bin-ukraynali-turkiyeye-tasindi/> (05.08.2022).

8 Project Would Build 200,000 Homes for 1M Syrians in Türkiye to Voluntarily Resettle: Turkish President, <https://www.aa.com.tr/en/turkey/project-would-build-200-000-homes-for-1m-syrians-in-turkiye-to-voluntarily-resettle-turkish-president/2583219> (05.06.2022).

9 Ukrayna Büyükelçisi Vasyl Bodnar, Türkiye'deki Ukraynalıların sayısını açıkladı, <https://haberglobal.com.tr/gundem/ukrayna-buyukelcisi-vasyl-bodnar-turkiyedeki-ukraynalilarin-sayisini-acikladi-180695>, <https://haberglobal.com.tr/gundem/ukrayna-buyukelcisi-vasyl-bodnar-turkiyedeki-ukraynalilarin-sayisini-acikladi-180695> (05.06.2022), (Türkiye'deki Ukraynalıların Sayısı).

10 Türkiye'deki Ukraynalıların Sayısı.

11 As Russia's Invasion Stalls, Ukraine's Refugees Return Home, <https://www.economist.com/europe/2022/05/24/as-russias-invasion-stalls-ukraines-refugees-return-home> (05.06.2022).

12 Ukraine Refugee Situation, [https://data.unhcr.org/en/situations/ukraine#\\_ga=2.240367939.1935601545.1654417001-115170318.1651773865](https://data.unhcr.org/en/situations/ukraine#_ga=2.240367939.1935601545.1654417001-115170318.1651773865) (23.08.2022). UNHCR notes that this number "reflects cross-border movements (and not individuals). Movements back to Ukraine may be pen-

Nevertheless, the inconsistency in the numbers of Ukrainians in Turkey is also related to the failure of the Presidency of Migration Management (PMM) of Turkey in providing up-to-date information with regard to Ukrainians' entry into, remaining in, or exit from Turkey. When the words "Ukraine" or "Ukrainians" are searched on the official website of the PMM<sup>13</sup>, the results show that the latest update was made in 2019.<sup>14</sup> Therefore, no information can be found in relation to the recent armed conflict and associated refugee arrivals on the PMM website. Yet, earlier, on 11 March 2022, the Twitter account of the PMM shared some useful information.<sup>15</sup> According to the statistics of that time, the number of Ukrainians was around 35,000, and only 407 had applied for international protection. Unfortunately, these numbers have never been updated since then even on Twitter. Therefore, the current number of Ukrainians who needed, applied for, or gained international protection status remains unclear.

Although it was early data, it is noteworthy that the number of Ukrainians who applied for international protection is also low. This can be explained in several ways. The first and foremost is the visa regime between Turkey and Ukraine. In 2011, Turkey and Ukraine reached an agreement on the conditions of mutual travel for their nationals.<sup>16</sup> This established a visa-free travel regime between these countries. The agreement was later amended and expanded in 2017.<sup>17</sup> According to this, passport-free travel was introduced for the nationals of these countries, who can now enter the other using only their ID cards. More importantly, the time limit for an uninterrupted stay, which was previously 30 days, was extended. Article 1 of the amended agreement provides that "nationals of the State of the either Party shall enter, exit, transit through and stay in the territory of the State of the other Party without visa, .... Provided that their stay shall not exceed 90 days within 180 days period."

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dular, and do not necessarily indicate sustainable returns as the situation across Ukraine remains highly volatile and unpredictable."

13 <https://en.goc.gov.tr/search/ara/ukraine>

14 The same results appear when the search is made in Turkish language, using the words "Ukrayna" or "Ukraynalı" in the Turkish website of the Presidency.

15 Göç İdaresi Başkanlığı [@Gocidaresi], 'Ukrayna'daki savaşın 15. gününü geride bırakırken ülkemiz yine mazlumlara yardım elini uzatıyor, <https://twitter.com/Gocidaresi/status/1502369020145717250> (05.06.2022).

16 Agreement between the Government of the Republic of Turkey and Cabinet of Ministers of Ukraine on conditions of mutual travels of their nationals (Turkey-Ukraine), Official Gazette of the Republic of Turkey (*hereafter* O.G.), 24.03.2012 – 28243.

17 Agreement between the Government of the Republic of Turkey and the Cabinet of Ministers of Ukraine on amendments to the Agreement between the Government of the Republic of Turkey and Cabinet of Ministers of Ukraine on conditions of mutual travels of their nationals (Turkey-Ukraine) O.G. 20.05.2017 – 30071.

This regime has not been suspended or changed since the war broke out in Ukraine. Therefore, Ukrainians can still stay in Turkey for up to 90 days. Indeed, Ukrainian people fleeing Russian attacks have been admitted to Turkey pursuant to this regime. This is probably the most important reason why Ukrainians did not apply for international protection status in Turkey during the first weeks of the conflict. Knowing that they could legally stay in Turkey for 90 days and hoping to return their homes after a probable peace agreement which would end the war soon, they might well have felt there was no need to make use of international protection mechanisms.

Another reason that could have possibly prevented Ukrainians from applying for international protection in the beginning is a particular restriction implemented by the Turkish government with regard to the provinces that a person can file an international protection application to reside in. Some Turkish cities, including Istanbul, Izmir, Antalya, and Bursa, which already host large numbers of foreigners have been closed to new international protection applications.<sup>18</sup> As most of the Ukrainians in Turkey currently prefer to live in Istanbul and Antalya<sup>19</sup>, this restriction might have caused them to refrain from applying for international protection. However, as a part of the measures taken by the Turkish government to make Ukrainians' stay in Turkey easier, it was later decided that this restriction would not apply to Ukrainian nationals.<sup>20</sup> Therefore, they will be able to stay in those cities under international protection status.

Another fact to bear in mind is that, like everywhere else in the world, the Ukrainians in Turkey are for the most part women and children.<sup>21</sup> The main reason for this is the fact that the Ukrainian government prohibited the exit of men aged 18 to 60 from the country to ensure its defence under martial law.<sup>22</sup> Therefore, only women, children, and the elderly were legally able to leave the country for Turkey. Second, most Ukrainians who got married to Turkish citi-

18 İsmail Çataklı Yabancılar İkamete Kapatılan Yerleri Açıkladı, <https://www.cumhuriyet.com.tr/turkiye/ismail-catakli-yabancilara-ikamete-kapatilan-yerleri-acikladi-1910663> (24.08.2022).

19 Sevilay Nur Saraçlar, Rusların ve Ukraynalıların Varış Noktası: Antalya, <https://www.bianet.org/bianet/yasam/259797-ruslarin-ve-ukraynalilarin-varis-noktasi-antalya> (24.08.2022); Türkiye'de yaşayan kaç Ukraynalı var?, <https://www.turkiyeespresshaber.com/gundem/turkiye-de-yasayan-kac-ukraynali-var-h10605.html> (24.08.2022).

20 The PMM Directive No. E5927743700076226 'On Foreigners of Ukrainian Nationality', 09.03.2022. (On Foreigners of Ukrainian Nationality).

21 Ukraine Situation, <http://reporting.unhcr.org/ukraine-situation> (24.08.2022).

22 Asha C. Gilbert, Reports: Ukraine Bans All Male Citizens Aged 18 to 60 from Leaving the Country <https://www.usatoday.com/story/news/world/2022/02/25/russia-invasion-ukraine-bans-male-citizens-leaving/6936471001/> (24.08.2022), (Ukraine Bans All Male Citizens Aged 18 to 60 from Leaving the Country).

zens are women<sup>23</sup>, therefore it is only natural that they would flee to Turkey with their Turkish national husbands. This could be another factor that partly explains the low number of applications for international protection since they probably already have valid family residence permits. Finally, international protection processes are usually too lengthy, tiresome, and uncertain. With the presence of easier alternatives, it is natural that people will not typically make use of international protection.

As of May 24, 2022, based on their date of arrival, the 90-day legal stay of some Ukrainians without requiring a visa has expired. Therefore, they have to take some form of action in order to legally remain in Turkey. This includes applying for international protection and a residence permit that is most suitable to their individual situation. In what follows, I will analyse Ukrainians' eligibility for refugee status and subsidiary protection followed by appropriate residence permits.

## II. International Protection

As host countries have offered Ukrainians multiple legal pathways such as temporary protection or residence permits, judicial decisions on international protection will naturally come at a later stage.<sup>24</sup> Therefore, assessing the eligibility of Ukrainians to international protection before a decision is made anywhere in the world, including Turkey, is inevitably a speculative task.<sup>25</sup> After six months of conflict, no one can now predict its likely future course; indeed, the assessment of such is becoming increasingly difficult. As Storey puts it, "Would we be looking at a Ukraine restored to its pre-2014 or pre-2022 war boundaries? A Ukraine with peace and security restored? A Ukraine with some territory still under the control of the Russian forces? A Ukraine largely under direct Russia control or exercised through puppet administrations? A Ukraine still experiencing ongoing armed conflict? God only knows"<sup>26</sup> Nevertheless, as he maintains, some initial assessments can still be made based on the information publicly available to date.<sup>27</sup> Even though the number of applications for international protection in Turkey is notably low, such an analysis would anyway be warranted in terms of refugee status determination processes in the not-too-distant future.

23 Marriage and Divorce Statistics, 2021, <https://data.tuik.gov.tr/Bulten/Index?p=Marriage-and-Divorce-Statistics-2021-45568> (25.08.2022).

24 Hugo Storey, Are Those Fleeing Ukraine Refugees? <https://www.asileproject.eu/are-those-fleeing-ukraine-refugees/> (16.08.2022), (Are Those Fleeing Ukraine Refugees?).

25 Storey, Are Those Fleeing Ukraine Refugees?

26 Storey, Are Those Fleeing Ukraine Refugees?

27 Storey, Are Those Fleeing Ukraine Refugees?

The Turkish immigration law was reformed almost a decade ago with the adoption of the Law on Foreigners and International Protection (LFIP).<sup>28</sup> Before this, many of the aspects of the legislation on asylum and migration were quite disorganised, fragmented, and uncertain. The LFIP has largely modernized Turkish law on asylum and immigration with various institutions and concepts such as subsidiary protection or temporary protection incorporated from European Union Law. It has also reaffirmed certain principles and norms of international law including the principle of *non-refoulement*.<sup>29</sup> Thanks to the LFIP, it can now be argued that Turkey is on the right path to a fully-fledged immigration law.<sup>30</sup>

The LFIP is the principal source of law on international protection; it is thus central to the analyses in this paper. According to Article 3 (1) (r), international protection covers three statuses: refugee, conditional refugee, and subsidiary protection. As shall soon be discussed, conditional refugee status is not relevant in the context of Ukrainians in Turkey, and therefore the following discussion is restricted to refugee status and subsidiary protection.

### A. Refugee Status

Article 1 (A) (2) of the 1951 Refugee Convention<sup>31</sup>, as amended by the 1967 Protocol, defines a refugee as a person who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Turkey is a party to the 1951 Refugee Convention but still maintains the geographical limitation; it therefore only grants refugee status to people who come

28 The Law No. 6458 on Foreigners and International Protection, O.G. 11/4/2013 – 28615. (Unless otherwise is stated, I quoted the articles in this paper from the unofficial translation of the LFIP published on the websites of the PMM and the UNHCR: [https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP\\_ENG\\_DGMM\\_revised-2017.pdf](https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP_ENG_DGMM_revised-2017.pdf) (01.09.2022).

29 The LFIP article 4 provides that “no one within the scope of this of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.”

30 Meral Açıkgöz, Hakkı Onur Ariner, “Turkey’s New Law on Foreigners and International Protection: An Introduction. Briefing Paper 2” *University of Oxford Turkish Migration Studies Group (Turk-MiS)*, 2014, <https://www.compas.ox.ac.uk/2014/turkeys-new-law-on-foreigners/> (25.08.2022).

31 Convention Relating to the Status of Refugees (1951 Refugee Convention) (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 150.

to Turkey as a result of events occurring in, specifically, European countries. The adoption of the LFIP did not change this.<sup>32</sup> For this reason, the number of refugees in Turkey in legal terms is said to be only around 40-50.<sup>33</sup> Traditionally, the overwhelming majority of people who migrate to Turkey are not from Europe but the Middle East and Asia. Therefore, even if they meet the other criteria in the definition, they may not be eligible for refugee status in Turkey. For such people, the LFIP has created a status called “conditional refugees” who may “reside in Turkey temporarily until they are resettled to a third country.”<sup>34</sup> This status does not apply to Ukrainians as they come from a European country. Thus, I exclude conditional refugee status in this analysis.

The term “European Countries” in the LFIP’s definition is interpreted as being the member states of the Council of Europe.<sup>35</sup> Since Ukraine is a member of the Council, Ukrainian nationals may qualify as refugees in Turkey. However, there might still be obstacles arising from the narrow definition of the 1951 Refugee Convention; for instance, it does not automatically cover war refugees. The UNHCR Handbook published in 1979 states that “persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol.”<sup>36</sup> This means that even if people escape from the most brutal armed conflict, they might not be eligible for refugee status under the Convention or, indeed, Turkish law. The definition of the 1951 Convention is too persecution-centric. However, the overwhelming majority of today’s refugees are escaping from armed conflicts and have not necessarily experienced persecution. The conflicts in Syria, Afghanistan, Iraq, and Ukraine are but a few of the examples that have created the largest number of refugees. Therefore, it is often questioned whether the Convention is still relevant and adequate in the face of the challenges posed by contemporary refugee movements.<sup>37</sup>

Indeed, some regional instruments adopted in Africa and Latin America such

32 Article 61 of the LFIP.

33 Adem Metan, *Göçmen ve Mülteci Meselesini Göç İdaresi Başkanlığı İle Konuştuk!* <https://www.youtube.com/watch?v=rUh-9TbYTjg> (06.06.2022).

34 Article 62 of the LFIP.

35 Neva Övünç Öztürk, *Uluslararası Koruma Çerçevesinde Mültecinin Hukukî Statüsünün Belirlenmesi*, PhD Thesis, Ankara University Institute of Social Sciences Department of Private Law (Comparative Law), 2014, p. 394.

36 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, Reedited, Geneva, January 1992, UNHCR 1979, para. 164.

37 Alexander Betts, Paul Collier, *Refuge: Transforming a Broken Refugee System*, Allen Lane, 2017.



as 1969 OAU Refugee Convention<sup>38</sup> and Cartagena Declaration on Refugees<sup>39</sup> recognise that people fleeing external aggression, occupation, foreign domination or events seriously disturbing public order may qualify as refugees.<sup>40</sup> However, the 1951 Refugee Convention excludes them all. One of the ironies of the current international refugee regime is exposed by the Russian-Ukrainian conflict. While people from Russia who oppose the war could qualify as refugees on the basis of a well-founded fear of persecution due to their political opinions, the Ukrainian people who might actually need to flee the war itself might never qualify as such.<sup>41</sup> Russian people who are against the war should certainly be able to qualify for refugee status considering that they would face persecution under the Putin regime in Russia; indeed, there is no debate at all about this issue. The point here is the fact that the definition of the 1951 Refugee Convention is clearly overly narrow.

Nevertheless, the definition applies both in times of peace and in times of war. Even though fleeing war itself is not sufficient to satisfy the definition, Ukrainians can still gain refugee status if they meet one of the five specified grounds indicative of a well-founded fear of persecution. Indeed, the UNHCR revised its position with regard to refugees from armed conflict in its Guidelines on International Protection No. 12. It now argues that “rarely are modern-day situations of armed conflict and violence characterised by violence that is not in one way or another aimed at particular populations, or which does not have a disproportionate effect on a particular population, establishing a causal link with one or more of the Convention grounds”.<sup>42</sup> While this certainly places additional burdens on the Ukrainian people, one may still be optimistic as there is still some room for them to gain refugee status in Turkey, which is a status that allows for a long-term stay and carries certain rights. For this, however, they first need to demonstrate that they would have had a well-founded fear of persecution on account of the five specified grounds had they stayed in Ukraine.

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38 The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 U.N.T.S. 45.

39 Cartagena Declaration on Refugees Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (adopted 22 November 1984).

40 OAU Refugee Convention art. 1 (2).

41 Bill Frelick, Ukrainians Are Refugees, but Our Laws Don't Consider Them Such, <https://thehill.com/opinion/immigration/599879-ukrainians-are-refugees-but-our-laws-dont-consider-them-such/>, (06.06.2022).

42 UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the Regional Refugee Definitions*, HCR/GIP/16/12, 2016, para. 33, p. 7, (Guidelines on International Protection No. 12).

### 1. Well-founded Fear

A “well-founded fear of being persecuted” requires that an applicant would be under a reasonably foreseeable<sup>43</sup> risk in their country of origin. Although the experience of past persecution could contribute to the success of an application, it is by no means necessary for a refugee to satisfy the Convention’s definition. The risk assessment must be made with regard to the future. As Hathaway and Foster rightly state, “the sole implication of the “fear of” criterion of the definition is that the assessment of risk must occur within a *prospective* context. In other words, irrespective of what the claimant has or has not already experienced, the question to be asked is whether there is a reason to believe that she requires safe haven from apprehended risk in her state of origin.”<sup>44</sup>

Many jurisdictions and the UNHCR have adopted two requirements for the well-founded fear element. These are subjective risk perception of claimants themselves, and an objective situation in the country of origin. The Turkish Council of State also adopted this approach and determined that “[the assessment of well-founded fear of persecution] should be made by taking objective and subjective conditions into consideration. Objective elements require a substantial review of the conditions in the applicants’ country of origin which is ultimately important in determining the applicant’s subjective fear.”<sup>45</sup>

Hathaway and Foster challenge this understanding. They argue that such a bipartite standard may well result in the rejection of applications where the subjective fear cannot be demonstrated by an applicant but there is evidence of objective risk anyway in the country of origin.<sup>46</sup> Therefore, they argue that if it is objectively established that a reasonably foreseeable risk exists for the applicant solely based on the country of origin information, the subjective fear of the claimant might not even be taken into consideration.<sup>47</sup> Thus, country of origin information is crucial in assessing a claim. In the context of Ukraine, there have been various reports that indicate serious violations of International Human Rights Law (IHRL), International Humanitarian Law (IHL), and International Criminal Law (ICL).<sup>48</sup> However, even before such violations occurred, millions

43 Storey, Are Those Fleeing Ukraine Refugees?.

44 James C Hathaway, Michelle Foster, *The Law of Refugee Status*, 2nd edition, Cambridge University Press 2014, p. 110. (The Law of Refugee Status).

45 The Turkish Council of State Plenary Session of the Administrative Law Chamber File No. 2021/2384 Decision No. 2022/677, 28.02.2022.

46 Hathaway, Foster, *The Law of Refugee Status*, p. 93.

47 Hathaway, Foster, *The Law of Refugee Status*, p. 122.

48 Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine, <https://www.osce.org/>

of people had already left their places of origin, reasonably anticipating that the war could inflict serious harm on them. As the Russian forces rapidly advanced to the outskirts of Kyiv, the capital city, more people left Ukraine fearing that the Ukrainian government would fall, and the Russians would gain control of the areas they lived in. Reports later revealed that there have been blatant violations in the places controlled by the Russian forces. These would surely be considered to demonstrate the existence of the well-founded fear element.

In addition to country-of-origin information, evidence of similarly situated persons are also taken into consideration in the assessment of well-founded fear. When considering this, scholars have mostly focused on the evidence of risks to persons similarly situated in the country of origin. Nevertheless, the evidence from the people of other countries who have been subjected to persecution by the same agent can also play a role in the assessment. The Russian Federation have been militarily active in various other parts of the world. Its compliance with IHRL and IHL has, however, largely been flawed.<sup>49</sup> There have been various breaches of the IHRL and IHL on many occasions, such as indiscriminate shelling and bombing of residential areas, the use of internationally banned weapons, killing civilians, torture and others.<sup>50</sup> Therefore, considering that such conduct is not by any means unheard of with regard to Russian forces in the previous military activities they carried out in Chechnya<sup>51</sup>, Georgia<sup>52</sup>, Syria<sup>53</sup> and other places, as well as there being no guarantee that such violations would not be repeated in Ukraine, it must be accepted that Ukrainians may have genuine justification for holding a well-founded fear of persecution at the hands of the Russian armed forces.<sup>54</sup>

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files/f/documents/c/d/523081\_o.pdf (29.08.2022).

49 Human Rights Watch, Russia: Events of 2020, *World Report 2021* <https://www.hrw.org/world-report/2021/country-chapters/russia> (29.08.2022), (Russia: Events of 2020).

50 Human Rights Watch, Russia: Events of 2020.

51 International Helsinki Federation for Human Rights, Russia Is Violating International Humanitarian Law in Chechnya, <https://reliefweb.int/report/russian-federation/russia-violating-international-humanitarian-law-chechnya> (29.08.2022); Revealed: Russia's Worst War Crime in Chechnya <https://www.theguardian.com/world/2000/mar/05/russia.chechnya> (16.06.2022).

52 Christopher W. Mullins, "War Crimes in the 2008 Georgia–Russia Conflict" *The British Journal of Criminology* Volume 51, Issue 6.

53 United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/34/64, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/026/63/PDF/G1702663.pdf?OpenElement> (16.06.2022); "War Crimes" Committed by Russia, Assad Gov't in Syria: Amnesty, <https://www.aljazeera.com/news/2020/5/11/war-crimes-committed-by-russia-assad-govt-in-syria-amnesty> (16.06.2022).

54 Devastation of War in Ukraine "Repetition of Syria" and Iraq, Says Amnesty <https://www.independent.co.uk/news/world/europe/ukraine-war-syria-amnesty-international-b2046201.html> (16.06.2022).

## 2. Persecution

The question in this section is whether the persecution element exists in the case of Ukrainians. The answer will obviously depend on their individual circumstances. Nevertheless, some general remarks can still be made regarding the existence of the persecution element in relation to Ukrainians' circumstances. Indeed, persecution is the central element in the Convention's definition. Nowhere in the Convention is persecution actually defined; however, it is often understood to constitute serious violations of human rights. Hathaway postulates that persecution is "sustained or systemic violation of basic human rights".<sup>55</sup> This interpretation, known as human rights law approach to refugee definition, has commonly been adopted across various jurisdictions.

As mentioned, early reports indicate the existence of severe breaches of the IHRL by Russian forces. In Bucha, a small town close to Kyiv, it was revealed following the withdrawal of the Russian forces that dozens of civilians, whilst with their hands been tied behind them, were deliberately executed and their bodies left in the streets.<sup>56</sup> It was testified that many bodies showed signs of torture, mutilation, or burning.<sup>57</sup> Claiming to be "hunting Nazis", the Russian forces went door to door, raped women and girls, and took men away, which amounted enforced disappearance, as the Human Rights Watch reported.<sup>58</sup>

Other violations have occurred in other parts of Ukraine too. There are serious allegations that children have been forcibly transferred from Ukraine to Russia,<sup>59</sup> which is defined as genocide by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.<sup>60</sup> In addition, where Russians encountered a degree of resistance in cities such as Mariupol, they did not hesitate to deliberately target civilian areas and raze civilian infrastructure such as homes, schools, and hospitals to the ground.<sup>61</sup> As Storey argues, this actually

55 James C Hathaway, *The Law of Refugee Status*, Butterworths, 1991, p. 101.

56 Ukraine: Russian Forces' Trail of Death in Bucha, <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha> (17.08.2022), (Russian Forces' Trail of Death in Bucha).

57 Oleksandr Stashevskiy, Cara Anna, In Bucha, Ukraine, Burned, Piled Bodies among Latest Horrors <https://abnews.go.com/International/wireStory/bucha-ukraine-burned-piled-bodies-latest-horrors-83902341> (24.08.2022).

58 Russian Forces' Trail of Death in Bucha.

59 'Russia in Spotlight over Ukraine Atrocities as Human Rights Council Meets'; Exclusive: Ukraine Probes Deportation of Children to Russia as Possible Genocide, <https://www.reuters.com/world/europe/exclusive-ukraine-investigates-deportation-children-russia-possible-genocide-2022-06-03/> (16.06.2022).

60 The Convention on the Prevention and Punishment of the Crime of Genocide, (adopted 9 December 1948, entered into force 12 January 1951) 78 U.N.T.S. 277.

61 Storey, Are Those Fleeing Ukraine Refugees?.

appears to be the main strategy of the Russian forces.<sup>62</sup>

In view of the above, one would conclude that there are strong reasons to believe that the element of persecution is apparent with regard to Ukrainians' claims for refugee status under the framework of the human rights law approach. Nonetheless, the IHRL is by no means the only context that gives the meaning of persecution. Among others, IHL, particularly in situations of armed conflict, can inform us as to an interpretation of the concept.<sup>63</sup> Indeed, the UNHCR has affirmed the fact that "if someone is forced to flee armed conflict in their country because of human rights violations and breaches of humanitarian law, these factors will be part of what determines that person's refugee status".<sup>64</sup>

The Turkish courts do not describe persecution in relation to violations of a particular branch of international law. The Council of State provides that "undoubtedly, the concept of persecution may refer to objective situations that make one's life unbearable such as [a threat to] life, freedom, or being exposed to discrimination as well as the situations that could be regarded subjective for the person concerned."<sup>65</sup> This interpretation seems to be broader than the human rights law approach. The term "situations that makes one's life unbearable" may cover not only serious violations of IHRL but also other situations that could arise outside its context.

As Holzer puts it, violations of IHL norms and principles such as attacks against civilians, rape and other sexual violence, use of prohibited weapons, etc., can amount to persecution.<sup>66</sup> These examples are obviously not exhaustive. Commission of war crimes, crimes against humanity, and other international crimes may also amount to persecution. The International Criminal Court has already launched an investigation into the crimes committed in Ukraine.<sup>67</sup>

62 Storey, Are Those Fleeing Ukraine Refugees?.

63 Hugo Storey, "Armed Conflict in Asylum Law: The "War-Flaw"", *Refugee Survey Quarterly*, Volume 31, Issue 2, 2012, p. 1. (Armed Conflict in Asylum Law); Eric Fripp, "International Humanitarian Law and the Interpretation of "Persecution" in Article 1A (2) CSR51" *International Journal of Refugee Law*, Volume 26, Issue 3, 2014, p. 382.

64 UNHCR, Note on International Protection, A/AC.96/975, 2 July 2003, <https://www.refworld.org/docid/3f1feb6d4.html> (16.06.2022).

65 The Turkish Council of State 10. Chamber, File No. 2016/99 Decision No. 2019/59, 07.01.2019.

66 Vanessa Holzer, "Persecution and the Nexus to a Refugee Convention Ground in Non-International Armed Conflict: Insights from Customary International Humanitarian Law", Eds. David James Cantor, Jean-Francois Durieux, *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, Martinus Nijhoff, 2014.

67 Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Decided to Proceed with Opening an Investigation." <http://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening> (16.06.2022).

These do not mean to suggest that a perfect compliance with IHL in an armed conflict does not constitute persecution. Even activities that are not prohibited by IHL may also be considered persecution under international refugee law.<sup>68</sup>

On the other hand, Ukrainians' fear of being persecuted might not only be from the Russian forces. They might also be subjected to persecution by the government of their own country. Indeed, even before the war, human rights record of Ukraine was not bright.<sup>69</sup> There are many reports indicating serious violations of human rights, particularly in the Donbas region due to the armed conflict ongoing since 2014.<sup>70</sup> Ukraine formally derogated<sup>71</sup> from the European Convention on Human Rights<sup>72</sup> (ECHR) and the International Covenant on Civil and Political Rights.<sup>73</sup>

After the Russian invasion, the Ukrainian government took further steps to deal with the emergency situation in the country.<sup>74</sup> This includes shutting down political parties<sup>75</sup> and media organs which are deemed to be pro-Russian<sup>76</sup>, banning the exit of men aged between 18-60 from the country,<sup>77</sup> and indeed some others.<sup>78</sup> Some of these measures may possibly amount to persecution within the meaning of the international refugee law. For example, Ukrainian nationals of Russian origin who do not support the Ukrainian government in its fight against Russian attacks may face persecution as part of the measures taken. In

68 UNHCR, Guidelines on International Protection No. 12, p. 4.

69 Fundamental Freedoms Squeezed in Ukraine, Human Rights Council Hears, <https://news.un.org/en/story/2021/12/1107972> (28.08.2022).

70 OHCHR, Arbitrary Detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine, 2014-2021, <https://www.ohchr.org/en/documents/country-reports/arbitrary-detention-torture-and-ill-treatment-context-armed-conflict> (28.08.2022).

71 See the declaration by the Permanent Representation of Ukraine to the Council of Europe on 'Note Verbale' (10 June 2015) JJ7979C Tr./005-185 <https://rm.coe.int/09000016804896cf> (24.08.2022).

72 The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) the Council of Europe, ETS No. 005.

73 The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 99 U.N.T.S. 171.

74 President Signed a Decree on the Imposition of Martial Law in Ukraine, the Verkhovna Rada Approved It, <https://www.president.gov.ua/en/news/prezident-pidpisav-ukaz-pro-zaprovadzheniya-voyennogo-stanu-73109> (28.08.2022).

75 Pjotr Sauer, Ukraine Suspends 11 Political Parties with Links to Russia, <https://www.theguardian.com/world/2022/mar/20/ukraine-suspends-11-political-parties-with-links-to-russia> (16.06.2022)

76 Roman Olearchyk, Ukraine Shuts TV Channels It Accuses of Spreading "Russian Disinformation", <https://www.ft.com/content/176c0332-b927-465d-9eac-3b2d7eb9706a> (16.06.2022).

77 Gilbert, Ukraine Bans All Male Citizens Aged 18 to 60 from Leaving the Country.

78 Alesya Pavlynska, Martial Law in Ukraine [https://www.americanbar.org/groups/labor\\_law/publications/labor\\_employment\\_law\\_news/spring-2022/martial-law-in-ukraine/](https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/spring-2022/martial-law-in-ukraine/) (28.08.2022).

addition, there might also be people who criticise the government for its “poor” handling of the crisis. Such people may also face persecution as the governments in war times are generally far less tolerant to different voices. There are also reports that left wing activists are being subjected to torture and ill treatment, and treated as traitors in Ukraine.<sup>79</sup> Those people might be eligible for refugee status in third countries, including Turkey.

### 3. Nexus to Convention Grounds

To be eligible for refugee status, however, a well-founded fear of persecution is not in itself sufficient. It must be accompanied by at least one of the five specified grounds listed in the Convention’s definition. For people fleeing from persecution by the Ukrainian government, establishing the nexus could be easier. If they are of Russian origin, they can rely on nationality grounds. If the fear of persecution is on account of their disagreements with the government, the nexus is likely to be political opinion. Persecution by one’s own government is already the most traditional reason for seeking asylum. However, establishing the necessary nexus for Ukrainian people escaping from the Russian forces and indiscriminate violence of warfare would be a more involved task.

In my opinion, the most suitable grounds for refugee status for Ukrainians fleeing Russian attacks would be nationality or political opinion. Traditionally, nationality was interpreted as citizenship of a country. However, it has been often emphasized that nationality is not limited to a formal understanding of citizenship. The UNHCR Handbook on Procedures, for example, states that “the term “nationality” in this context is not to be understood merely as “citizenship”.” To justify a broader understanding of the term nationality, it is often questioned and found absurd as to why a state would persecute its own citizens on account of their possession of its own citizenship.<sup>80</sup> It follows that the concept covers ethnic origins and minorities in a country even if they are not granted citizenship. It is certainly true that the concept also refers to “a group of people with the same language, culture and history who form part of a political nation”.<sup>81</sup> However, a need for such a justification arises when it is assumed that it is only the factors in the country of origin that play a role in the escape of people. This assumption often leads to the roles and responsibilities of external factors, such as the activities of third states, to be ignored that cause people to

79 Ukraine is Brutally Repressing the Left, Criminalizing Socialist Parties, Imprisoning Activists <https://mronline.org/2022/03/26/ukraine-is-brutally-repressing-the-left-criminalizing-socialist-parties-imprisoning-activists/> (16.08.2022).

80 Hathaway, Foster, *The Law of Refugee Status*, p. 397.

81 Andreas Zimmermann, Jonas Dörschner, Felix Machts, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*, Oxford University Press, 2011, p. 388.

become refugees. Therefore, considering that the reasons for refugee flights are often centred around armed conflicts, not only internal but also international or internationalized armed conflicts, persecution by third states on the ground of citizenship is not too absurd. It may indeed be claimed that it is already happening in Ukraine.

Ukrainian citizens could argue that they are being persecuted on account of their Ukrainian nationality as Russians do not seem to recognize that Ukrainians are a different nation. In such a scenario, the matter is not whether the Ukrainian nation is objectively different to the Russians, but rather the perception or conviction of the Russians that denies the identity of the Ukrainian nation. Therefore, the belief of the persecutor plays a greater role in determining the refugee status of those being persecuted. Indeed, President Putin has several times stated that Ukrainians and Russians are “one people”<sup>82</sup>. This demonstrates that they deny the very existence of Ukrainians as a different nation. Thus, Ukrainians may well claim that they have a well-founded fear of persecution on account of their Ukrainian nationality. This could establish the necessary nexus to be eligible for refugee status.

One may argue that the nationality grounds meaning citizenship would be extremely inclusive as it opens the door for the entire nation of Ukraine.<sup>83</sup> That could well be true. Nevertheless, that a large number of people are persecuted as a group does not change the fact that individual members of the group are also persecuted. In the early days in some jurisdictions, it was held that asylum seekers fleeing armed conflicts were required to demonstrate a differential impact of the conflict on themselves “over and above” than the ordinary effects of the warfare.<sup>84</sup> This meant that if the violence affects the whole society equally, an individual was not able to qualify as a refugee unless they are singled out by the persecutors. This understanding, however, has been abandoned as it required an extra test which is found nowhere in the Convention.<sup>85</sup> As Mark Symes put it, “merely because all of those people in fact experience persecution, it cannot be said that the risk faced is in some way non-discriminatory; there is

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82 Katherine Arnold, “There Is No Ukraine”: Fact-Checking the Kremlin’s Version of Ukrainian History, <https://blogs.lse.ac.uk/lseih/2020/07/01/there-is-no-ukraine-fact-checking-the-kremlins-version-of-ukrainian-history/> (08.06.2022); ‘Putin Likes to Talk about Russians and Ukrainians as “One People.” Here’s the Deeper History’, <https://www.washingtonpost.com/politics/2022/02/10/putin-likes-talk-about-russians-ukrainians-one-people-heres-deeper-history/> (06.06.2022).

83 Kristie De Peña, Have Ukrainians Been Persecuted? <https://www.niskanecenter.org/have-ukrainians-been-persecuted/> (16.05.2022), (Have Ukrainians Been Persecuted?).

84 The United Kingdom House of Lords, *Secretary of State for the Home Department, Ex parte Adan*, UKHL 15, 2 April 1998.

85 Storey, *Armed Conflict in Asylum Law*, p. 9.



still discrimination based upon the Convention-protected characteristic which attracts the ill-treatment in the first place”<sup>86</sup> Such discrimination on Convention grounds can then be nationality for Ukrainians to gain refugee status in Turkey.

Indeed, in the case of Ukrainians in Turkey, it does not seem that there is any real concern that the entire Ukrainian nation would flee to Turkey. As mentioned, the overwhelming majority of them escaped to neighbouring European countries. According to UNHCR data, only 6.5 million out of 44.5 million, the total population of Ukraine, have sought refuge in other countries.<sup>87</sup> This means that approximately 15% of the total Ukrainian population migrated to other countries. Therefore, the immigration of the “entire nation” discourse, even though hypothetically possible, would likely be misleading in practice. Secondly, in cases of mass migration, states often find other ways to deal with refugee influxes. For example, in many jurisdictions, including Turkey, temporary protection is offered if the numbers of refugees are regarded as too high to be handled through the individual refugee status determination processes. Furthermore, Article 16 of the Temporary Protection Regulation of Turkey stipulates that international protection applications of people under temporary protection status are not processed for the purposes of ensuring the effective implementation of temporary protection measures.<sup>88</sup> Leaving aside discussions on the compatibility of this article with international law, it is just another indicator that the discourse of the entire nation getting refugee status is illusionary.

The second most relevant grounds in the Convention for Ukrainians to be eligible for refugee status would be political opinion. Relying on the Russian arguments again, Ukrainians could also argue that they are persecuted on account of their political opinion. Russians have claimed that people who are against Russian invasion are neo-Nazis. Thus, people who remain in Ukraine and defend their country against Russia are potential neo-Nazis in the eyes of Russian politicians and soldiers.<sup>89</sup> Again, it does not matter whether Ukrainians resisting the Russian invasion are neo-Nazis or otherwise; the vast majority, of course, have absolutely nothing to do with Nazis. The imputed political opinion by the Russian forces is sufficient to establish the link for political opinion grounds.

Finally, race as a ground in the Convention can also be relevant in the context of Ukraine. Admittedly, race and nationality are often intertwined concepts.

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86 Mark Symes, *Caselaw on the Refugee Convention: The United Kingdom's Interpretation in the Light of the International Authorities*, Refugee Legal Centre, 2000, p. 75.

87 UNHCR, Ukraine Emergency.

88 Temporary Protection Regulation, O.G. 22/10/2014 – 29153.

89 De Peña, Have Ukrainians Been Persecuted?.

Unlike the early understanding of race as biological features of human beings, it is contemporarily understood in a broader term to include colour, ethnicity, culture, and even religion as in the case of Jews.<sup>90</sup> Therefore, it is now recognized as more of a social construct.<sup>91</sup> Former President of the Russian Federation, Dimitry Medvedev, currently serving as Deputy Chairman of the Security Council of Russia has made several statements threatening the existence of Ukraine.<sup>92</sup> Amongst others, implying a genocidal intent, he stated, “who said that in two years Ukraine will exist at all on the world map?”<sup>93</sup> Indeed, such assertions have become the everyday business of Russian TV channels and newspapers.<sup>94</sup> Taken together, Ukrainians can argue that they have a well-founded fear of persecution on the basis of their race.

#### 4. Protection

There are two more elements in the Convention’s definition. A person should be “outside the country of his nationality” and “is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. As this paper analyses the probable claims of Ukrainians who are in Turkey, no discussion would arise with regard to the requirement of being outside the country of nationality; they are already outside Ukraine. The focus should then be on the other element: the protection of the country of origin.

The question is whether Ukrainians are still able to avail themselves of the protection of their country or, owing to a well-founded fear of persecution, are not willing to avail themselves of such. Traditionally, the source of persecution is either claimants’ own governments or non-state actors against the activities of which the government is either unwilling or unable to provide protection. In addition, a foreign state can also be the source of persecution through various activities, including invasion of a country. Failure of state protection in such cases is integral to the success of an international protection application.<sup>95</sup>

90 Hathaway, Foster, *The Law of Refugee Status*, p. 394-397.

91 Hathaway, Foster, *The Law of Refugee Status*, p. 394-397.

92 Ruchira Sharma, Former Russian President and Putin’s Defence Minister State Right to Use Nuclear Weapons in Ukraine War, <https://inews.co.uk/news/former-russian-president-putin-defence-minister-state-right-use-nuclear-weapons-ukraine-war-1541571> (24.08.2022).

93 John Haltiwanger, Russia’s Former President Says Ukraine Might Not “even Exist on the World Map” in 2 Years in Latest Genocidal Message, <https://www.businessinsider.com/russias-ex-president-ukraine-might-not-even-exist-on-the-world-map-in-2-years-2022-6> (18.06.2022).

94 Andrew Roth, Fears Genocidal Language in Russian Media May Prompt More War Crimes, <https://www.theguardian.com/world/2022/apr/07/russian-media-coverage-ukraine-genocidal-streak> (18.06.2022).

95 Hathaway, Foster, *The Law of Refugee Status*, p. 297.

Country of origin information is again crucial to determine such a failure. Unfortunately, the PMM does not publish country of origin information reports. Thus, I am not aware of whether a report on Ukraine situation has yet been prepared for the convenience of decision-makers. However, from open sources, it appears that some territories in eastern and southern parts of Ukraine are under Russian control as of August 2022.<sup>96</sup> Russian forces aim to advance towards the west day by day.<sup>97</sup> In addition, heavy clashes are still experienced in those parts, particularly in and around the regions of Kharkiv, Luhansk, Donetsk, Zaporizhzhia, and Kherson.<sup>98</sup> As the Ukrainian government has lost control over some parts of these regions, it is unable to provide protection to Ukrainian citizens from there.

On the other hand, significant territories in the Western parts of Ukraine have yet to be invaded by Russian forces; moreover, some areas have never been attacked. Since such areas are safer, millions of people from the east migrated to the west to find a shelter. According to UNHCR data, some seven million people have been internally displaced. In particular, the Lviv region, near the Polish border, has hosted a large number of IDPs.<sup>99</sup> In addition, there have been returns of Ukrainian people to their country, particularly after Russian forces withdrew from the outskirts of Kyiv. Since 28 February 2022, as the UNHCR provides, there have been 4,767,914 border crossings to Ukraine. Considering these, the question arises as to whether international protection applications by Ukrainians should be denied on the basis that Ukraine still provides effective protection to its citizens in areas other than those controlled by Russians in the east.

This is an important question as asylum claims are generally rejected in many jurisdictions if there is internal flight or protection is a viable alternative. The implementation in Turkey is no different. In line with Article 8 of the EU Qualification Directive on internal protection alternative<sup>100</sup>, Article 78 (4) of the LFIP states that “when the applicant can be provided with protection against the threat of persecution or serious harm in a certain region of the country of

96 Ukraine War in Maps: Tracking the Russian Invasion after Six Months <https://www.bbc.com/news/world-europe-60506682> (28.08.2022), (Ukraine War in Maps).

97 Ukraine War in Maps.

98 Ukraine War in Maps.

99 Loveday Morris, As Russia’s War Expands, a Ukrainian Tourist Hub Becomes a Refuge for the Displaced, <https://www.washingtonpost.com/world/2022/03/01/ukraine-russia-refugees-displaced/> (27.08.2022).

100 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted 2011 [32011L0095]. (Directive 2011/95/EU)

citizenship or former residence, and if the applicant is in a condition to safely travel to and settle in that region of the country, it may be decided that the applicant does not need international protection.” The law then requires the country of origin is still able to provide protection against the threat of persecution and serious harm in the areas to where asylum seekers are proposed to be relocated. Second, such areas must be safely accessible to asylum seekers, there should not be a threat of persecution or serious harm *en route* to those places. Third, in addition to safe travel, the place must be suitable for settlement. The EU Qualification Directive also requires that an applicant can “reasonably be expected to settle there”.<sup>101</sup>

The UNHCR provides broader guidance for the assessment of whether there is a genuine internal protection alternative or otherwise.<sup>102</sup> According to this, there are two main tests that needs to be considered: These are *the relevance* and *the reasonableness* tests.<sup>103</sup>

*The relevance* analysis is made based on the following criteria:

- “Is the area of relocation practically, safely, and legally accessible to the individual? If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.
- Is the agent of persecution the State? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.
- Is the agent of persecution a non-State agent? Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.
- Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new form of persecution or other serious harm in the area of relocation.”<sup>104</sup>

101 (Directive 2011/95/EU).

102 UNHCR, Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees HCR/GIP/03/04, <https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html> (18.08.2022), (Guidelines on International Protection No. 4).

103 UNHCR, Guidelines on International Protection No. 4.

104 UNHCR, Guidelines on International Protection No. 4., p. 3.

On the other hand, *the reasonableness* analysis takes the following question into consideration:

- “Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.”<sup>105</sup>

In view of the above, how should the case of Ukrainians in Turkey be evaluated? First of all, it must be stated that the evaluation of internal protection alternative is forward-looking.<sup>106</sup> The risk assessment should be made in relation to whether the asylum seeker can prospectively find protection in the proposed part of his country. This means that people may not be sent back to allegedly safe areas as they could have sought protection somewhere in the country of origin before arriving to the host country. This is not an admissibility criterion. Therefore, the claims of asylum seekers must first be heard, then an assessment be made pursuant to the definition of the 1951 Refugee Convention. Indeed, Article 78 (5) of the LFIP provides that even if it appears in the beginning that an internal protection alternative exists, “[it] does not prevent the application from undergoing a full assessment.” This is already an established practice of the Turkish Council of State. It first examines the claims of asylum seekers, then establishes whether there is a well-founded fear of persecution on account of the five specified grounds and turns to the evaluation of an internal protection alternative.<sup>107</sup>

Second, following the UNHCR guidance step by step, it can well be argued that Ukrainians can practically, legally, and safely access the Western parts of their country where there is no Russian presence. There is no threat in accessing, for instance, the Lviv area through Poland. There is no legal barrier in relation to their readmission to Ukraine.

Third, the source of persecution matters. Notably, the UNHCR guidelines does not refer to third states as the source of persecution or serious harm. Yet, as mentioned, the Russian attacks and violations of the IHL and IHRL can amount to persecution or serious harm. Indeed, Russian attacks in Ukraine are country-wide, even though they are sporadic in some places. It must be considered that Russia even bombed Lviv, the western-most region of Ukraine that was regarded as a safe haven by many Ukrainians. Civilian casualties have nev-

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105 UNHCR, Guidelines on International Protection No. 4., p. 3.

106 UNHCR, Guidelines on International Protection No. 4., p. 3.

107 The Turkish Council of State 10. Chamber, File No. 2016/447 Decision No. 2018/970, 01.02.2018; File No. 2016/654 Decision No. 2018/2122, 20.06.2018.

ertheless been reported in this region too.<sup>108</sup> Indeed, it cannot really be surprising that Russia attacks anywhere in Ukraine as their officials affirm that Russia is reluctant to accept Ukraine as an independent state and nation. President Putin asserted that they are “just starting” in Ukraine.<sup>109</sup> Following this, the Russian Foreign Minister stated that their goal in Ukraine is not restricted to Donbas region, but beyond it.<sup>110</sup>

These statements, coming from a country that is the world’s second-largest military superpower, in possession of nuclear weapons, ruled by an autocrat, and in full cooperation with Belarus through which Russians may conveniently operate also in northwest Ukraine<sup>111</sup> may unsurprisingly create a threat of persecution or serious harm to all Ukrainians, regardless of their location. Fears may also arise in western Ukraine as it is the main gateway for weapons supplied by the European countries and NATO, which will almost certainly make these areas more vulnerable to Russian attack.<sup>112</sup> No less likely, Russia may hit the places near the European borders where the most IDPs are located purely to create more refugee flights towards European countries in order to increase their burden, as it has already done in northwest Syria in border towns with Turkey, only to create more movements towards Turkey and Europe.

While suggesting the above matters, it must be borne in mind that Russia is actually capable of hitting every corner of Ukraine. It has got long-range missiles which can carry out intended attacks which may even be launched from its own territories. The analyses might also require examining the air defence capabilities of Ukraine. However, as it stands, Russia has demonstrated its ability to hit remote parts of Ukraine. Therefore, Russia does not need to have boots on the ground to create the threat of persecution or serious harm to the Ukrainian people. Indeed, as suggested by the UNHCR guidance, if a persecutor is likely to

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108Toby Luckhurst, Mariana Maglych, Ukraine War: First Civilian Deaths in Lviv Shatter Sense of Safety <https://www.bbc.com/news/world-europe-61141817> (28.08.2022).

109Mark Trevelyan, Putin Says Russia Just Starting in Ukraine, Peace Talks Will Get Harder, <https://www.reuters.com/world/europe/russias-putin-if-west-wants-beat-us-battlefield-let-them-try-2022-07-07/> (19.08.2022).

110 Mark Trevelyan, Russia Declares Expanded War Goals beyond Ukraine’s Donbas, <https://www.reuters.com/world/europe/lavrov-says-russias-objectives-ukraine-now-go-beyond-donbas-2022-07-20/> (19.08.2022).

111 Anastasiya Bayok, Stefan Wolff, Ukraine War: Fears That Belarus Might Invade on Russia’s Side Are Growing, <http://theconversation.com/ukraine-war-fears-that-belarus-might-invade-on-russias-side-are-growing-185416> (28.08.2022).

112 Riya Baibhawi, Russia Claims to Destroy NATO-Supplied Weapons in Ukraine’s Lviv Region as War Escalates, <https://www.republicworld.com/world-news/russia-ukraine-crisis/russia-claims-to-destroy-nato-supplied-weapons-in-ukraines-lviv-region-as-war-escalates-articleshow.html> (28.08.2022).

operate in the entire country, it is presumed that there is no internal protection alternative. Hathaway and Foster affirm this in stating that “it is not necessary that the persecutor has already established a presence throughout the country, as long as it has the capacity to continue to harm the applicant in the alternative place.”<sup>113</sup>

The last point in *the relevance* analysis is the requirement that there should be no new risks of being persecuted or harmed. This is also related to the discussions above. Considering that the war continues and there are currently no signs of the formation of a durable peace between the conflicting parties, and also considering the threatening statements by Russian officials, it is too difficult to conclude that a new risk of persecution or serious harm will not arise for an applicant if returned to Ukrainian territories.

For such reasons, I am of the opinion that there are insufficient grounds to deny asylum claims at this stage of the armed conflict on the basis of the existence of an internal protection alternative. Indeed, the UNHCR affirms this position: “in view of the volatility of the situation in the entire territory of Ukraine, UNHCR does not consider it appropriate to deny international protection to Ukrainians and former habitual residents of Ukraine on the basis of an internal flight or relocation alternative.”<sup>114</sup> Similarly, the UK Home Office maintained the same outcome in a report recently published on the Ukraine country situation. It provided that “due to the levels of indiscriminate violence in certain regions and the unpredictable and fast-moving nature of the conflict, internal relocation within Ukraine is not considered reasonable at the time of writing.”<sup>115</sup>

As to *the reasonableness* analyses, the UNHCR provides that internal protection should be able to “lead a relatively normal life without facing undue hardship”.<sup>116</sup> The LFIP Article 78 (4) seems to address this matter in very loose terms, despite the EU Qualification Directives’ reference to *reasonableness* in Article 8 as “reasonably be expected to settle there”. Article 78 (4), however, suffice to state that the applicant can “... settle in that region”. Unlike the UNHCR test and EU Qualification Directive, it does not seem to be particularly interested in the *socio-economic* situations of applicants when returned to their country of origin based on the existence of an internal protection alternative.

113 Hathaway, Foster, *The Law of Refugee Status*, p. 345.

114 UNHCR Position on Returns to Ukraine, <https://www.refworld.org/docid/621de9894.html> (26.09.2022).

115 Country Policy and Information Note: Security Situation, Ukraine, June 2022, <https://www.gov.uk/government/publications/ukraine-country-policy-and-information-notes/country-policy-and-information-note-security-situation-ukraine-june-2022-accessible> (26.09.2022).

116 UNHCR, *Guidelines on International Protection No. 4.*, p. 3.

Nevertheless, it can still be argued that “settling” is not a mere presence in a safe place, but to have a normal life with its all aspects which does not exclude *socio-economic* perspectives. Hathaway and Foster offer an alternative framework for the *reasonableness* test. According to them, what must be considered instead is the provision of the rights listed in the 1951 Refugee Convention.<sup>117</sup>

I have not come across a Turkish court decision assessing *the reasonable-ness* test in the context of internal protection alternative. Nevertheless, there are cases, particularly of Afghans and Iraqis in Turkey, where the internal protection alternative was partly relied on in the rejection of international protection applications. Storey states that “refugee assessment [of Ukrainians] will be somewhat akin to that undertaken in the past in relation to Iraq and Afghanistan where at different points in time UNHCR among others, only considered certain provinces or regions to be at an exceptionally high level of violence so as to give rise to a general risk.”<sup>118</sup>

In many decisions, the Turkish Council of State, with regards to the situation in Afghanistan before Taliban takeover in 2021, held that “in the country of origin report submitted by the respondent administration to the file, in the report prepared by the UK Home Office, it is stated that those sent from the UK to Kabul are in better condition than IDPs, Kabul is one of the places where there is the least conflict and where the best contingents of international forces were located and it is a viable option for the person concerned to relocate within his country and settle in safe areas, therefore, it is established that there is an internal flight and relocation alternative within the applicant’s country.”<sup>119</sup>

In another ruling where an applicant placed that he feared from persecution by Taliban, the Ankara Regional Administrative Court upheld that 68% of armed clashes occur mostly in the south, southeast, and east of Afghanistan; when the number of civilians killed or injured in 2014 was taken into account, 0.03% of the total population was directly and physically affected by the violence; the city of Kabul is, in general, appropriate for internal flight. Therefore, it rejected the claims of the applicant. Also in Iraq, the capital Baghdad was considered a place suitable for internal flight.<sup>120</sup>

117 Hathaway, Foster, *The Law of Refugee Status*, p. 355.

118 Storey, *Are Those Fleeing Ukraine Refugees?*.

119 The Turkish Council of State 10. Chamber, File No. 2019/245 Decision No. 2020/5866, 07.12.2020; The Turkish Council of State 10. Chamber, File No. 2016/1 Decision No. 2018/717, 19.02.2018; The Turkish Council of State 10. Chamber, File No. 2016/2327 Decision No. 2016/3692 11.10.2016.

120 Ankara Regional Administrative Court, 10. Administrative Law Chamber, File No. 2018/907 Decision No. 2018/1047, 03.10.2018].



If the courts follow a similar reasoning in the Ukrainian case too, it might be expected that international protection applications of Ukrainians may be rejected on the basis of the existence of internal protection alternative. Nevertheless, it must be noted that the violence in Afghanistan and Iraq was quite protracted when these rulings were established. Therefore, there were some regions which were not directly affected by violence for many years. As Storey points out, there were some UNHCR reports accepting the availability of an internal protection alternative in some regions.<sup>121</sup> On the other hand, the conflict in Ukraine is relatively new, therefore, it is still too early to reach a similar conclusion. If the Turkish courts follow UNHCR guidance as well as UK Home Office reports, as they have done before along with the above considerations, they should not deny refugee status to Ukrainians relying on the internal flight alternative.

Finally, it must be recalled that the language of the LFIP Article 78 (4) is optional: "... it *may* be decided that the applicant does need international protection." This leaves a significant margin to the administration in deciding whether to deny an application on the basis of the existence of an internal flight alternative. The PMM is the body that carries out international protection assessments in Turkey. Considering the favourable treatment of Ukrainians in Turkey as per government policy, the PMM, as a government body, may not trigger Article 78 (4) at all.

### 5. Safe Third Country/First Country of Asylum

States often find creative ways to pursue restrictive immigration policies. Although nowhere in the 1951 Refugee Convention is it stated that refugees should seek asylum in the first country they found safety<sup>122</sup>, returns to third countries for reasons that protection could have been sought elsewhere has become an established policy of European countries and, indeed, that of others. Such implementations have been widely criticised in the literature as it creates various problems for refugees, host countries, and transit countries alike. I do not intend to address those problems<sup>123</sup> and the legality of the concepts of first country of asylum and safe third country under international law<sup>124</sup> for reasons

121 Storey, Are Those Fleeing Ukraine Refugees?.

122 Guy S Goodwin-Gill, "Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention and Protection", Eds. Erika Feller, Volker Türk, Frances Nicholson, *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, 2003, p. 194.

123 See for further information on Stephen H Legomsky, "Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection" *International Journal of Refugee Law*, Volume 20, Issue 4, 2003, p. 567. (Secondary Refugee Movements)

124 See for a detailed analysis of the lawfulness of the concept of 'safe third country' under international law: Violeta Moreno-Lax, "The Legality of the 'Safe Third Country' Notion Contested: Insights from the Law of Treaties", Eds. G.S. Goodwin-Gill, P. Weckel, *Migration & Refugee Pro-*

of space. Nevertheless, such concepts are relevant in this analysis as Turkey also introduced them as admissibility criteria when the LFIP came into force.<sup>125</sup>

A quick look at the routes used by Ukrainians arriving in Turkey also requires an engagement with the applicability of these concepts. Turkey and Ukraine do not share a land border, though the countries are ‘neighbours’ via the Black Sea. Three modes of transportation, namely, land, sea and air, are normally available for the movement of people between these countries. However, even before the Russian invasion begun on the 24<sup>th</sup> of February 2022, many airline companies had cancelled their flights to and from Ukraine.<sup>126</sup> After the invasion, Ukrainian airspace was entirely closed to civilian flights.<sup>127</sup> Therefore, direct arrivals to Turkey from Ukraine became impossible through airways. Similarly, as Russia has attacked Ukrainian ports on the Black Sea and also imposed a naval blockade for ships departing from Ukraine<sup>128</sup>, sealines were also not available for people to flee. Therefore, they were only left with the land option, mostly through the western borders of Ukraine with European countries.

Most Ukrainians have taken the easiest route by bus: Ukraine-Romania-

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*tection in the 21st Century: Legal Aspects*, The Hague Academy of International Law Centre for Research, Martinus Nijhoff, 2015, p. 665. She sensibly argues that only in rare circumstances the concept of ‘safe third country’ might be considered lawful: “In a system based on equal sovereignty and free consent, protection obligations on third countries cannot be created without their express accord, either unilaterally or through bilateral or multilateral inter se agreements. The amendment of the 1951 Convention by all or part of its Contracting States is also subject to substantive and procedural conditions that pre-empt the distortion of its purpose and essence. The end result is that responsibility for refugee protection may be shared (but not shifted) only where a genuine cooperative basis conducive to the realization of the 1951 Convention objectives is really present.” either unilaterally or through bilateral or multilateral inter se agreements. The amendment of the 1951 Convention by all or part of its Contracting States is also subject to substantive and procedural conditions that pre-empt the distortion of its purpose and essence. The end result is that responsibility for refugee protection may be shared (but not shifted

125 Turkey has long criticised the use of safe third country concept by developed countries in a way that erodes the institution of asylum and burdens transit and developing countries. Yet it also introduced the concept with the adoption of the LFIP. For a detailed analyses of Turkey’s international policy on safe third country see: Gamze Ovacık, “Compatibility of the Safe Third Country Concept with International Refugee Law and Its Application to Turkey”, *Perceptions: Journal of International Affairs*, Volume 25, Issue 1, 2020, p. 61.

126 Rob Gill, More Airlines Cancel Flights to Ukraine as Tensions Rise, <https://www.business-travelnewseurope.com/Air-Travel/More-airlines-cancel-flights-to-Ukraine-as-tensions-rise> (11.08.2022).

127 Beth Timmins, Ukraine Airspace Closed to Civilian Flights, <https://www.bbc.com/news/business-60505415> (11.08.2022).

128 Rory Tingle, Putin Cuts off Vital Shipping Route to Ukraine While His Forces Move on Kiev: Russian Vessels Blockade the Azov Sea While Navy Conducts “special Military Operation” in the Area, <https://www.dailymail.co.uk/news/article-10546931/Putin-cuts-vital-shipping-route-Ukraine-forces-Kiev.html> (11.08.2022).

Bulgaria-Turkey.<sup>129</sup> Some might have also passed Moldova or other European countries to reach Turkey, while a very limited number might have arrived through the route of Russia-Georgia-Turkey. Therefore, they have passed through a few countries before reaching Turkey. In this case, one may wonder how Turkey applies the concepts of safe third country and the first country of asylum to Ukrainians. Would they be returned to those countries under these frameworks?

It must initially be stated that such a return would not happen under the current political circumstances. As mentioned, the Turkish government pursued a welcoming policy towards Ukrainians. Therefore, even if their international protection claims are rejected, they would still be allowed to remain in Turkey under other schemes, as I shall elaborate upon in the following sections. Yet, this is an issue that would nevertheless arise in the refugee status determination processes.

The LFIP Article 74 (1) states that the applications of those coming from safe third countries are considered inadmissible: “In cases where it is established that applicant has arrived from a safe third country in which he/she has lodged an [international protection] application or in which it would have been possible to lodge an international protection claim that could have resulted in the granting of appropriate protection in compliance with the Convention, the application shall be considered inadmissible and the actions for their removal to the safe third country shall be initiated.” Turkey does not list countries that are deemed safe. However, the LFIP Article 74 (2) articulates that a country would be considered safe if “a) the lives or freedoms of persons are not under threat on account of their race, religion, nationality, membership of a particular social group or, political opinion; b) implement the principle of non-refoulement with regard to countries where persons may be subjected to torture, inhuman or degrading punishment or treatment; c) provide the opportunity to apply for refugee status, and when the person is granted refugee status, the possibility to provide appropriate protection in compliance with the Convention; c) ensure that there is no risk of being subject to serious harm.”

As most Ukrainians have used the Romania-Bulgaria route to reach Turkey, the question arises as to whether these countries could be considered “safe third countries”. Considering that these countries are parties to the 1951 Refugee

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129 Médecins du Monde-Turkey, Ukrainian Refugees in Turkey: A Brief Look at the Humanitarian Needs and Responses, <https://reliefweb.int/report/turkey/ukrainian-refugees-turkey-brief-look-humanitarian-needs-and-responses> (11.08.2022).

Convention<sup>130</sup>, the European Convention on Human Rights,<sup>131</sup> and other human rights treaties, are members of the European Union, and also have welcoming policies towards Ukrainians, and provide them with temporary protection which grants the right to work, accommodation, and social assistance, education, and medical care, I do not think that there would be any real controversy in relation to these countries being considered to meet the criteria for safe third countries for Ukrainians by the Turkish courts.<sup>132</sup> Obviously, an individual assessment is still required in each case to determine whether these countries are safe or otherwise. A more important and relevant question with regard to Ukrainians' circumstances, however, is related to their transit passage. The fact that Ukrainians aiming to reach Turkey as their final destination had to transit through Romania and Bulgaria raises the question of whether a mere transit is sufficient for their *refoulement* to safe third countries or otherwise.

In some jurisdictions, mere contact with the authorities of a safe third country is sufficient to regard them as asylum seekers under the jurisdiction of that country, and in which asylum seekers could have requested protection.<sup>133</sup> The operation of the Dublin System of the European Union, for example, is based on this idea. Under this, the country where asylum seekers entered first is, in principle, responsible for processing refugee status determination.<sup>134</sup> It does not matter whether asylum seekers happened to be in the territories of the first EU country for a few hours or transited through that country to their final destination. The responsible state would be the first country of entry, save some limited exceptions.<sup>135</sup> In Turkey, however, sending people to safe third countries only because they transited through territories of those states was clearly ruled out. First, Article 74 (3) of the LFIP provides that “the assessment of whether or not a country is a safe third country for the applicant shall be made on case-by-case

130 UNHCR, States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, <https://www.unhcr.org/protect/PROTECTION/3b73bod63.pdf> (11.08.2022).

131 Chart of Signatures and Ratifications of Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), <https://www.coe.int/en/web/conventions/full-list> (11.08.2022).

132 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

133 Section 12 The Safe Third Country Concept, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4bab55e22> (29.08.2022)

134 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) 2013 (OJ L). (Regulation (EU) No 604/2013)

135 Regulation (EU) No 604/2013.

basis for each applicant, including the assessment of connections between the person and the country according to which it would be reasonable to return the applicant to the third country concerned". Second, further provisions can be found in the Regulation on the Implementation of the Law on Foreigners and International Protection (RFIP)<sup>136</sup> Article 77 (2) with regard to the reasonable connection test. For there is a reasonable connection between a country and applicant, the RFIP article 77 (2) (ç) that requires that "the applicant has previously been in the county concerned for long term stay purposes as opposed to merely for the purpose of transit."

In light of the above, it is clear that Ukrainians may not be *refouled* to the countries that they transited through on their way to Turkey under the concept of safe third country. This outcome should also be adopted under the concept of the country of first asylum. Article 73 of the LFIP states that "in cases where it is established that applicant has arrived from a country in which they have previously been recognised as a refugee and can currently avail themselves of that protection or, has arrived from a country where they can currently enjoy sufficient and effective protection<sup>137</sup> including protection against refoulement, their applications shall be considered inadmissible and the actions for the applicant's removal to the first country of asylum shall be initiated."<sup>138</sup>

136 The Regulation on the Implementation of the Law on Foreigners and International Protection, O.G. 17.03.2016 – 29656.

137 What is meant by "sufficient and effective protection" is elaborated in the article 76 of the RFIP: If one of the following conditions exists, an applicant is considered to have currently been enjoying from a "sufficient and effective protection": "(a) There is no risk of well-founded fear of persecution or serious harm for the applicant in the third country concerned; (b) There is no risk of onward deportation for the applicant from the third country concerned to another country where he or she will be unable to avail themselves of sufficient and effective protection; (c) The third country concerned is a state party to the 1951 Refugee Convention and 1967 Protocol and undertakes practices in compliance with the provisions of the 1951 Convention; (ç) The sufficient and effective protection provided by the third country concerned to the applicant shall persist until a durable solution can be found for the applicant."

138 In this article, I had to depart from the unofficial translation of the LFIP published by PMM and UNHCR since it is not only weak but also really misleading with regards to the scope of the concept of first country of asylum. The second part of the sentence is translated in the document as follows: "or, has arrived from a country where the[re is a] possibility to enjoy sufficient and effective protection including protection against refoulement" which is rather problematic. First, it skips, for no reason, the word "*hâlen*" meaning "currently" or "still" that is used in the original Turkish text before "enjoy". Second, the use of the word "possibility" may create an incorrect understanding that sending people back to the country of first asylum only because there was a possibility for them to enjoy sufficient and effective protection even if they merely transited through the country concerned is legal. Admittedly, this arises from the law's confusing use of the word "*faydalanabileceği*" in the original text, meaning "can enjoy". While a very strict literal interpretation of this word seems to allow for the meaning "possibility to enjoy", it must be rejected as the purpose of the law does not allow for such an interpretation. When the LFIP 73 is read in conjunction with the LFIP article 74 and the RFIP articles 75 and 76, it will be seen that the legislator intends to mean that asylum

The concept of first country of asylum targets persons who *have* already been recognized as refugees or those who *were* granted another form of protection that is sufficient and effective. In addition, the applicant should *currently* be benefitting from the protection provided by the host country. A mere presence of asylum seekers in such a country for transit purposes is not sufficient to consider that country as a first country of asylum. Indeed, first country of asylum concept requires a stronger connection between an asylum seeker and host state in comparison to the safe third country concept. In the former, rather than a mere international protection application or the opportunity to apply for such, a *recognition* of the eligibility of people for refugee status or another form of protection which is sufficient and effective by the host country is necessary.<sup>139</sup> As Legomsky puts it, “the longer, the more meaningful, the more formal, and the more secure the person’s stay in the third country, the more likely it is that the country will be described as a ‘first country of asylum’ rather than a ‘safe third country’.”<sup>140</sup> A transit country cannot be considered as such.”

In summary, it can be reasoned that if a transit pass is not considered a reasonable and sufficient connection to return people to a safe third country, it may not, *a fortiori*, be a reasonable ground to return people under the category of first country of asylum. Therefore, Ukrainians may not be *refouled* to Romania, Bulgaria, or other countries merely because they transited through these countries before arriving in Turkey. This remains the case regardless of whether they had the opportunity to seek asylum in these countries.

This marks the end of the examination for the eligibility of Ukrainians for refugee status.<sup>141</sup> Although gaining refugee status is actually possible for

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seekers should have either been granted refugee status or another form of protection that is effective and sufficient which the applicant *currently* enjoys. First, the LFIP article 74 explicitly states that “applicant has arrived from a safe third country in which he/she has lodged an [international protection] application or in which it would have been possible to lodge an international protection claim that could have resulted in the granting of appropriate protection in compliance with the Convention”. If this was intended for the country of first asylum too, the legislator could explicitly state it in the article 73 as well. Further, if there was an intent to cover the possibility of filing an application in the first country of asylum, the difference between Articles 73 and 74 would make no sense. Second, in the RFIP 75 and 76, the legislator does not use the word “ *faydalanabileceği*”. Instead, it uses present and past tense for the word “enjoy”. In the RFIP article 75, it is stated “ *korumadan halen yararlanıyor olması*” meaning “[an applicant] is currently enjoying protection”; while in the RFIP article 76, it is stated “ *korumadan halen faydalandığı*” meaning “[an applicant] has currently been enjoying protection”. Therefore, as I offer above, a correct translation should be “can currently enjoy”. Nevertheless, it would have been more appropriate had the legislator only used “enjoys” for a greater clarity.

139 I am grateful to Asst Prof Gamze Ovacık and Atty Enes Kafadar for their useful clarifications on this matter.

140 Legomsky, *Secondary Refugee Movements*, p. 571.

141 If there are reasons to consider the exclusion of a particular applicant from refugee status

Ukrainians in Turkey, individual refugee status determination processes, as everywhere in the world, is a lengthy journey surrendered by many obstacles. Compared to other alternatives, as shall be demonstrated in the following sections, it is probably the most tiresome procedure to go through to legally stay in Turkey. For this reason, one may wonder how many Ukrainians will attempt to apply for and then successfully gain refugee status in Turkey. I will now turn to another form of international protection status, subsidiary protection, which can also be as lengthy and tiresome as refugee status. Before beginning, however, it must be stated that the considerations on the internal light alternative, safe third country and first country of asylum equally apply to subsidiary protection under the framework of the LFIP.

### **B. Subsidiary Protection**

This form of protection was first designed in European Union Law for people who fall outside the scope of the definition of the 1951 Refugee Convention but cannot be sent back to their countries as they would face serious human rights violations. In order to fulfil the obligations arising from several international human rights treaties, particularly with regard to the ECHR, subsidiary protection was created to complement the 1951 Refugee Convention.<sup>142</sup> Decisions of the European Court of Human Rights (ECtHR) expanding the scope of the principle of *non-refoulement* played a significant role in the creation of this category of protection.<sup>143</sup> Turkey also adopted this status in order to improve its human rights record by granting protection to those whose *refoulement* would otherwise be considered a breach of its IHRL obligations and complete necessary amendments in its law in the EU accession process.<sup>144</sup>

Subsidiary protection is defined in Article 63 of the LFIP as follows: “A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would:

- a) be sentenced to death or face the execution of the death penalty;
- b) face torture or inhuman or degrading treatment or punishment;

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pursuant to article 1 (F) of the 1951 Convention and article 64 of the LFIP, an evaluation will also be made with regards to this issue. Yet, for reasons of space, I have decided not to cover this matter in this analysis.

142 Jane McAdam, *Complementary Protection in International Refugee Law*, Oxford University Press, 2007, p. 136, (Complementary Protection in International Refugee Law).

143 McAdam, *Complementary Protection in International Refugee Law*, p. 137.

144 Süreyya Can, *Avrupa Birliği Hukuku ve Türk Hukukunda İkincil Koruma*, Unpublished Master Thesis, Dicle University Institute of Social Sciences Department of Private Law, 2021, p. 224.

c) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict;

and therefore is unable, or for the reason of such threat, is unwilling to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.”

In this section, I will largely focus on paragraph (c) of the Article since it is more relevant to Ukrainians as most of them fled from the indiscriminate effects of the armed conflict. Nonetheless, the implementation of paragraphs (a) and (b) can also arise depending on the circumstances of the Ukrainians in question. At this point, it must be noted that Russia was expelled from the Council of Europe<sup>145</sup> and therefore it will cease to be a party to the ECHR.<sup>146</sup> This means that the death penalty may be brought back to places that Russia has effective control over. Indeed, this is not a mere possibility. Some foreigners captured fighting for Ukraine were sentenced to death by the authorities in the Russian-controlled “Donetsk People’s Republic”.<sup>147</sup> Therefore, this real risk should duly be considered if an applicant raises the fact that they could face such a penalty if returned to Ukraine. Similarly, paragraph (b) can also be a real concern as there have been various human rights violations by both Ukraine and Russia. These paragraphs are the most direct effects of the rulings of the ECtHR in relation to the nexus between asylum and the right to life (ECHR Article 2) and the right not to be subjected to torture and inhuman or degrading treatment (ECHR Article 3).

Article 63 (c), on the other hand, was incorporated from the EU Qualification Directive 2011 Article 15 (c), though with a few differences.<sup>148</sup> For an applicant to be granted subsidiary protection in Turkey, multiple elements, namely armed conflict, indiscriminate violence, and serious individual threat should be

145 The Council of Europe Ministers’ Deputies, Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a5da51](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51) (28.08.2022).

146 Russia Ceases to Be a Party to the European Convention on Human Rights on 16 September 2022, [https://www.coe.int/en/web/portal/full-news/-/asset\\_publisher/y5xQt7QdunzT/content/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022](https://www.coe.int/en/web/portal/full-news/-/asset_publisher/y5xQt7QdunzT/content/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022) (28.08.2022).

147 Two Britons, One Moroccan Sentenced to Death by Court of Russian Proxy in Ukraine, <https://www.reuters.com/world/europe/separatist-donbas-region-issues-death-penalty-captured-british-moroccan-fighters-2022-06-09/> (20.08.2022).

148 For differences see: Meltem İneli-Ciğer, “Silahlı Çatışma Durumlarında Ayrılmayı Gözetmeyen Şiddet Hareketlerinden Kaçan Kişilerin Avrupa Birliği Hukuku ve Türk Hukukunda İkincil Korunması”, *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi*, Volume 20, Issue 1, 2018, p. 199, (Silahlı Çatışma Durumlarında İkincil Koruma). The major difference is that the EU law requires an applicant to be a civilian whereas the Turkish Law do not.



established cumulatively, although the last two of them seems contradictory. Each element is separately analysed in the following.

### 1. Armed Conflict

The first element is the existence of armed conflict. People should be fleeing from an international or non-international armed conflict. Sometimes the meaning of these terms, particularly that of non-international armed conflict, might be a matter of controversy.<sup>149</sup> In the Ukrainian case, however, this is probably the least controversial element. Apart from Russia maintaining that it is carrying out a “special military operation”<sup>150</sup>, there is a worldwide consensus on the existence of an international armed conflict between Ukraine and Russian Federation. International law is rather concerned with an objective analysis of what is happening on the ground, regardless of the claims of the parties.<sup>151</sup> In addition, Turkey also recognised that there is an armed conflict in Ukraine when it announced that it closed its straits to warships<sup>152</sup> pursuant to the relevant provisions of the Montreux Convention applicable in time of war.<sup>153</sup> Therefore, this element will exist in Ukrainians’ international protection applications.

### 2. Indiscriminate Violence

The mere existence of an armed conflict in a country of origin or a region of such is not sufficient in itself for a person to be granted subsidiary protection. The violence caused by the conflict, for instance, should be indiscriminate in nature. Nowhere in the LFIP or the RFIP, however, is indiscriminate violence defined. Similarly, the EU Qualification Directive does not provide a definition of such. In some European jurisdictions, the concept was interpreted in the context of the IHL in reference to Article 51 (4) of the 1977 Additional Protocol I to the Geneva Conventions,<sup>154</sup> which defines indiscriminate attacks as: “(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military

149 See for the discussions in the Court of Justice of the European Union, *Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides*, C-285/12, 30.01.2014.

150 Ukraine: Putin Declares Special Military Operation, <https://www.bbc.com/news/av/world-60505319> (26.08.2022).

151 Emily Crawford, “Armed Conflict, International”, *Max Planck Encyclopedias of International Law*, Oxford University Press, 2015, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e429?prd=MPIL> (27.08.2022).

152 Turkey to Implement Pact Limiting Russian Warships to Black Sea, <https://www.reuters.com/world/middle-east/turkey-implement-international-pact-access-shipping-straits-due-ukraine-war-2022-02-27/> (25.08.2022).

153 The Convention regarding the Regime of the Straits (adopted 20 July 1936, entered into force 9 November 1936) art. 19.

154 İneli-Ciğer, *Silahlı Çatışma Durumlarında İkincil Koruma*, p. 214.

objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.”<sup>155</sup>

This approach, however, was rejected by the Court of Justice of the European Union (CJEU)<sup>156</sup> in the *Elgafaji* case<sup>157</sup>. The term “indiscriminate”, as the Court held, “implies that [violence] may extend to people irrespective of their personal circumstances”.<sup>158</sup> Attacks on civilians and civilian objects, bombing of areas inhabited mostly by civilians such as “marketplaces, public roads, healthcare facilities” may qualify as indiscriminate violence.<sup>159</sup> Further, even in the absence of a violation of IHL, for example, where attacks are directed against military targets but inflict damage on civilians anyway, the existence of indiscriminate violence may still be accepted.<sup>160</sup> In other words, the harm inflicted on civilians, commonly known as “collateral damage”, that are caused by certain attacks that are considered “legal” under the IHL is not a categoric excuse to deny the existence of indiscriminate violence.

The intensity of violence is also taken into consideration when determining indiscriminate violence.<sup>161</sup> In *Sufi and Elmi*, where applicants claimed that indiscriminate violence in the capital of Somalia was sufficient to “pose a real risk to the life” of any civilian in Mogadishu, the ECtHR adopted that the intensity of conflict may be assessed based on the following criteria: “first, whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; secondly, whether the use of such methods and/or tactics was widespread among the parties to the conflict; thirdly, whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting.”<sup>162</sup>

155 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 U.N.T.S. 3.

156 İneli-Ciğer, *Silahlı Çatışma Durumlarında İkincil Koruma*, p. 215.

157 CJEU, *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie* Case C-465/07, 17.02.2009. (*Elgafaji*)

158 *Elgafaji* para. 34.

159 3.3.4. Indiscriminate Violence, <https://euaa.europa.eu/country-guidance-nigeria/334-indiscriminate-violence> (22.08.2022).

160 İneli-Ciğer, *Silahlı Çatışma Durumlarında İkincil Koruma*, p. 215.

161 İneli-Ciğer, *Silahlı Çatışma Durumlarında İkincil Koruma*, p. 215.

162 ECtHR, *Sufi and Elmi v the United Kingdom*, 8319/07, 11449/07, 28.06.2011, para. 241.

In view of the above, the existence and intensity of the indiscriminate violence in Ukraine can be determined. First of all, it was reported that civilians were deliberately targeted on many occasions during the conflict by Russian forces.<sup>163</sup> Second, both parties to the conflict have used methods and tactics of warfare that posed an increased risk to civilians. By hitting residential areas far from combat zones and razing a number of cities to the ground, Russian forces have been accused of creating terror amongst civilians as a strategy.<sup>164</sup> On the other hand, reports demonstrated that Ukrainian forces have used civilians as human shields to manipulate the Russians.<sup>165</sup> This has certainly increased the risk of civilian casualties. Third, the fighting is not localised in Ukraine. Although the intensity of violence is far higher in the Eastern regions, other parts of the country are not free from missile and other forms of attack. There have also been civilian casualties in the most remote regions of Ukraine from active combat zones. No one can really say that certain parts of the country will not be targeted. Not only the Russians, but also the Ukrainians sometimes expand conflict zones. Recently, Ukrainian forces targeted the Crimean Peninsula which has never seen an attack, even when it was occupied by the Russian Federation.<sup>166</sup> It remains to be seen how Russian forces will react to it.<sup>167</sup>

Finally, in the six months since the war started, 13,212 civilian casualties in the country (5,514 killed and 7,698 injured) have been recorded by the UN Human Rights Monitoring Mission in Ukraine.<sup>168</sup> In addition, as mentioned in the introduction, over 5.6 million people have become refugees and more than 7.1 million people have been forcibly displaced internally. The above considerations strongly suggest that indiscriminate violence, though at different levels of intensity across its regions, exists in Ukraine. What must be identified next is the existence of serious individual threat for persons seeking asylum.

### 3. Serious Individual Threat

To be eligible for subsidiary protection, indiscriminate violence arising out of armed conflict should also pose a serious individual threat to the applicant.

163 Russian Forces' Trail of Death in Bucha.

164 Storey, Are Those Fleeing Ukraine Refugees?.

165 Amnesty International, Ukraine: Ukrainian Fighting Tactics Endanger Civilians, <https://www.amnesty.org/en/latest/news/2022/08/ukraine-ukrainian-fighting-tactics-endanger-civilians/> (01.09.2022).

166 Crimea Airfield Blast Was Work of Ukrainian Special Forces, Official Says, <https://www.washingtonpost.com/world/2022/08/10/ukraine-russia-crimea-beach-blast/> (01.09.2022).

167 Russia's Medvedev: Attack on Crimea Will Ignite "Judgement Day", <https://www.reuters.com/world/europe/medvedev-wests-refusal-recognise-crimea-russian-is-threat-2022-07-17/> (01.09.2022).

168 HRMMU, 'Ukraine: Civilian Casualty Update'.

Although such a framing seems to be contradictory in terms of requiring both indiscriminate violence and individual threat, Turkish legislators have not amended this language when incorporating it from the EU Qualification Directive. Yet, neither the LFIP nor the RFIP provides further guidance as to how to evaluate individual threat by reason of indiscriminate violence. It would not be surprising to find that this formation creates certain interpretative challenges for decision-makers in Turkey.

The CJEU encountered this challenge in the *Elgafaji* case. To reconcile the elements of indiscriminate violence and individual threat, the Court provided an approach widely referred to as a “sliding scale”: “the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence is required for them to be eligible for subsidiary protection.”<sup>169</sup> Similarly, the higher the level of indiscriminate violence, the lower the extent to which the applicant needs to demonstrate individual threat.

It must be noted that the individual threat element does not require an applicant to be specifically targeted by the parties to the conflict. As İneli-Ciğer puts it, if there is sufficient ground to believe that the applicant would be under a serious threat in a conflict zone that would possibly inflict physical and psychological harm on them, the existence of the individual threat element must be accepted.<sup>170</sup> In addition, applications’ particular circumstances should also be assessed when determining individual threat. The EU implementation suggests that “certain applicants may be considered at enhanced risk of indiscriminate violence, including its direct and indirect consequences due to, inter alia: geographical proximity to areas which are targeted by violence, age, gender, health condition and disabilities, lack of a social network, etc.”<sup>171</sup>

It is not unreasonable to expect that Turkish decision-makers would make their assessment in relation to the reconciliation of the two elements in light of EU case law. The case of Ukrainians may then be evaluated based on the above-mentioned approach. This suggests that a distinction be made between different regions in Ukraine based on the information currently available. The Eastern part of the country, for example, is where the heaviest armed clashes occur between Ukrainian and Russian forces and Russia-backed armed groups. Considering reports, images, and video footage from the city centres of Mari-

169 *Elgafaji* para 39.

170 İneli-Ciğer, *Silahlı Çatışma Durumlarında İkincil Koruma*, p. 228.

171 3.3.5. Serious and Individual Threat, <https://euaa.europa.eu/country-guidance-nigeria/335-serious-and-individual-threat> (26.09.2022).

upol and other cities where significant parts of residential areas have been severely damaged, it can be concluded that the level of indiscriminate violence is sufficiently high that it can make the mere presence of a civilian in the region sufficient to for a serious individual threat to be imposed upon them. Therefore, people from those regions might not even be required to demonstrate further evidence for individual threat, taking into account the level and intensity of indiscriminate violence occurring in the region.

Going towards western part of the country, it seems that the situation gets better in terms safety and security. The sliding scale approach would suggest that people living in western Ukraine would need to demonstrate higher levels of the individual elements to qualify for subsidiary protection. Obviously, the East-West division is not a determinative factor. This is only an overall illustration of the general situation in the country. The expected requirement for the individual threat element would also be different within the territories considered Western. For example, people fleeing regions near the west of Kyiv would probably still need to demonstrate a lower level of individual threat compared to people from around Lviv. The level and intensity of violence must be evaluated based on the very location where the applicant has fled from.

It should also be noted that the level and intensity of violence in some parts of the country may be considered too low to constitute individual threat, which might lead to the conclusion that there is an internal protection alternative in the country of origin. In such a scenario, subsidiary protection application may be rejected, as seen in section II.A.4.

### **III. Temporary Protection**

Article 91 of the LFIP provides that “temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection”. This is one of the most important institutions that the LFIP introduced in 2013. After the arrival of Syrians in large numbers fleeing civil war since 2011, the status was granted to Syrians and has currently only been triggered for them alone. Ukrainians may also be considered well-suited to meet the definition of temporary protection. Indeed, the EU provided temporary protection for Ukrainians, representing the first use of temporary protection in EU history. In Turkey, however, considering that the number of Ukrainians who need protection is not particularly high, it would be safe to assume that this option is not on the Turkish government’s agenda for the time being. The government has indeed

never implied this status for Ukrainians. I believe that the government considers the Ukrainian arrivals manageable within the individual application processes for international protection or through granting residence permits. Thus, I do not see the need to elaborate further on temporary protection and will skip to residence permits, which are the most relevant instruments to the legal stay of Ukrainians in Turkey.

#### IV. Residence Permits

The arrival of Ukrainians in Turkey after the war has not led to any suspension or change in Turkish law, to the detriment of the Ukrainians. They have continued to enjoy 90-days visa-free travel to Turkey. However, after 90 days, if they still wish to remain in Turkey and if they do not want to avail themselves of international protection, they have to have a valid residence permit. The government has encouraged Ukrainians to apply for a residence permit that would best suit to them. On the other hand, there are also Ukrainian people who happened to be in Turkey before the war broke out and who cannot return home. Such people will need to extend their residence permits in Turkey. Fortunately, the Turkish government has also taken some measures, as I shall point out soon, to make their stay convenient in Turkey.

According to the data recently published by the Presidency of the Migration Management on the 15<sup>th</sup> of September 2022, the number of Ukrainians who have been granted a residence permit in Turkey is 44,774.<sup>172</sup> Considering the announcement by the Ukrainian Ambassador stating that there are currently 50,000 Ukrainians remaining in Turkey, it is clear that overwhelming majority of Ukrainians prefer to obtain a residence permit over international protection.

Residence permit types are listed in Article 30 of the LFIP. Those are short-term residence permits, family residence permits, student residence permits, long-term residence permits, humanitarian residence permits and, finally, victim of human trafficking residence permits. Ukrainians are not restricted in their choice of a particular type of permits; they are free to apply for any one of them depending on their particular circumstances. For example, a Ukrainian married to a Turkish national can apply for a family residence permit. People who can demonstrate that they will be studying in Turkey can apply for the student residence permit. For reasons of space, I will only address two of residence permits in detail, which I believe the most relevant for Ukrainians in Turkey. These are short-term residence permits and humanitarian residence permits.

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<sup>172</sup> Residence Permits, <https://en.goc.gov.tr/residence-permits> (26.09.2022), (Residence Permits).

### A. Short-Term Residence Permit

As mentioned in the beginning, the number of Ukrainians who have been interested in international protection is not too high in Turkey. In addition to the opportunity for visa-free travel, another reason for this is the fact that residence permits are actively and genuinely open to Ukrainian nationals. They can avail themselves of short-term residence permits on various grounds as long as they have legally entered Turkey. The Turkish government announced that it will make the procedures easier for them. Indeed, short-term residence permits have so far been the most frequently enjoyed option by the Ukrainians. Out of the 44,774 Ukrainians who have gained residence permits in Turkey, 32,097 were granted a short-term residence permit.<sup>173</sup> Yet, it must be noted that this number covers not only the Ukrainians fleeing armed conflict after the 24<sup>th</sup> of February 2022, but also those who were previously in Turkey. There is no data on the number of Ukrainians fleeing the armed conflict who benefitted from a short-term residence permit.

The LFIP lists the relevant grounds for short-term residence permits. The scope of this residence permit is rather broad and diverse. Article 31 of the LFIP reads as follows: “A short-term residence permit may be granted to those foreigners listed below who: arrives to conduct scientific research; owns immovable property in Turkey; establishes business or commercial connections, participates in on-the-job training programmes; arrives to attend educational or similar programmes as part of student exchange programmes or agreements to which the Republic of Turkey is a party to; wishes to stay for tourism purposes; intends to receive medical treatment, provided that they do not have a disease posing a public health threat; is required to stay in Turkey pursuant to a request or a decision of judicial or administrative authorities; transfers from a family residence permit; attends a Turkish language course; attends an education programme, research, internship or, a course by way of a public agency; applies within six months upon graduation from a higher education programme in Turkey; does not work in Turkey but will make an investment within the scope and amount that shall be determined by the Council of Ministers ...”

Although the LFIP lists the grounds for short-term residence permits, such grounds are not exhaustive. More precisely, all the reasons for a visit not specifically listed above are considered under the tourism category.<sup>174</sup> Therefore, tourism is an all-inclusive category under the short-term residence permit. The Turkish government had been mostly permissive with regard to residence

<sup>173</sup> Residence Permits.

<sup>174</sup> The RFIP, art. 28 (10).

permits for tourism purposes. In particular, while it is not on the list, granting short-term residence permits for those who rent a property to reside in Turkey was a common practice by the Turkish government in recent years.<sup>175</sup> This could have been quite useful for Ukrainians who had the means to rent a property in Turkey. However, the government imposed certain restrictions to this practice as of the 10<sup>th</sup> of February 2022, arguing that tourism residence permits have been used by immigrants out of purpose.<sup>176</sup> Residence permits for tourism purposes are now unavailable for people who arrive in Turkey with visa exemptions or a tourism visas and then apply for a residence permit for the first time.<sup>177</sup> The government does not seem to make a distinction between Ukrainians and other nationals in this category. Nevertheless, short-term residence permits for tourism purposes can still be issued on certain reasonable grounds: those who have family connections in Turkey; who provide a detailed travel plan demonstrating why a standard tourism visa is not sufficient; and those who have a sufficient and regular income can still get a tourism residence permit.<sup>178</sup> Ukrainians who meet these criteria will be able to use this option.

In addition, an increase has also been recorded in the number of Ukrainians who purchased a property in Turkey after the war.<sup>179</sup> This is also useful since purchasing a property is another grounds for gaining a short-term residence permit. Before 2022, purchasing any property, regardless of its value, was sufficient to gain a residence permit. However, the government made some amendments to this implementation. As of January 2022, the value of the property should be no less than 75,000 USD<sup>180</sup> if the property is in the largest cities such as Istanbul, Ankara, Antalya, or Izmir; if it is in the smaller towns, the value of the property must be at least 50,000 USD.<sup>181</sup> These measures have arguably been put into practise due to the increasing numbers of asylum seekers and illegal immigrants in Turkey, which subsequently caused the rise of xenophobia

175 Yabancılar ev kiralayıp Türkiye’de oturma izni alıyor, <https://www.borsamanset.com/yabancılar-ev-kiralayip-turkiyede-oturma-izni-alıyor-haber-98721> (01.09.2022).

176 Bakanımız Sn. Süleyman Soylu: 1 Temmuz İtibarıyla Mahallelerde İkamet Edebilecek Yabancı Oranı Yüzde 20’ye Düşürülecek, <https://www.icisleri.gov.tr/bakanimiz-sn-suleyman-soylu-1-temmuz-itibariyla-mahallelerde-ikamet-edebilecek-yabanci-orani-yuzde-20ye-dusurulecek> (03.08.2022), (Interior Minister Süleyman Soylu).

177 Interior Minister Süleyman Soylu.

178 Hülya Taş, Turizm Amaçlı İkamet İzni Almak Zorlaştı Ne Yapmalısınız?, <https://www.youtube.com/watch?v=W8PS0NmFBqA> (03.08.2022).

179 Savaştan kaçan Ukraynalılar parasını Antalya’da konuta yatırdı, <https://www.sozcu.com.tr/2022/ekonomi/savastan-kacan-ukraynalilar-parasini-antalyada-konuta-yatirdi-7092347/> (20.06.,2022).

180 Interior Minister Süleyman Soylu.

181 Interior Minister Süleyman Soylu.



within Turkish society.<sup>182</sup> This has created a certain pressure on the government to take action and impose certain barriers against easier stays by foreigners in Turkey.<sup>183</sup>

As to the duration of short-term residence permit, depending on the grounds of issue, it can be valid for maximum two years at any one time, though it can be extended multiple times. Nevertheless, a short-term residence permit is only granted for a limited time on certain grounds. For example, as Article 31 (3) of the LFIP stipulates, residence permit for reasons of attending a Turkish language school may only be issued twice for a given individual. Similarly, short-term residence permits upon graduation from a higher education programme in Turkey can only be granted once for a maximum duration of one year. Nevertheless, there is nothing in law preventing people switching to another type of residence permit.<sup>184</sup> Therefore, in a probable scenario of the Russian-Ukrainian conflict becoming protracted, Ukrainian people may need to switch their residence permit for legal reasons.

When discussing residence permits, the situation of Ukrainians who were already in Turkey before the war and cannot return to Ukraine must be addressed. Their residence permits might expire and therefore their legal stay in Turkey might be at risk. The Turkish government also adopted certain steps for such people. Normally, violations of visas, or work or residence permits are subject to fines and restriction codes for entry into Turkey are emplaced for the persons concerned (Restriction codes, category “Ç”).<sup>185</sup> For Ukrainians, however, these measures will soon be inapplicable; they are not going to be fined or subject to restricted entrance in the future.<sup>186</sup> They will be able to extend their

182 Dilek Gül, Göçmen tartışması: Siyasilerin açıklamaları ırkçılığı mı tetikliyor?, <https://tr.euronews.com/2022/04/25/turkiye-de-gocmen-tart-smas-siyasilerin-ac-klamalar-rkc-l-g-m-tetikliyor> (03.08.2022).

183 Adem Demir, Siyasetin göçmen söylemi: Dünün “misafirleri” bugünün “istilacıları”... Türkiye'nin sığınmacı politikası sertleşiyor, <https://www.indyturk.com/node/499841/siyaset/siyasetin-g%C3%B6çmen-s%C3%B6ylemi-d%C3%BCn%C3%BCn-misafirleri-bug%C3%BCn%C3%BCn-istilac%C4%B1lar%C4%B1E2%80%A6-t%C3%BCrkiyenin> (03.08.2022).

184 The LFIP, article 29. However, it must be noted that those arriving in Turkey with a visa for study or medical treatment purposes may not switch to a residence permit which is not related to their original purpose. The government has recently introduced this restriction claiming that these routes have been abused by immigrants. Yet I do not think that this would find much area of application for Ukrainians.

185 The PMM Directive No. E9704722400076225, ‘Foreigners of Ukrainian Nationals who would be in Breach of Visa Regulations by Force Majeure’, 09.03.2022. (The PMM Directive – ‘Foreigners of Ukrainian Nationals’)

186 The PMM Directive – ‘Foreigners of Ukrainian Nationals’. The PMM Directive – ‘Foreigners of Ukrainian Nationals’.

current visas or residence permits or switch to another type of visa or residence permit. There might also be Ukrainians who were previously subject to an entry ban to Turkey due to previous visa violations. If they come Turkey after the 24<sup>th</sup> of February 2022, again, their ban will be removed at the borders, and they will be admitted to Turkey like any other Ukrainian.<sup>187</sup>

For those who are not able to apply for one of the visas, including short-term, family, or student visas, or who prefer not to apply for refugee status or subsidiary protection, there is the option of another type of residence permit; this is called a humanitarian residence permit and the Turkish government urges the relevant authorities to encourage Ukrainians to apply for it.

### **B. Humanitarian Residence Permit**

A humanitarian residence permit is another institution that was introduced by the LFIP. It is an exceptional type of residence permit and mostly designed for people whose situation requires special attention.<sup>188</sup> In general, when it is not possible to issue another type of residence permit and the individual in question's situation requires their stay in Turkey for humanitarian reasons, a humanitarian residence permit may be issued.

Article 46 (1) of the LFIP sets forth the conditions for humanitarian residence permits. Pursuant to this, a humanitarian residence permit may be issued in the following situations:

- a) where the best interest of the child is of concern;
- b) where, notwithstanding a removal decision or ban on entering Turkey, foreigners cannot be removed from Turkey or their departure from Turkey is not reasonable or possible;
- c) in the absence of a removal decision in respect of the foreigner pursuant to Article 55;
- ç) where there is a judicial appeal against the actions carried out pursuant to Articles 53, 72 and 77;
- d) throughout the removal actions of the applicant to the first country of asylum or a safe third country;
- e) in cases when foreigners should be allowed to enter into and stay in Turkey, due to emergency or in view of the protection of the national interests, as well as reasons of public order and security, in the absence of the possibility to

<sup>187</sup> The PMM Directive – ‘Foreigners of Ukrainian Nationals’.

<sup>188</sup> Nuray Ekşi, “Mahkeme Kararları Işığında İnsani İkamet İzni”, *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni*, Volume 38, Issue 2, 2018, p. 243. (Mahkeme Kararları Işığında İnsani İkamet İzni).

obtain one of the other types of residence permits due to their situation that precludes granting a residence permit;

f) in extraordinary circumstances.

Any of these paragraphs could be useful to Ukrainians, depending on their circumstances. For example, paragraph (c) pertains to persons in Turkey who do not have any other type of residence permit or visa, yet there is no removal decision against them. This means that such an individual can be granted a humanitarian residence permit until a removal decision is made. During such a time, they can then stay in Turkey legally. In addition, a removal decision may never be made depending on the individual's circumstances and the country to which they would be returned. Article 55 (1) stipulates that certain people may not be deported for particular reasons: "Removal decision shall not be issued in respect of those foreigners a) when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to; b) who would face risk due to serious health condition, age or, pregnancy in case of travel; c) who would not be able to receive treatment in the country to which they shall be returned while undergoing treatment for a life threatening health condition; ç) victims of human trafficking, supported by the victim's assistance programme; d) victims of serious psychological, physical or sexual violence, until their treatment is completed."

The first group under the category (a) is a reflection of the principle of *non-refoulement* in Turkish law on IHRL grounds. In this category, Ukrainians will need to prove that they will be subject to the death penalty, torture, or inhuman or degrading treatment if returned to Ukraine. Nevertheless, the paragraph does not mention the indiscriminate life-threatening impacts of armed conflict. Indeed, nowhere in the LFIP is armed conflict listed as grounds for granting a humanitarian residence permit. Therefore, not all Ukrainians would normally be eligible for a humanitarian residence permit under this category, but rather only those for whom there are serious indications that they would be subjected to the death penalty, torture, or inhuman or degrading treatment upon return can benefit from category (a). This could be a risky and tiresome path to take in any case, and which would ultimately be similar to an international protection application.

Article 46 (1) (b) can be thought to be relevant to Ukrainians. It is another expression of the principle of *non-refoulement* in Turkish law. It stipulates that if the departure of a person is not reasonable or possible upon a removal decision, such an individual can be issued a humanitarian residence permit. The

scope of Article 46 (1) (b) is indeed broader than Article 46 (1) (c) in reference to Article 55 (a). The “reasonable or possible” test in Article 46 (1) (b) encompasses the following expression in Article 55 (1) (a): “serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned”. For example, return may not be legally “reasonable or possible” not only because of the existence of the death penalty in the destination country, but also due to serious risks to one’s life, liberty, or limb, which include the risks associated with the indiscriminate violence caused by armed conflicts. The problem, or lack of problem, with this article, however, is that even though its scope is broader, it might not find many areas of application in the case of Ukrainians as it requires an initial removal decision. As a matter of policy, the government would not make removal decisions for Ukrainians unless specific circumstances arose such as a threat to public order or national security occurring. Therefore, Article 46 (1) (b) might not really represent a remedy for the overwhelming majority of Ukrainians. Nevertheless, it may still be relevant where international protection is denied to a Ukrainian applicant and consequently a deportation decision is made, yet implementing it would be considered unreasonable because of the indiscriminate violence taking place in Ukraine which, of course, would constitute a serious threat to life and freedom. Upon the removal decision and the reasonableness assessment, the applicant may be issued a humanitarian residence permit under Article 46 (1) (b).

On the other hand, the government has a large margin of appreciation in granting humanitarian residence permits. Indeed, it can grant humanitarian residence permits *ex officio*, even in the absence of a claim by the applicant.<sup>189</sup> Pursuant to the favourable policy of the Turkish government in relation to Ukrainians, the implementation of the PMM does not seem too strict in terms of issuing humanitarian residence permits. Nevertheless, it is not at all clear under which paragraph of Article 46 (1) the PMM may issue humanitarian residence permits to Ukrainians. A directive issued by the PMM implies that Ukrainians arriving in Turkey after the 24<sup>th</sup> of February 2022 due to the armed conflict in Ukraine could be granted humanitarian residence permits based on Article 46 (1) (c).<sup>190</sup> Yet, as mentioned, this is not the most proper grounds for many Ukrainians fleeing the indiscriminate effects of armed conflict, rather than facing the death penalty, torture, or inhuman or degrading treatment.

While humanitarian residence permits are granted on an individual basis in

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189 Açıkgöz, Ariner, p. 16.

190 The PMM Directive on Foreigners of Ukrainian Nationality.

principle, government practice demonstrates that the membership of an individual to a particular group, nationality, or ethnicity plays a significant role in the decision. Humanitarian residence permits are issued to people of Turkish descent in a straightforward manner in practice. Iraqi Turkmen<sup>191</sup>, Uyghurs, and Chechens are amongst those groups.<sup>192</sup> This is indeed a continuation of the practice implemented before the adoption of the LFIP. While there was no provision in Turkish legislation for humanitarian residence permits, members of certain groups used to be granted residence permits for humanitarian reasons through in-service directives (*hizmet içi genelge*) issued by the Turkish National Police Department, the Foreigners, Border and Asylum branch.<sup>193</sup> Such designations are now made by the Presidency of the Migration Management. However, it remains unclear which paragraph of Article 46 is relied on for such designations.

Following this practice, Ukrainians could also be designated as a group of people who can benefit from humanitarian residence permits. To this end, Article 46 (1) (f), “extraordinary circumstances”, seems better suited to their circumstances. Again, the government has a wide margin of discretionary power in the interpretation of the term “extraordinary circumstances”. To my capacity, however, there is no document announcing that the circumstances of Ukrainians fleeing Turkey from the recent armed conflict in any way amount to “extraordinary”. Unfortunately, the government does not tend to explain the details of the grounds relied upon when granting humanitarian residence permits. Nonetheless, in practice, it is no secret that Ukrainians are encouraged to apply this permit.<sup>194</sup> Therefore, it could be said that they have been implicitly designated as a group of people who should be granted humanitarian residence permits without difficulties. It seems to me that the only grounds that would be inclusive of all Ukrainians in Turkey is Article 46 (1) (f).

Ukrainians arriving after the war and who were already in Turkey before the war can apply for humanitarian residence permits. To make it more convenient for them, the government has taken certain measures to allow the issue of such visas in a shorter timeframe. As a rule, a humanitarian residence permit is issued after an investigation has been conducted into the applicant. This could include research on the country of origin, a criminal record, or the authenticity

191 Ekşi, Mahkeme Kararları Işığında İnsani İkamet İzni.

192 Directorate General of Migration Management (*now the PMM*) Directive No. 40871249-2015, ‘Extensions of Humanitarian Residence Permit’, 4.12.2015.

193 Ekşi, Mahkeme Kararları Işığında İnsani İkamet İzni, p. 247.

194 I am grateful to Atty Abdulhalim Yılmaz and Atty Nur Banu Çağan for the invaluable information they provided in relation to practice.

of their claims. Upon the investigation coming back clear, a residence permit may be granted. This usually takes approximately six months. For Ukrainians, however, an expedited procedure has been created.<sup>195</sup> According to this, even if security investigations have not yet been completed, the humanitarian residence permit will be issued.<sup>196</sup> If any negative outcome is reported at the end of the investigation, necessary measures such as the revocation of the permit will then be undertaken.<sup>197</sup> Thus, applications by Ukrainians can be concluded in a faster manner, possibly in as short a time as a few weeks.

Humanitarian residence permits are temporary in nature. They are granted for up to 1 year but may be extended by a year multiple times; there is no limit in this regard. Yet, unlike ordinary residence permits, the time spent on humanitarian residence permits is not taken into account in the calculation of the total days that must be spent in Turkey necessary to apply for a long-term residence permit or citizenship.<sup>198</sup> Still, humanitarian residence permits may be attractive to Ukrainians as obtaining one is probably the easiest and the fastest of their available options. Compared to international protection, humanitarian residence permit holders are not registered in a particular city in Turkey. This means that they do not need to get permission from the relevant authorities to leave their place of residence. Therefore, they can enjoy freedom of travel in Turkish territories in better conditions. On the other hand, a humanitarian residence permit is not free of charge like an international protection application. Applicants need to pay a fee to make the application. In the case of the conflict in Ukraine being prolonged for more than one year, which is indeed a real possibility, they will need to extend their permit at the end of every single year. In addition, this type of residence permit does not automatically come with certain rights such as the right to work or free healthcare which are provided to those with international protection status or application holders. To gain a work permit in Turkey, they need go through another application process. Considering these pros and cons, it is up to Ukrainians to make an informed decision regarding their legal stay in Turkey.

## V. The Special Situation of People of Turkish Descent from Ukraine

With the dissolution of the various great empires in the 19<sup>th</sup> and 20<sup>th</sup> centuries, numerous nation states have emerged in their former territories. The Ottoman Empire was such a significant empire, losing large territories particularly

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195 The PMM Directive on Foreigners of Ukrainian Nationality.

196 The PMM Directive on Foreigners of Ukrainian Nationality.

197 The PMM Directive on Foreigners of Ukrainian Nationality.

198 The RFIP, art. 26 (8) and art. 44 (4).

in the Balkans and Caucasus. Millions of Turks and Muslims had to migrate to Anatolia due to the loss of these territories and subsequent persecution by the newly established nation states that came in their stead. Nevertheless, when the Republic of Turkey was established after World War I, a significant number of people of Turkish descent happened to stay outside the borders of Turkey. They have become minorities in their new states. Turkey has welcomed those people of Turkish origin under a special residence regime.<sup>199</sup> They are the most privileged category of foreigners in Turkey in many regards.<sup>200</sup>

Various laws specifically address the migration of such people to Turkey. Amongst others, *İskân Kanunu*<sup>201</sup> (the *Settlement Law*) No. 5543 could be regarded *lex generalis* to address the situation of people of Turkish descent. Based on this, the term “immigrant” (*göçmen*) was given a particular meaning in Turkish law. It is defined in Article 3 (d) of the *Settlement Law* as persons “who are of Turkish origin and committed to Turkish culture, arriving in Turkey individually or collectively for the settlement purpose and admitted pursuant to this law.” According to the Article 8 (4) of the law, those people who are admitted into Turkey as “immigrants” are naturalised after a certain time upon the completion of certain procedures. They are then granted citizenship by the decision of the President of Turkey.<sup>202</sup>

The Law authorises the President to determine what it means to be of Turkish descent or being committed to Turkish culture.<sup>203</sup> Accordingly, some groups of people may be designated as “immigrants” by the President. In addition, Parliament can also enact laws on the admission and settlement of a specific group of people of Turkish origin. For example, after the Soviet invasion of Afghanistan, a minority of Turkish origin fled from Afghanistan to Pakistan. In 1982, a law was adopted in Turkey with regard to the admission and settlement of those people in Turkey.<sup>204</sup>

In the Ukrainian context, mainly two groups of people of Turkish origin might be considered under the framework of the *Settlement Law*. These are Meskhetian Turks and Crimean Tatars. It was recently announced that 2395

199 The Settlement Code No. 2510, O.G. 21.06.1934 – 2733. (Abolished in 2006 by the Law No. 5543).

200 Dilara Karagül, *Türk Soyulu Yabancıların Hukuki Rejimi*, Unpublished Master Thesis, Istanbul University Institute of Social Sciences Department of Private Law, 2021, p. 14.

201 The Settlement Law No. 5543, O.G. 26/9/2006 – 26301, (The Settlement Law No. 5543).

202 The Settlement Law No. 5543, art. 8 (4).

203 The Settlement Law No. 5543, art. 7.

204 The Law No. 2641 on the Admission and Settlement of Migrants of Turkish Descent into Turkey, who fled from Afghanistan to Pakistan, O.G. 19/03/1982 – 17638. This law was abolished in 2007 by the Law No. 5637 as there was no further area of application of it.

Meskhetian Turks and 409 Crimean Tatars had been evacuated from Ukraine after the war started and admitted into Turkey.<sup>205</sup> They are currently hosted in five cities and their fundamental needs such as accommodation, healthcare, and education are being met by the government.<sup>206</sup>

Meskhetian Turks have a more privileged status in Turkey compared to other peoples of Turkish origin as there is a specific law addressing their situation. In 1992, the Turkish Parliament adopted the Law No. 3835 on the admission and settlement of Meskhetian Turks (*lex specialis*).<sup>207</sup> Article 1 of the law reads as follows: “Those wishing to come Turkey from our cognates known as ‘Ahıska’ Turks living in various post-Soviet countries may be admitted as immigrants with or without settlement<sup>208</sup>, starting from those who are in the most difficult situation, provided that they do not exceed the annual number to be determined by the President.”

Meskhetian Turks are originally from Georgia, which is a neighbouring country to Turkey on the northeast border. After the Great War, when the borders were reshaped, Meskhetian Turks happened to be outside of Turkey and remained in Soviet territories. In 1944, by the order of Joseph Stalin, former premier of the USSR, Meskhetian Turks consisting of 115,000 people were subjected to forced deportation to Central Asia and resettled in Kazakhstan, Uzbekistan, and Kyrgyzstan. In 1989, due to the conflict that erupted between Uzbeks and Meskhetian Turks, they were once again forced to leave their homes to various places such as Azerbaijan, Ukraine, and Turkey. Those who migrated to Ukraine numbered around 10,000 and they mainly settled in Eastern Ukraine, in the Donbass area.<sup>209</sup> While they started new lives in Ukraine, armed conflict emerged in Donbass in 2014 between the Ukrainian armed forces and Russian separatists backed by the Russian Federation. Because of this conflict, some of the Meskhetians fled from the warzone to safer places in Ukraine, whilst others migrated to Turkey.<sup>210</sup>

205 Safa Şahin, Türkiye, Kırım Tatar Türklerine Süresiz İkamet İzni Vermeye Başladı, <https://www.aa.com.tr/tr/gundem/turkiye-kirim-tatar-turklerine-suresiz-ikamet-izni-vermeye-basladi/2658802> (11.08.2022), (Kırım Tatar Türklerine Süresiz İkamet İzni).

206 Şahin, Kırım Tatar Türklerine Süresiz İkamet İzni.

207 The Law No. 3835 on the Admission and Settlement of Meskhetian Turks into Turkey, O.G. 11/7/1992 – 21281.

208 “Immigrants with settlement” are provided a residential property in a designated province. “Immigrants with no settlement” are admitted into Turkey provided that they do not claim a property from the State. Article 3 (e) and 3 (f) of the *Settlement Law*.

209 Ukrayna’da Yaşayan Ahıska Türkleri Kimdir?, <https://ukrainer.net/ukraynadaki-ahıska-turkleri/> (22.06.2022).

210 The Fifth Group of the Meskhetian Turks Coming from Ukraine Was Placed in Erzincan, <https://en.goc.gov.tr/the-fifth-group-of-the-meskhetian-turks-coming-from-ukraine-was-placed-in-erzincan> (26.09.2022) (The Fifth Group of the Meskhetian Turks Coming from Ukraine).



Pursuant to the Law No. 3835, the government decided to resettle the Meskhetians from Ukraine (677 families) due to the armed conflict in Donbass.<sup>211</sup> According to the data of the Presidency of Migration Management, 2513 Meskhetian Turks were resettled in Turkey.<sup>212</sup> A similar decision was made in June 2022 after the recent invasion of Ukraine by Russia. The President of Turkey issued a decree stating that 1000 Meskethian families, mainly from Ukraine, are going to be admitted to Turkey in 2022 as immigrants with settlement.<sup>213</sup> Accordingly, they are provided free accommodation in Turkey in designated provinces.

As to the Crimean Tatars, they have also been designated as a group of Turkish origin in August 2022.<sup>214</sup> They have currently been resettled in designated cities in Turkey together with Meskhetians. Yet, there is no specific law addressing their situation. Therefore, it can be expected that the *Settlement Law* would apply to them. The Interior Minister announced that the Crimean Tatars' stay in Turkey will be made easier. Accordingly, they were granted long-term residence permits immediately after their arrival in Turkey. According to the LFIP Article 42, a long-term residence permit is normally granted to foreigners after eight years' legal stay in Turkey. However, this will not apply to Crimean Tatars as per the decision of the Ministry.<sup>215</sup> They will also be exempt from the fees for the residence permit applications.<sup>216</sup> Considering previous examples and the provisions of the *Settlement Law*, it could reasonably be expected that they will also be neutralized after they spend some time in Turkey. Yet, there is no clear timeframe for this.

## Conclusion

There are multiple ways that Ukrainians may pursue the maintenance of their legal stay in Turkey. I have first analysed the eligibility of Ukrainians for international protection, namely refugee status and subsidiary protection. While I have proposed that most Ukrainians fleeing to Turkey after the Russian invasion can meet the requirements of international protection, it remains to be seen how the Turkish authorities and courts will evaluate the individual ap-

211 The Republic of Turkey Cabinet Decree, O.G. 17/05/2015 – 29358. (Decision No. 2015/7668).

212 Göç Politikaları Kurulu Toplandı, <https://www.goc.gov.tr/goc-politikalari-kurulu-toplandi49> (22.06.2022); The Fifth Group of the Meskhetian Turks Coming from Ukraine.

213 The Presidential Decree No. 5676, 4 June 2022, O.G. 04/062022 – 31856.

214 Kırım Tatar Türklerine Süresiz İkamet İzni.

215 Kırım Tatar Türklerine Süresiz İkamet İzni.

216 Kırım Tatar Türklerine Süresiz İkamet İzni.

plications of Ukrainians. Although gaining one of these international protection statuses is a possibility for Ukrainians, it seems that most have preferred not to pursue them as the processes are often lengthy and tiresome, with no guarantee of success. On the other hand, easier alternatives were made available to Ukrainians by the Turkish government. I have briefly noted that temporary protection is currently not considered for Ukrainians by the Turkish government, which maintains that the Ukrainian refugee situation in Turkey can be managed through individual application processes as their numbers are not too high. Accordingly, residence permits are granted to Ukrainians in a rather lenient way as a government policy. They can apply for any residence permit which best suits their own individual circumstances. However, if a Ukrainian does not have particular grounds for a particular residence permit, the government encourages them to apply for a humanitarian residence permit, which is the most inclusive category offered to Ukrainians. It is available to almost all Ukrainians in Turkey, regardless of whether they arrived in Turkey before or after the start of hostilities in their country. Finally, I have provided some analyses with regard to the admission and settlement of people of Turkish descent arriving in Turkey from Ukraine due to the armed conflict in their country.

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