Right to Housing-National Report Turkey

ULAŞ KARAN

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About ETHOS

ETHOS - Towards a European THeory Of juStice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

a) philosophical and political tradition,
b) legal framework,
c) daily (bureaucratic) practice,
d) current public debates, and
e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinate the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

Executive Summary

This working paper was written within the framework Work Package 3 (Law as or against justice for all?) for Deliverable 3.5 (Right to Housing-National Report Turkey) of the ETHOS Project. The paper focuses on right to vote of two groups, namely refugees, asylum seekers, undocumented workers and persons with disabilities in Turkey in a strict sense. It mainly elaborates on the existing legal framework without addressing its application or interpretation by the relevant organs.

Turkey has restricted the scope of the refugee definition with the term of "events occurring in Europe". Even though following the civil war broke out in Syria in 2011 millions of refugees fled to Turkey, none of them acquired refugee status in Turkey. Thus, current number of refugees, asylum seekers and undocumented migrants in Turkey is unknown which is also the case for persons with disabilities due to lack of an official database.

The current constitution, which was adopted in 1980 explicitly set forth the right to housing in Art. 57. Despite the fact that the title of the article is "right to housing", the wording does not directly bestow the right itself, it only emphasizes the duties of the state. Although there is explicit reference to persons with disabilities, with respect to refugees, asylum seekers and undocumented migrants there is no direct provisions related with the said groups.

In Turkey, there are two types of social housing scheme which are only eligible for Turkish citizens and excludes refugees, asylum seekers and undocumented workers. Even though does not have a legal basis, a *de facto* 10% quota is allocated for persons with at least 50% disability in mass housing projects. Current statutory law only provides a protection to eviction instead of giving place to positive obligations. Legal framework concerning discrimination also provides protection to some extent to persons with disabilities while once again exclude refugees, asylum seekers and undocumented workers. To date, it is not possible to say that the existing law has been implemented effectively and any case law on the implementation of the law cannot be reached. The existing legislative framework provides no effective and accessible means of judicial or quasi judicial remedies, redress or compensation to the victims of right to housing.

The current legal framework concerning right to housing, instead of putting forward a claimable right, opt for only recognizing a right without any possibility of invoking it. This situation suggests an approach based on a justice as recognition rather than justice as redistribution with respect to different conceptions of justice. This observation is more apparent with respect to right to housing of persons with disabilities. On the other hand, non-recognition of refugee status connoted that even a concept of justice as recognition is not applicable under these circumstances. Considering the lack of availability of representing these groups in courts, impossibility of NGO led litigation and flaws in consultation in any housing project, the concept of justice as representation also comes not into play.

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List of Abbreviations

Art./Arts.	: Article/Articles
CERD	: Committee on the Elimination of Racial Discrimination
CESCR	: Committee on the Economic, Social and Cultural Rights
CRPD	: Committee on the Rights of Persons with Disabilities
CRT	: Constitution of Republic of Turkey
DGMM	: Directorate General for Migration Management
ECHR	: European Convention on Human Rights
ECRI	: European Commission against Racism and Intolerance
ECSR	: European Committee on Social Rights
ECtHR	: European Court of Human Rights
ESC-R	: European Social Charter (Revised)
EU	: European Union
GDSB	: General Directorate of Social Benefits
HDA	: Housing Development Administration
ICESCR	: International Covenant on Economic, Social and Cultural Rights
LFIP	: Law on Foreigners and International Protection
p./pp.	: page/pages
para./paras.	: paragraph/paragraphs
PwDs	: Persons with disabilities
TCC	: Constitutional Court of the Republic of Turkey
TİHEK	: Turkish Human Rights and Equality Institution
UDHR	: Universal Declaration of Human Rights
UNCRPD	: United Nations Convention on the Rights of Persons with Disabilities
UNHCR	: United Nations High Commissioner for Refugees

1) National Legal Framework

1.1) Background Information

This report focuses on right to housing of refugees, asylum seekers, undocumented migrants and persons with disabilities (PwDs) in Turkey. Turkey became a party to the 1951 Convention Relating to the Status of Refugees in 1961. With using the optional right that is provided in Article (Art.) 1B (1) (a) of the Convention, Turkey has restricted the scope of the refugee definition with the term of "events occurring in Europe". While the geographic and temporal reservation was removed at the New York Conference held in 1967, the states that have signed the 1951 Convention with the geographical reservation were given the option to continue these reservations. Turkey is one of only four countries that continue the geographical reservation at the moment. Therefore, in accordance with the 1951 Convention, Turkey only accepts citizens of European countries as refugees.

After the civil war broke out in Syria in 2011, millions of refugees fled to Turkey and according to official figures, there are 2.7 million Syrian and 300,000 Iraqi refugees in Turkey.[1] Even though Turkey does not recognize them as refugees, international law dictates that they must be recognized as such. That is why they are referred to as refugees in this report.

The number of individuals belonging to groups such as refugees, asylum seekers varies according to different sources. Since the state does only recognize the status of refugee to only small number of group, the official number with regard to refugees is very low. Current number of refugees, asylum seekers and undocumented migrants in Turkey is unknown.

There exists an official database, although not so reliable, that comprise PwDs. Even though the Turkish Government stated that a "National Disability Database" was established in 2006 with the objective of ensuring efficiency of disability services,[2] no information has been given on the number of registered persons with disabilities on the database, as well as the distribution of gender, province, type of disability, in which public service planning the registered data is used or the results of these activities etc.[3]

The total number of persons with disabilities still unknown in Turkey. A study carried out in 2002 indicated that the total number of disabled people was 8.4 million which amount to 12.29% of the general population. However, another study conducted in 2011 demonstrated this figures as 4.9 million and 6.6%.[4] Even the researches done by the state presented different figures every time which leads to complicated depiction of the situation.[5] It was submitted to the Committee on the Rights of Persons with Disabilities (CRPD) that there is no official statistics or analysis, which focus on

[1] ECRI, 5th Report on Turkey, CRI(2016)37, 2016, para 60.
[2] CRPD, Initial report submitted by Turkey under article 35 of the Convention, CRPD/C/TUR/1, 04.10.2017, p. 55.
[3] CRPD, Proposal of List of Issues from Association for Monitoring Equal Rights in relation to the Government report of the Republic of Turkey for the 10th Pre-Sessional Working Groups, p. 20.
[4] Engelli ve Yaşlı Bireylere İlişkin İstatistiki Bilgiler, Engelli ve Yaşlı Hizmetleri Genel Müdürlüğü, October 2018, p. 32.
[5] CRPD, Initial Report on the Convention on the Rights of Persons with Disabilities, Turkey, CRPD/C/TUR/1, 04.10.2017, p. 4; ECSR, Conclusions 2016, Turkey, Article 15-1, 2016/def/TUR/15/1/EN, 09.12.2016.

the education, health, employment, access to rights and participation of women and girls with disabilities, or any disaggregated data in overall statistics system.[6]

1.2) Constitutional Protection

Does national constitutional law protect, either through explicit textual reference or by means of authoritative interpretation, any right to (social) housing, or housing assistance, or any other form of protection of the home. If so, in which terms? If not, how is the right to (social) housing or social assistance protected? Are there any corresponding state obligations of a constitutional nature?

How strong is the protection afforded to the right to property or the right to carry out a business under domestic law? To what extent can it be limited to pursue social objectives (eg affordable housing) or interest, including the protection of one's home?

The existing Turkish Constitution is the fourth one that has been adopted after the fall of the Ottoman Empire and is still in force since 1982 with major amendments mostly inspired by the EU accession process. Art. 2 of the Constitution of Republic of Turkey (CRT)[7] describes the State as "a democratic, secular and social state governed by the rule of law… respecting human rights". The provisions of the Constitution are fundamental legal rules binding upon the legislative, executive and judicial organs, and administrative authorities and they also have horizontal effect on other private institutions and individuals.

The right to housing in Turkey is regulated for the first time in the 1961 Constitution. When the second subsection of Art. 49 of the 1961 Constitution is examined, it can be seen that the said right was regulated in relation to the right to health: "The State takes measures to meet the housing needs of the poor or low-income families according to the health conditions." As is seen from the text, the former Constitution adopted "the poor and low-income families" as the particular subject of the right to housing.

The current constitution, which was adopted two years after the coup d'état staged in 1980 and designed directly by the members of military council, explicitly set forth the right to housing in Art. 57, this time broadly and as a separate article under the chapter "Social and Economic Rights and Duties: "The State shall take measures to meet the need for housing within the framework of a plan that takes into account the characteristics of cities and environmental conditions, and also support community housing projects." Since its adoption in 1982, beginning with the first amendment in 1987, in total, there are 19 amendments with the last amendment adopted in 2017.[8] Interestingly enough, to date there has been no amendment made with regard to right to housing.

Such formulation imposes duties to the State. Despite the fact that the title of the article is "right to housing", the wording does not directly bestow the right itself,[9] it only emphasizes the duties of the

[6] CRPD, Shadow Report Turkey prepared by the coordination of the Confederation of the Disabled of Turkey, 20.08.2018, para 19.

[7] For the official text of the Constitution of Republic of Turkey in English see, http://www.constitutionalcourt.gov.tr/inlinepages/legislation/pdf/constitution_en.pdf (last accessed: 01.12.2018)

[8] For a list of these amendments please see, http://anayasa.gov.tr/icsayfalar/mevzuat/1982anayasası.html (last accessed: 01.10.2018)

[9] İbrahim Kaboğlu, "Anayasal Sosyal Haklar: Alanı ve Sınırları", Anayasal Sosyal Haklar, (Avrupa Sosyal Şartı, Karşılaştırmalı Hukuk ve Türkiye), İbrahim Kaboğlu (ed.), Legal Yayınları, İstanbul, 2012, s. 16.

state.[10] It is argued that this article is only a programmatic provision and that the purpose of such provisions is not to give the state a concrete assignment on certain issues, but only to provide directives to assist the relevant bodies of the state in the implementation of the social and economic policies.[11]

Art. 57 of the CRT regulating the right of housing does not include the reasons for a restriction. It is possible to say that one of the reasons that the article does not include any reasons for restriction is that the right to housing is considered to be only a duty of the state by the CRT.[12] No direct emphasis for positive obligations stem from right to housing beyond general obligation of the state set forth in Art. 5 of the CRT: "The fundamental aims and duties of the State are […]to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law…" On the contrary, Art. 65 of the CRT implies that "The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties." As a restriction clause for social rights, Art. 65 gives a wide discretion to the state to priorities its social policies and a pretext for non-fulfilment of social rights including right to housing.

One exception with regard to positive obligations persons with disabilities may be referred to. Along with the Art. 5 of the CRT which constitutes a general legal basis for positive obligations, CRT provides a general positive obligation as regard to persons with disabilities. Art 61, subsection 2 of the CRT states that "The State shall take measures to protect the disabled and secure their integration into community life." Wording of the subsection explicitly provides duties for the state which should also embraces right to housing of the disabled persons.

Another provision related with the right to housing is Art. 10 of the CRT which encompasses principle of equality and prohibition of discrimination: "Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such consideration." Although the European Commission against Racism and Intolerance (ECRI) recommended to amend the list in a way to cover language, citizenship, national or ethnic origin[13] and after the series of amendments to CRT, not mentioning disability, ethnic origin or minority status in the article has criticized,[14] the wording of the article does not require such an amendment. As can be seen from the wording, the protection afforded is not limited to the grounds enlisted in the provision. The assertion of "any such considerations" potentially empowers the Turkish judiciary to widen the protection to the groups that have not been expressed in the article. The material scope of the Art. 10 is not limited to specific rights, therefore directly covers right to housing in the strict sense. Accordingly, Art. 10 of the CRT can be served as a basis to provide protection to all disadvantaged groups including refugees, asylum seekers and undocumented persons as well PwDs.

[10] Erdal Abdulhakimoğulları; Fatmagül Kale, "Türk Anayasalarında ve Karşılaştırmalı Hukukta Konut Hakkı", Türkiye Adalet Akademisi Dergisi, Vol. 4, Issue: 15, 2013, s. 25.

[11] Z. Gönül Balkır, Konut Hakkı ve İhlalleri: Kentli Hakkının Doğuşu IV. Sosyal Haklar Ulusal Sempozyumu Muğla, 2012, s. 344; Nurten İnce; İmam Bakır Kanlı; Burak Hamza Eryiğit, "İnsan Hakkı Olarak Konut Hakkı", International Journal of Political Studies, August 2017, Vol. 3, Issue: 2, s. 32.

[12] Bülent Algan, Ekonomik, Sosyal ve Kültürel Hakların Korunması, Seçkin Yayınları, Ankara, 2007, s. 279.

[13] ECRI, 5th Report on Turkey, CRI(2016)37, 2016, para. 12.

[14] Katarina Tomaševski, Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002, E/CN.4/2002/60/Add.2, 27.03.2002, para. 45.

The amendment made in Art. 10 in 2010 annexes a new subsection to the provision as "Measures to be taken for … disabled people … shall not be considered as violation of the principle of equality." The new subsection both obliges state to take special measures as well as provides that those measures would not constitute a breach of principle of equality. Although the former version of the provision implicitly recognizes the need for special measures and their conformity with the principle of equality, the 2010 amendment fosters this approach by way of emphasizing the disadvantage groups such as PwDs and adding indirectly the disabled persons to the list of prohibited grounds of discrimination. As a consequence, Art. 10 of the CRT enhanced the protection provided for right to housing for persons with disabilities. Along with Art. 10 of the CRT, Art 61, subsection 2 which states that "The State shall take measures to protect the disabled and secure their integration into community life." also provides duties for the state which should also embraces right to housing of the disabled persons and enhance the subsection concerning special measures in Art. 10.

Another right related with the right housing is right to property which is regulated by the Art. 35 of the CRT in under the chapter "Rights and Duties of the Individuals": "Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest." The second sentence of the Art. 35 of the CRT set forth the conditions under which and how to limit the right to property. Accordingly, the right to property may be restricted by the state if only there is a public interest. However, the restrictions to be made on the grounds of public interest must also regulated by statutory law. The last sentence of the Art. 35 of the CRT imposes a duty also on the property owner. The owner may not use his property right against the public interest.

With respect to refugees, asylum seekers and undocumented migrants there is no direct provisions related with the said groups. On the contrary CRT disregards these groups without even mentioning the word "refugee" or "asylum seeker. The only provision concerning these groups is the Art. 16 of the CRT which stated "the fundamental rights and freedoms in respect to aliens may be restricted by law compatible with international law." CRT implicitly refers to "Turkish citizens" or instead uses "everyone" in some of the rights and freedoms, however, the Art. 57 remains silent on the subject of the right housing which suggested that the protection provided by the provision is afforded to the non-citizens. As stated by the European Committee on Social Rights (ECSR), the right to housing is not a right that the state provides only to its citizens and must also be granted both to refugees and to individuals legally residing in the country or holding a work permit.[15] For reasons closely related to the right to life, states are sometimes also required to grant the right to housing to individuals who are illegally present within their boundaries. The housing provided to such individuals must meet high standards in terms of health, safety and hygiene, and key needs such as water, heating and sufficient lighting must also be met.[16]

On the other hand, as a general provision for all the rights and freedoms, Art. 16 allows for wide discretion concerning restrictions to the right to housing for non-citizens, including refugees, asylum seekers and undocumented migrants.

[15] ECSR, *ERRC v. Italy*, Complaint No. 27/2004, 07.12.2005, para. 45.

[16] ECSR, *ERTF v. France*, Complaint No. 64/2011, 24.01.2012, paras. 126-127.

1.3) (Social) Housing Policy

Please provide some general information on the provision of social housing/housing assistance in your member state (social housing stock, measures to promote construction and maintenance of social housing stock, social rental agencies, housing benefits, etc), and/or refer to synthetic materials easily available in English.

The duty of meeting the social housing needs of the lower income group and the poor group citizens, who are not able to own in the market conditions, is fulfilled by Housing Development Administration (HDA). HDA was established in 1984 by Mass Housing Law (Law No. 2985) due to the rapid increase in the housing deficit in the cities since 1980s. As a public legal entity affiliated with the Ministry of Environment and Urbanization, it is a non-profit public law legal entity and a part of the administration.

In pursuant to Mass Housing Law, HDA performs housing production and supply in Turkey on its own lands raising itself the necessary financial resources required to ensure that middle and low income groups, who are unable to purchase housing units under the current market conditions, become home-owners with suitable monthly instalments at long-term maturities in compliance with their saving patterns. Rental public housing system does not exist in social housing policy in Turkey. Public housing enjoyed by public employees is the only example in Turkey a sort of a rental social housing.[17]

HDA describes its institutional duties as giving credit support to lower and middle income groups, building low monthly instalment housing projects in long terms and encouraging banks to enter the field of housing finance in order to provide financial resources with suitable conditions for those who are not able to pay under the market conditions. HDA has provided long-term and low-interest loans to the housing cooperatives in the early periods of its establishment. Recently, however, instead of lending to the housing cooperatives, the institution has inclined to the production of mass housing by itself.[18]

In Turkey, there are two types of social housing application. First one is carried out by HDA alone, in a kind of mortgage model, which is long-term comparing with market credits and increased as indexed to annual civil service hike for low- income group.[19] The second one is carried out since 2009 in a cooperation with HDA and the Ministry of Family, Labour and Social Services-General Directorate of Social Benefits (GDSB) which provides social housing for the poorest and non-residential part of the society. These houses are inexpensive and interest- free and provided without advance payment and with long-term and fixed instalments. The poor families living - mostly in slums - settle down in these houses and these poor families are the most populous families of the society in Turkey.[20] In the implementation of the projects, HDA is the organization that builds social houses and the GDSB acts as the organization that financing the houses and determines the poor people who will benefit from these houses. HDA reported that, as of December 2018, 45,55% of the social housing projects realized consists of those for the small and middle income groups. 18,22% of the projects were

[17] Mehmet Okan Taşar; Savaş Çevik, "Sosyal Konut ve Konut Sektörüne Devlet Müdahalesi: Avrupa Ülkeleri ve Türkiye", Aksaray Üniversitesi İİBF Dergisi, Temmuz 2009, Cilt:1, Sayı: 2, s. 160.
[18] Nevzat Fırat Kunduracı, "Dünyada ve Türkiye'de Sosyal Konut Uygulamaları", Çağdaş Yerel Yönetimler, C. 22, S. 3, Temmuz 2013, s. 71.
[19] *Ibid*, s. 72.
[20] *Ibid*, s. 72

conducted they consist for the low-income group.[21] Until December, 2018; the number of housing units constructed by HDA is 830.960 and the constructions continues in all provinces on a total of 3.650 construction sites.[22] Despite all those efforts, there is a striking lack of housing in Turkey and even in 2011, it is estimated that an additional three million residences are needed.[23] Besides, while it is not known exactly how many people are homeless in Turkey, it was also estimated in 2015 that the figure to stand at around 70,000.[24] While Turkey claims that the homelessness rate is not very high because family ties are so strong,[25] there is no official or unofficial data to back up this claim. Various state institutions carry out social housing projects in Turkey but it is not known which groups benefit from these projects. The Committee on the Economic, Social and Cultural Rights (CESCR) is of the opinion that the number of housing units constructed by HDA is far lower than what is actually needed, and that a national housing strategy must be drawn up.[26]

Conditions in order to benefit from social housing projects are determined by HDA. Those conditions for the low-income group:

- the applicant must be citizen of Republic of Turkey,
- the applicant should not be less than one year of resident of or registered to the provincial /district boundaries where the project is located,
- the applicant must not have purchased housing from Mass Housing Administration or loaned from Mass Housing Administration for housing loans,
- The applicant or his/her spouse or children under his/her custody must not have any housing with construction servitude or condominium or any detached house under registration,
- the applicant must be twenty-five years of age as of the date of application,
- monthly household net income of the applicant must be maximum 4500 TRY. (This requirement applied as 4.800 TRY in Istanbul)
- on behalf of a household only one application is allowed.[27]

As can be seen from the conditions stated above, refugees, asylum seekers and undocumented migrants cannot benefit from social housing projects. On the contrary, "disadvantaged groups" are regarded as HDA's priority in social housing production. Along with the low and medium income families which constitute the main target in its activities, it was stated that separate quotas and are allocated for the PwDs.[28] In one of its report submitted to the European Committee on Social rights Turkey stated that “in mass housing projects, a 10% quota is allocated for persons with at least 50% disability.”[29] However, this seems just a social policy without a legal basis and needs to be adopted through binding legal means.

The HDA realizes projects using method of collecting preliminary demands in order to prevent idleness of investments to be made in projects toward settlements with a population below 40.000. The preliminary demand collection method is organized by the Governorships, District Governorships

[21] See, http://www.toki.gov.tr/en/housing-programs.html (last accessed: 15.12.2018)
[22] See, http://www.toki.gov.tr/en/ (Last accessed: 15.12.2018)
[23] CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey, E/C.12/TUR/CO/1, 12.07.2011, para. 28.
[24] ECSR, Conclusions 2015, Turkey, Article 31-2, 2015/def/TUR/31/2/EN, 01.12.2015.
[25] ECSR, Conclusions 2011, Turkey, Article 31-1, 2011/def/TUR/31/1/EN, 10.01.2012.
[26] CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey, E/C.12/TUR/CO/1, 12.07.2011, para. 28.
[27] See, https://www.toki.gov.tr/basvuru-sartlari (last accessed: 15.12.2018)
[28] HDA, Corporate Profile, 2016, p. 62.
[29] ECSR, Conclusions 2016, Turkey, Article 15-3, 2016/def/TUR/15/3/EN, 09.12.2016.

or Municipalities. The project is put into effect in case of adequate application to the project (at least 100 housing units).

Due to the very high demand, houses are sold to applicants through a lottery supervised by a public notary.[30] The beneficiaries who sign a contract, cannot transfer the ownership of their houses until their debt is paid. In addition, until the debt is paid, buyer or his/her family should be residents in the contracted house. If it is determined that the buyer/his/her spouse or children do not reside in the house, the contracts can be dissolved.

The beneficiaries of the social housing projects of HDA, which are constructed on lands pertaining to HDA, make their down payments on the start of the constructions after the tender or at a certain stage that is determined by the Administration and continue monthly payments according to a single-indexed reimbursement plan. No down-payment is collected in projects toward the poor group.

Implementations for the low-income group houses are executed under the coordination of the HDA and the GDSB, and the HDA only undertakes construction of the houses in those projects. Applications and all following procedures are realized by the concerned social solidarity foundations. These projects seek the condition that the applicant him/herself, his/her spouse and the children under his/her custody have no real estate registered in his/her name with the land registry office. It is necessary that the applicants are not subject to the Social Security Institution. In housing sales toward the low-income groups, there is a condition of residence for the purchaser or his/her family until pay-off of the debt for the contracted house. The applications, sales, repayment terms and identifying beneficiaries related to the poor group houses are determined by General Directorate. These houses are delivered to low-income citizens by the HDA.

1.4) General national rules

Does national law provide for an 'enforceable' right to (social) housing? If so, in what terms? Please provide necessary retails of its recognition and implementation.

Please summarise the national (and/or where relevant local/regional) legal framework determining who is entitled to social housing and under which conditions (including rules related to access but also termination of social housing). Given that social housing comes in limited supply, pay particular attention to 'priority' rules and procedural mechanisms.

Please summarise the national (and/or where relevant local/regional) legal framework determining who is entitled to housing assistance in the form of housing benefits in cash, tax credits, vouchers, rent support, etc.

Please summarise the national legal framework regulating eviction. Pay attention to different 'types' of eviction, including eviction from rented properties for unpaid rent/bills, eviction from 'illegally' occupied properties (eg squats, camps), eviction from public properties (eg evacuation of Roma or 'refugee' camps), eviction from public or private properties for regeneration/beautification projects, gentrification programs, eviction in the context of mortgage foreclosure or housing repossession procedure, etc.

[30] HDA, Corporate Profile, 2016, p. 18.

As the vulnerable groups remain on the margins of society and lack equal access to socio-economic rights, inequality is the result of both income disparity and the marginalization of groups that experience intersecting disadvantages relating to factors such as inter alia alienage and disability.

Aside from Art. 57 of the Turkish Constitution, further regulations dealing with the right to housing also exist within domestic law:
- Law on Slums (Law No. 775)
- Law of Social Services (Law No. 2828)
- Law on Preservation of Cultural and Natural Assets (No. 2863)
- Expropriation Law (Law No. 2942)
- Mass Housing Law (Law No. 2985)
- Construction Law (Law No. 3194)
- Law on Municipalities (Law No. 5393)
- Turkish Code of Obligations (Law No. 6098)
- Law on Transformation of Places under Disaster Risk (Law No. 6306)

Meeting the housing need, arranging the procedures and principles that will be subject to the construction of the dwelling, development of industrial construction techniques and tools and materials appropriate to the country's conditions and support of the state is subject to the Mass Housing Law (Law No. 2985).

The two main state institutions that deal with the right to housing in Turkey are the Ministry of the Environment and Urbanization and HDA. Social housing projects are carried out within the framework of Mass Housing Law (Law No. 2985) and Construction Law (Law No. 3194). In addition, Art. 69 of Law on Municipalities (Law No. 5393) provides that local governments are also entitled to build, rent and sell housing and mass housing in order to meet housing and planned urbanization needs. The Mass Housing Law is a framework law defining the fundamental principles, which give direction to the solution of the housing problem in Turkey.

As another framework regulation Law of Social Services (Law No. 2828) regulates principles and procedures regarding the establishment, duties, authorities and responsibilities for the purpose of carrying out these services and the social services and services provided to the family, children, disabled, elderly and other persons in need of protection, care or assistance.

In Turkish Law, eviction is possible in terms of Turkish Code of Obligations (No. 6098), Law on Transformation of the Fields Under the Risk of Disaster (No. 6306), Expropriation Law (Law No. 2942) and Law on Slums (Law No. 775).

According to the Code of Obligations reasons for evictions are bright-line in the Law. Art. 350 provides that the lessor may process for eviction if the lessor has to use the house due to his/her or his/her descendants/lineal ancestors or dependants' needs or if it is necessary to repair, expand or replace, and it is not possible to use the house during these works due to reconstruction or improvement purposes. The new owner may also may process for eviction if he/she has to use the house due to his/her own or his/her descendants/ lineal ancestors or dependants' needs according to the Art. 351. Art. 352 sets for the reasons of eviction deriving from the tenants. If the tenant defaults twice within the term of the lease contract which is a less than one year lease contracts or within a period of more than a lease year or a lease year in case of one-year or longer-term lease contract; If the tenant or his /her spouse has a residence suitable for residence in the same district or municipality or if the renter does not perform evacuation despite the fact that he/she has promised

to in written form the leaser may dissolve the contract and demand evacuation of the house. Speaking of provisions of Turkish Code of Obligations, under its section regulating rental agreements it is observed that the Law protects the tenant against the rent increases and the dissolution of the rental agreement by the leaser.[31] In case of mortgage agreement, if the instalments are not paid for more than two months, the mortgage bank is authorized to exercise its rights on the housing and If the debt is not paid within one month period again, the bank can put the house on sale which would be culminated with an eviction. Since squats or camps of nomadic groups is not a very common situation the issue of expulsion, including forced removal has not been dwelled upon in the study.

For the evacuations subject to Law No. 6306, according to the Art. 5, it is principle to deal with the owners in the risky structures determined as risky structures in accordance with the Law. Temporary housing allocation or rent assistance may be made to the owners, tenants or the holders of the restricted real rights who have been evacuated by the agreement. Upon request by the Ministry, HDA or the Administration during the implementation, electricity, water and natural gas shall not be given to the structures and risky structures in the risky areas by taking the opinion of the right holders and the services rendered shall be stopped. In pursuance of the Implementation Regulation of the Law No. 6306, beside the real or private legal entities that are owner of the immovable in the area, the municipalities and HDA may apply for the risky area determination from the Ministry of Environment and Urbanization. The authority to determination of the risky structures belongs to the Ministry of Environment and Urbanization, Municipalities, Provincial Directorate of Environment and Urbanization, universities authorized by the Ministry and private companies and organizations licensed by the Ministry.

Art. 5 of the Law No. 6306 stipulates that the owners of these structures are given a period of not less than sixty days to demolish the risky structures before starting the implementation. In this period, if the building is not demolished by the owner, the owner shall be notified that the structure will be demolished by the administrative authorities and shall be given another period. In this period, if the building is not destroyed by the owner, it shall be notified that the structure will be demolished by the administrative authorities and the period shall be notified to the owner again. If the owners do not undertake the demolition in this period, the evacuation and demolition of these buildings shall be carried out by the local governors in corporation with local administrations.

The evacuations in terms of Expropriation Law (Law No. 2942) come to the fore when the administrations expropriate necessary immovable properties, resources and easement rights in order to carry out public services or undertakings for which they are obliged to carry out, by paying in cash and in advance or in equal instalments. The proprietor may file an annulment action against the expropriation process in the administrative courts within thirty days from the notification of the expropriation decision. The administration assigns a commission for valuation of the immovable and establishes its own reconciliation commission for the purchase of the immovable. The offer of the administration is offered to the proprietor and an agreement is sought for the value of the immovable. The owner of the immovable property will respond to this offer within 15 days. The agreement is provided by the conciliation commission. The Administration shall pay the agreed price

[31] Art. 343: “No change can be made against the tenant except for the determination of the rent in the lease contracts.” Art. 344: “The agreements of the parties regarding the rental price to be applied to the renewal periods are valid so as not to exceed the rate of increase of the producer price index of the previous lease year. This rule also applies to lease contracts longer than one year.”

within 45 days after the signatures have been made. If the owner does not respond to the offer of the institution within 15 days and the settlement cannot be reached, the institution shall file an action for the determination and registration of the expropriation value in the Civil Court of First Instance. The price of the immovable property is determined by the experts.

Law on Slums (Law No. 775) regulates the necessary measures to be taken for the purpose of improvement, liquidation of the unauthorized structures without the consent of the owner and prevention of the reconstruction of them. If the resident of the slum is owner, the slum cannot be demolished until it is turned into cash and it is paid to the owner or a land is allocated to the owner for housing if necessary, by providing the loan. If the resident is not an owner, it is not possible to demolish the slum, until a cheap rented house is provided or if the land is allocated for housing, and if necessary it is provided by providing the loan by providing the loan.

Law No. 5356 aims at establishing residential, commercial, cultural, tourism and social facilities by reconstructing and restoring the areas corroded which have been registered and declared as protected areas by the conservation boards of cultural and natural heritage, taking measures against natural disaster risks, protecting and conditioning the historical and cultural immovable assets by renewing them. In terms of Art. 4 of the Law, the way of agreement with the proprietor is essential in the evacuation, demolition and nationalization of the buildings in the renovation areas in accordance with the Law. In cases where there is no agreement, the immovable property owned by the real and private legal entities may be expropriated by the relevant provincial special administration and the municipality.

Along with the CRT and the above-mentioned statutory law, the right to housing is directly protected by the Law of the National Human Rights Institution of Turkey (TİHEK) in terms of prohibition of discrimination. Until the TİHEK Law was passed, there had not been any legal regulations prohibiting discrimination with regards to the right to housing. Art. 5 of the Law forbids state institutions and organizations, occupational organizations of a public nature, real persons, private legal entities and people granted authority by the aforementioned bodies from discriminating in advertisements for the sale or rental of moveable and immovable properties, the rental of such properties, the stipulation of conditions of rental contracts, the renewal or termination of rental agreements, and the sale and transfer of properties.

Apart from a specific provision focused on principle of equality and prohibition of discrimination, for the first time a general definition of different types of discrimination provided in Art. 2 of the Turkish Human Rights and Equality Institution Law (TİHEK) (Law No. 6701). The types of discrimination set forth in the Law are segregation, direct discrimination, indirect discrimination, multiple discrimination, instruction to discriminate, mobbing, denying reasonable accommodation, harassment, discrimination on an assumed ground and victimization. The TİHEK Law also obliges both public and private bodies or natural persons to eliminate discrimination again both in public and private sphere along with housing. The TİHEK Law prohibits discrimination confined to selected grounds including ethnic origin, religion, belief, sect and disability in Art. 3/1.

Last but not least, refugees, asylum seekers and undocumented persons or PwDs are sometimes subjected to mistreatment and harassment of a discriminatory nature. In 2016, the TİHEK Law

defined harassment in Turkish law for the first time and recognized it as a form of discrimination.[32] The TİHEK Law stipulates that with regards to cases of harassment, public institutions and organizations as well as occupational organizations of a public nature must take the necessary precautions to eliminate infringements, redress infractions, prevent the repetition of such acts, and ensure that legal and administrative steps are carried out to follow up on such matters.[33] Although the TİHEK Law provided a wide protection against discrimination even in the field of housing, to date, It is not possible to say that the law has been implemented effectively and any case law on the implementation of the law cannot be reached.

1.5) Specific rules targeting selected groups

Are they specific rules targeting our selected groups (refugees, asylum-seekers, undocumented migrants, persons living with disabilities, ethnic and religious minorities) with regard to access to social housing/housing benefits (e.g. priority, special accommodation, etc.), as well as with regard to the protection against the loss of the home (eviction).

1.5.1) Refugees, Asylum Seekers and Undocumented Migrants

Turkey became a party to the 1951 Convention Relating to the Status of Refugees in 1961. Turkey, using the optional right that is provided in Art. 1B (1) (a) of the Convention, restricted the scope of the refugee definition with the term of "events occurring in Europe". While the geographic and temporal reservation was removed at the New York Conference held in 1967, the states that have signed the 1951 Convention with the geographical reservation were given the option to continue these reservations. Turkey is one of only four countries that continue the geographical reservation at the moment. Therefore, in accordance with the 1951 Convention Turkey only accepts citizens of European countries as refugees.

Turkey's first asylum law, the Law on Foreigners and International Protection (LFIP)[34], was adopted in 2013 and came into force in April 2014. It represented a landmark step in legal protections for asylum-seekers and refugees in Turkey, and was developed in consultation with the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe, and civil society organizations. It completely overhauled the country's legal framework for migration-related matters and established a new civilian agency, the Directorate General for Migration Management (DGMM), which - supported by its local offices, the Provincial Directorates for Migration Management - is charged with managing asylum and migration in Turkey.

The LFIP is largely based on the EU law known as the "asylum acquis," which aims to establish a Common European Asylum System. As such, Turkey's new law incorporates many EU asylum law models and procedures, including controversial concepts such as "accelerated processing" and the

[32] Art. 2/1-j. Harassment is defined in the following terms: "Every kind of behavior that seeks to harm human dignity or is intimidating, derogatory, insulting, and/or intends to cause embarrassment and thus results in harm to human dignity, on the grounds stipulated in this law, including those of a psychological and sexual nature".

[33] See, Art. 3/3.

[34] For the unofficial text of the LFIP in English, see, http://www.goc.gov.tr/files/files/law%20on%20foreigners%20and%20international%20protection(2).pdf (last accessed: 15.12.2018)

administrative detention of some categories of applicants. The LFIP establishes a unique dual asylum structure. On the one hand are refugees from Syria, who are provided with "Temporary Protection" as a group[35]. On the other hand are asylum-seekers from other countries, who can be granted one of three individual "International Protection" statutes by the DGMM: 1) "refugees," who are fleeing from events in Europe, and who are permitted long-term integration in Turkey; 2) "conditional refugees," who are fleeing from events outside Europe, and who must await resettlement to a third country; and 3) "subsidiary protection" beneficiaries, who do not qualify as refugees or conditional refugees but who require protection because they face the death penalty, torture, or generalized violence amounting from armed conflict in their country of origin.[36] For all international protection applicants, Turkey has what is called a "satellite city policy," which requires them to live in a designated province (which excludes the largest cities of Ankara, Istanbul and Izmir).[37] Until the LFIP entered into force in 2014, any law regarding asylum was not available. Therefore, as of 1994, this subject was regulated by the Regulation of Asylum and was executed through the circulars and ordinances of Ministry of Interior.

Temporary protection which is defined in the Art. 91 of the LFIP, as an emergent and temporary protection provided to foreigners coming massively to Turkey and whose protection requests cannot be considered individually, is not listed among international statuses because temporary protection status requires of a review of international protection demands on the group basis.

The LFIP provides that the regulations regarding temporary protection status to be enacted by by-law. For this reason, order of temporary protection status, the duration and the expiration of the rights and obligations of those who will benefit from this status briefly regulating all matters relating to the procedure and the basis of temporary protection status is set forth by the Temporary Protection Regulation.

In Art. 95 of LFIP has provided that international protection applicants or foreigners having international protection status are required to meet their housing needs themselves. But it also states that the DGMM may establish reception and accommodation centres whose management and operation procedures and principles regulated by a Directive to meet the accommodation, food, health, social and other needs. Indeed, Regulation Regarding Establishment, Management, Operation, Operation and Control of Reception and Accommodation Centres and Removal Centres[38] has come into effect immediately after the entry into force of LFIP.

According to Art. 8 of the Regulation, centres may be operated directly or in accordance with Arts. 58 and 95 of LFIP they may be had operated to public institutions and organizations, Turkish Red Crescent Society or public benefit organizations who have expertise in the field of migration in order to provide services such as nutrition, shelter, cleaning, security, health, social and psychological support, social, artistic and sports activities.

Art. 4 of the Regulation provides that principles of protection of the right to life in the implementation of the services to be provided, the human-oriented approach, the care of the best interests of unaccompanied children, the prioritization of individuals with special needs, the

[35] LFIP, Art. 91;
[36] LFIP, Arts. 61-63.
[37] LFIP, Art. 71.
[38] See, Official Gazette No. 28980, 22.04.2014, http://www.resmigazete.gov.tr/eskiler/2014/04/20140422-5.htm (Last accessed: 15.12.2018)

confidentiality of personal information, informing the relevant parties in the procedures, social and psychological strengthening of the accommodation, respecting the freedom of belief and worship of the people who are sheltered and providing services to the residents without discrimination based on language, race, colour, gender, political thought, philosophical belief, religion, sect and similar reasons shall be taken as a basis in establishment and operation of the centres.

According to the Art. 9 of the Regulation of Temporary Protection Status, authority to determine the persons to be taken under temporary protection status belongs to Council of Ministers. The DGMM has the authority to determine the foreigners who will not be covered by the temporary protection status and give the individual decisions about those. Art. 8 of the Regulation sets for the cases that the foreigners cannot achieve the status or the protection status which has been obtained shall be revoked by the DGMM.

In accordance with Art. 3/1-1 of the Temporary Protection Regulation, the temporary sheltering centre is the centres that established for the purpose of providing shelter and accommodation of the foreigners within the scope of the Regulation. When referring the beneficiaries of temporary protection to these centres, their demands, family situations and whether they are in special need will be taken into consideration.

The foreigners staying under temporary protection may be allowed under certain conditions outside of temporary sheltering centres. Hereunder, in accordance with the principles and procedures to be determined by the General Directorate, they may be allowed to stay in the provinces to be determined by the General Directorate, if there is no harm in terms of public security, public order or public health.

The services to be benefited by the foreigners within the scope of the regulation in temporary shelter centres are generally counted as nutrition, shelter, health, social assistance, education and similar services to the extent of the possibilities. It is also accepted that temporary protected staying outside of the temporary shelter centres can also benefit from the services provided in these centres.

1.5.2) Persons with Disabilities

The primary law concerning the disabled persons is Law on Persons with Disabilities (Law No. 5378). By means of a reform made in 2014, the Law initially adopted in 2005 has been providing enhanced and far-reaching protection. The Law in Art. 8 states that “Accessibility standards are complied with in planning, design, construction, manufacturing, licensing and inspection processes in order to ensure the accessibility of disabled people in the built environment.”

The concept of reasonable accommodation is also employed in statutory law. The Law on Persons with Disabilities (Law. No. 5378) and TİHEK Law (Law No. 6701) also defines reasonable accommodation with some distinctions. Art. 2/1-i of the TİHEK Law provides that “Proportional, necessary and appropriate modifications and measures which are required in particular situations within the boundaries of financial means in order to enable the persons with disabilities to exercise and enjoy rights and freedoms fully and equally as other individuals”. Art. 3/j of the Law on Persons with Disabilities uses “necessary and appropriate modifications and measures that do not place disproportionate or excessive burden” instead of “proportional, necessary and appropriate modifications and measures”. The definition of Law No. 5378 seems more compatible with the definition of the concept in Art. 2 of the UN Convention on the Rights of Persons with Disabilities

(UNCRPD). Despite the partial difference in definition of the concept, both laws (Art. 5/2 of the Law No. 6701 and Art 4A of the Law No. 5378) obliges public or private institutions who are responsible for the planning, offering and supervising of the services shall be liable for taking into consideration the needs of different disabled groups and making reasonable accommodation.

With the Art. 1 of the Decree in Force of Law dated 6 June 1997 No. 572, an article was added to the Construction Law (Law No. 3194), bringing the provision "For making physical environment accessible and habitable for the people with disabilities, relevant standards of the Turkish Standards Institute[39] has to be followed in zoning plans, urban, social, technical infrastructure areas and in buildings" to effect.

As noted above, "disadvantageous groups" including people with disabilities are HDA's priority in social housing production. In this context, a quota of 5% of the number of houses in the projects put to sale by the Administration for the citizens with disabilities has been allocated and the beneficiaries and their houses are determined by drawing of lots. As a result of the lots, applicants of this category who are not beneficiaries are included in the lot again along with the applicants in the "Other Purchasers" category.

According to the practise adopted by HDA, for citizens with disabilities who have completed the age of 18 and have certificate of 40% or more disability, 5% of the number of houses offered for sale is allocated and rights holders are determined by lot. Applicants who cannot be entitled to housing as the result of the lot, have the right to stand in the lot with the applicants in the category of other buyers.[40]

Real Estate Tax Law (Law No. 1319), Art. 8 authorizes the President for reducing or cancelling out the taxes of real estate that belong to PwDs provided that they possess only one dwelling smaller than 200 square meter. As from 2007, persons with disabilities have been exempt from real estate tax in accordance with the decree of Council of Ministers.[41]

Also Law of Social Services gives duty of caring for individuals with disabilities requiring care, protection and help to General Directorate of Social Benefits that affiliated to Ministry of Family, Labour and Social Services. GDSB, has shelter, protection houses, residential and nursing care and rehabilitation centres and day care and family counselling and rehabilitation centres. According to Art. 37/h of Regulation regarding Public Institutions and Organizations Care Centres for Disabled People disabled people in need of care which are paid by him(/her or his/her family or General Directorate are accepted to the care centres.[42]

Art. 38 of that Regulation provides that care fee of the persons with disabilities in need of care whose monthly income is less than 2/3 of the net monthly minimum wage, taking account of the number of their own or dependants on the basis of the sum of any kind of his/her revenues, shall be afforded by the General Directorate.

[39] Turkish Standards Institution Standard, TS9 111- The Requirements of Accessibility in Buildings for People with Disabilities and Mobility Constraints.
[40] See, https://www.toki.gov.tr/basvuru-sartlari (Last accessed: 15.12.2018)
[41] Council of Ministers Decision No. 2005/9827, http://www.resmigazete.gov.tr/eskiler/2005/12/20051229-4.htm (Last accessed: 15.12.2018)
[42] See, https://eyh.aile.gov.tr/bakima-muhtac-ozurlulere-yonelik-resmi-kurum-ve-kuruluslar-bakim-merkezleri-yonetmeligi (Last accessed: 15.12.2018)

There is also another service regulated by Regulation on Determination of Disabled People in Need of Care and the Principles of Care Services[43] for those who are documented as being severely disabled and so fond of continuing their life without the help and care of others because they cannot fulfil the usual, repetitive requirements of daily life. They must be not subject to any social security institutions and have lost their family their family should be in economic or social deprivation.

Besides care and rehabilitation centres in order to enable disabled people to participate in social life by living in small groups in the home environment "hope homes" are incorporated by the Ministry. For persons with especially intellectual and mental disabilities by providing living in apartments in small groups in the community. It is aimed that persons with especially intellectual and mental disabilities will actively participate into social life of the community through psycho-social support and support relating to education and employment. "Hope homes" is regulated by The Directive Regarding Hope Homes for Disabled Individuals.[44]

1.6) Constitutional challenges

Have national rules set out in legislation, regulations or other binding legal measures regulating access to social housing/housing benefits or eviction been challenged for incompatibility with national constitutional norms? If so, which ones, and with what effect? [If information is easily accessible, can you also indicate who were the parties challenging those rules? Have certain national rules contested by societal actors but not challenged before courts?]

In Turkey, since 1962, there has been a constitutional court with a broad mandate. According to the Art. 148 of the CRT, the Constitutional Court of the Republic of Turkey (TCC) shall examine the constitutionality, in respect of both form and substance, of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Thus, both the relevant laws in this field can be subject to constitutional review and allegations concerning violations of right to vote can be submitted by individual application process to the TCC. The third subsection of the said article set forth that "Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights (ECHR) which are guaranteed by the Constitution has been violated by public authorities." Therefore, since the ECtHR may refer to right to housing in association with other rights (such as right to life, right to respect for private and family life, and right to property) protected under ECHR housing issues can be subject to individual application process.

Having looked at the database of TCC, as of 1 December of 2018, circa 10.000 judgments ruled in both procedures are accessible. The database asserted that there are only three judgments where TCC mentioned right to housing. However two of those cases[45] which are not reviewed within the context of right to housing since applicants claimed that the right to respect for family life had been violated due to the decision to sell the house which was a family residence. On the other hand, in one case[46] which was brought before TCC by 125 deputies from main opposition party, by way of

[43] See, https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_bakimamuhtacozurlulertesbitivebakimi.pdf (Last accessed: 15.12.2018)
[44] See, https://eyh.aile.gov.tr/uploads/pages/engelli-bireylere-yonelik-umut-evleri-yonergesi/engelli-bireylere-yonelik-umut-evleri-yonergesi-ne-ulasmak-icin-tiklayiniz.pdf (Last accessed: 15.12.2018)
[45] TCC, *Melahat Karkin*, B. No. 2014/17751, 13.10.2016; *Yıldız Eker*, 2015/18872, 22.11.2018.
[46] TCC, E. 2012/7, K. 2014/41, 27.02.2014.

abstract review of norms, TCC made a constitutionality review with regards to right to housing. In that case it was asserted that of Law on Transformation of Areas under Disaster Risk (Law No. 6308) which determined the procedures and principles of improvement, liquidation and renewal of the risky structures on areas under the risk of disaster and out of those areas were incompatible with many articles of the CRT including the Art. 56 protecting right to housing. TCC decided that the provisions regarding the zoning plans to be made in terms of the Law No. 6306 were not subject to restrictions in the zoning legislations and regulations contradicting with the Law No. 6306 were incompatible with the right to housing. According to TCC provisions which create legal uncertainty and do not draw framework and principles for operation of administration violates the right to housing. On the other hand, TCC concluded that the provision providing that the owners, tenants and owners of limited rights, who agreed to deal with the Administration, would be granted temporary housing and work place allocation or rent assistance while such a social assistance would not be given to those who were forcibly evacuated by not accepting the agreement did not contradict with right to housing protected under 56. TCC reiterates that according to Art. 65 of the CRT the State shall fulfil the duties of the Constitution determined by the Constitution in the social and economic spheres, taking into account the priorities appropriate to the objectives of these duties, and to the extent of the financial resources of the State and that the State has no obligation to provide housing for all persons without any distinction.

As stated above, Art. 65 of the CRT leaves a wide discretion to the state regarding the realization of right to housing. In a judgment rendered in 2012, TCC reaffirmed application of this restriction clause in a strict sense without any detailed review. The Court stated that "In cases where the lack of public resources or physical and geographical characteristics requires, the possibility of establishing secondary schools together with primary schools or high schools is a result of paying regard to the adequacy of the financial resources of the state."[47] The inevitable consequence of this judgment is that the government can determine its priorities in terms of right to housing without a constitutional review unless the law does not hinder access to housing of any specific group in defiance of principle of equality or non-discrimination.

The number of judgments directly or indirectly regarding right to housing of persons with disabilities is so limited. Even though not directly related with right to housing, a judgment of the TCC demonstrate the approach of the Court with regard to special measures provided by the legislature. The judgment was about the quota system adopted by the Labour Code (No. 4857) for persons with disabilities. One of the courts of first instance alleged the unconstitutionality of the obligation for the employers to employ disabled persons if the number of the employee in the place of business is more than 50. The sanction for any violation of this obligation is a moderate fine which even seems not dissuasive. TCC stated that, considering the obligations set forth for the state, the rule which obliges to employ disabled persons without a distinction between the public and the private sector is the result of the social aims and the social state principle in CRT and not disproportionate as well.[48]

Another judgment of the TCC concerning persons with disabilities is related with concept of accessibility.[49] When the Law on Persons with Disabilities (Law No. 5378) adopted in 2005, the legislature puts some provisional articles to the law concerning obligation of ensuring accessibility.

[47] TCC, E. 2012/65, K. 2012/128, 20.09.2012.
[48] TCC, E. 2006/101, K. 2008/126, 19.06.2008.
[49] TCC, E. 2012/102, K. 2012/207, 27.12.2012.

According to the 2nd and 3rd provisional Art. of the said law, "The existing official buildings of the public institutions and organizations, all existing road, pavement, pedestrian crossing, open and green areas, sporting areas and similar social and cultural infrastructure areas and all kinds of structures built by the natural and legal persons serving to public" and "Metropolitan Municipalities and municipalities take the necessary measure to make sure that the mass transport services in the city provided or controlled by themselves" shall be brought to suitable condition for the accessibility of the disabled people within seven years after the date of effect of this law. The Law No 6353 has amended the seven-year term to eight years thus provides an additional year to the institutions and persons under the obligation of realizing accessibility and a new sentence as "an additional period of not more than two years may be granted after the expiry of this period." which enable to suspend the said obligation for an additional 3 years. So the term for the accessibility set forth by the law became 10 years in total. The TCC referred to the progressive realization of the economic, social and cultural rights of the disabled persons set forth in Art. 4 of the UNCRPD and found the law in conformity with the principle of equality (Art. 10) and the restriction clause (Art. 65) of the CRT.

1.7) Relevant institutional and procedural aspects

Please summarise institutional aspects (eg judicial review mechanisms) or procedural rules (eg standing) which are important in terms of guaranteeing access to social housing/housing benefits and the protection from eviction (200 words or reference to English language presenting it in a relevant, synthetic and concise manner).

As this study is not intended to provide in-depth information on the remedies in relation to the right housing, brief information will be given on judicial remedies. As this study is not intended to provide in-depth information on the remedies in relation to the right education, brief information will be given on judicial remedies. The judicial system in Turkey has a multipartite structure at the levels of first instance courts, appellate courts and high courts. Criminal courts of first instances are divided into criminal courts of first instance and aggravated felony courts, on the basis of the severity of crimes. Civil courts of first instances are civil courts of peace and the civil courts of first instances. Specialized courts are established to deal with the cases in their jurisdiction and they are found at an equal level to one of the courts of general jurisdiction.

In 2016, the former two-tier system was replaced by a three-tier system after the introduction of Regional Courts of Appeal. These appellate courts have the authority to examine cases coming from the courts of first instance in terms of form and substance. As a result of the separation between ordinary courts (as civil and criminal courts) and administrative courts, the Court of Cassation[50] and the Council of State[51] are the last instances for reviewing decisions and judgments rendered by civil and criminal courts and administrative courts respectively. These high courts are also the first and last instance courts for dealing with special cases prescribed by relevant laws. Judgments of the Court of Cassation and the Council of State are not binding on other cases that are heard in other

[50] Art. 154(1) of the CRT: "*The Court of Cassation is the last instance for reviewing decisions and judgments given by civil courts that are not referred by law to other civil judicial authority. It shall also be the first and last instance court for dealing with specific cases prescribed by law.*"

[51] Art. 155(1) of the CRT: *"The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law."*

courts. On the other hand, those high courts are entitled to render decisions of assembly of chambers which have the binding force on all judicial authorities.

First instance courts of administrative jurisdiction are assigned to deal with the administrative cases. Administrative cases are the cases in which the defendant is, with some exceptions, a public institution. Administrative courts are split into two categories as administrative and tax courts. Tax courts deal with tax disputes and administrative courts deal with other administrative disputes. Administrative courts are courts of general jurisdiction in the administrative judiciary branch; therefore, they deal with all administrative cases that remain outside the jurisdiction of the Council of State and tax courts.[52]

Historically Turkey is the third state in Europe to establish a constitutional court following Italy and Germany. The Constitutional Court of the Republic of Turkey examines the constitutionality of laws, decrees having the force of law and the Rules of Procedure of the Turkish Grand National Assembly as well as individual applications submitted by applicants.

When public authorities are responsible for violations by virtue of their acts or actions, administrative and/or criminal courts have the jurisdiction. Civil or criminal courts have jurisdiction if a natural persons or private legal entity is responsible for violations depending on whether it is a tort or a crime. Victims of infringement may apply to the judicial means under the Criminal Procedure Law (Law No. 5271), the Civil Procedures Code (Law No. 6100) and the Administrative Procedure Code (Law No. 2577). Restorative justice mechanisms, which offer alternative means of settlement, such as alternative dispute resolution in civil or criminal matters are quite limited. Therefore, the only option with respect to the violations of the right to housing is the courts with heavy workload which may carry out the proceedings in a long time.

Legal disputes regarding right to housing arising from natural persons or private legal entities institutions mostly under the jurisdiction of civil courts, particularly consumer courts or in case of an offense under the jurisdiction of penal courts. Since, social housing policy is fully run by the state, disputes rather than financial obligations or with the public bodies such as HDA are under the jurisdiction of administrative courts. These disputes encompass both acts and actions of the administration. According to Art. 125 of the CRT, recourse to judicial review shall be available against all actions and acts of administration and shall be liable to compensate for damages resulting from its actions and acts. However, the cases should be opened within a certain period of time; the jurisdiction shall be limited to the control of administrative actions and acts and the judicial decision shall not be made in the form of administrative action and act or to abolish discretion left to the administration. In the case of administrative proceedings, the administrative court may decide to cancel the administrative procedure and/or compensate the loss if it is found unlawful. Thus, administrative actions are subject to compensation. Yet, the burden of proof is on the victim.

All victims of right to housing in domestic law who do not receive any result in any judicial manner and who feel that they have been victimized have the right to submit application to the TCC within a period of 30 days following the exhaustion of domestic remedies with the allegation that one of the rights in both CRT and ECHR has been violated. It should be noted, however, that the rights and freedoms set out in the CRT and ECHR cover largely the first generation rights. For this reason, it

[52] İsmail Aksel, Turkish Judicial System, Bodies, Duties and Officials, The Ministry of Justice of Turkey, Ankara, 2013, p. 65.

would most likely not be possible to apply to the TCC in areas such as housing with regard to positive obligations. In case of a ratification of the Protocol No. 12 of the ECHR, it may be possible to apply to the TCC concerning positive obligations. Refugees and other related persons as well as PwDs can rely provisions related with right to housing and positive obligations stemmed from them in conjunction with provisions of prohibition of discrimination.

It is also possible to lodge an application to ECtHR, following exhaustion of individual application to the TCC in six months. However, the Court applies similar conditions regarding the admissibility of the application and the material scope of the rights and and freedoms set forth in the CRT and ECHR is quite similar. Thus, possibility of finding a violation of right to housing by the ECtHR is so low following a judgment of the TCC founding the application inadmissible or non-violation of the said right.[53]

The domestic and international application procedures and judicial proceedings are quite complex, hence, it is formidable for victims of right to housing to initiate a case or an application procedure without the assistance of a lawyer. At the point where the victims initiated judicial procedures, the judicial bodies do not show sufficient sensitivity to disadvantaged groups such as refugees, asylum seekers and undocumented persons or PwDs. In cases where judicial procedures are used, the proceedings last a long time and people face difficulties in restoring their grievances. This situation may create a vicious circle and result in victims not seeking judicial procedures and not seeking their rights.

Also, the state-oriented and nationalistic approach that the judiciary reflects minimise the effect of judicial means in Turkey According to a research carried out ten years ago, judges and prosecutors have hesitations about legal arrangements and amendments done during the EU harmonization process.[54] Although there are different conceptions, most judges and prosecutors found the process and its positive effects on human rights and rights of minorities incompatible with the conservative social structure of the Turkish society and complain about the coercion of the EU or foreign governments. A number of them explicitly opposed the membership.[55] After the flow of Syrian refugees to Turkey, considering growing xenophobia to the Syrians, a similar attitude to the issues regarding refugees is possible.

With respect to access to justice, current legal aid scheme is also worth to be focused upon. According to Civil Procedures Code (Law No. 6100), it is not obligatory for the parties to be represented in the court by a lawyer. The right to free legal assistance in civil law, criminal law and administrative proceedings is regulated by the statutory law and is provided by the legal aid offices established by the bar associations. However, due to the low amount of allowances, relatively few people have access to free legal aid and there are few applications to legal aid offices. Most lawyers prefer not to work in legal aid offices because of lack of sufficient funds and low fees. Victims and the general public, especially the most disadvantaged groups, do not know their rights or possible legal remedies. In civil law and administrative proceedings, victims are required to demonstrate that they

[53] In the first six years of individual application process, the number of judgments that ECtHR found a violation of rights set forth in the ECHR is just two. Based on this example, it is unlikely for the ECtHR to find a violation in an application duly reviewed by the TCC.

[54] Suavi Aydın; Meryem Erdal; Mithat Sancar; Eylem Ümit Atılgan, Just Expectations, A Compilation of TESEV Research Studies on the Judiciary in Turkey, TESEV, Istanbul, 2011, pp. 30 et al.

[55] *Ibid*. p. 39.

have no financial means to hire a lawyer and that legal representation will serve the interests of justice. This is also valid for individual applications to the TCC.

There is no explicit reference to the vulnerable groups or preference for providing legal aid to those groups in any law. The services provided by legal aid offices can reach quite a small part of the disadvantaged groups and mostly victims of domestic violence, despite all good intentions. Therefore, in the context of right to housing, comprehensive measures should be taken in order to provide legal assistance to victims, particularly to the refugees, asylum seekers and undocumented persons as well as PwDs. Another issue particularly important with regard to refugees is that, the Civil Procedures Code (Law No. 6100) regulates reciprocity principle for foreigners in order to be eligible to benefit from legal aid. Since the current situation in Syria does not provide an appropriate legal aid to anybody, this principle hinders the refugees to enjoy form right to legal aid.

Along with the judicial means, there are also quasi-judicial institutions which may provide remedy for the disadvantaged groups such as TİHEK and Ombudsman. TİHEK was established in 2016 by the Law No. 6701 as a national human rights institution, an equality body and a national preventive mechanism against torture and ill-treatment. Ombudsman Institution was established in 2012 with the Ombudsman Institution Law (Law No. 6328) and together with TİHEK entrusted with applications concerning human rights violations. As the Chief Ombudsperson and the ombudspersons have been elected just by the votes of ruling party in Parliament since the beginning and all the members of the TİHEK have been elected directly by the President, the lack of independence is a major issue that affected the efficiency of these institutions. Their capacities, financial resources, lack of public awareness, non-binding nature of their decisions are other aspects of concern for their effectiveness.

Despite these efforts, apart from the judiciary, still there exists no proper quasi-judicial human rights protection mechanism which satisfies the Paris Principles. As to date, TİHEK has not been an accredited institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The present quasi-judicial bodies still far from being compatible with the international standards and provide no effective means for the victims of right to housing, particularly for the groups focused upon in this study. Even, it is accepted as an effective remedy, Art. 7/1-g of the TİHEK Law provides an exception that difference in treatment for foreigners on the basis of their status do not constitute discrimination on the basis of nationality, which prevents complaints from refugees, asylum seekers and undocumented migrants. Therefore, an application for complaint to the TİHEK, in theory, only possible for PwDs. In contrast to TİHEK, foreigners can submit a complaint to the Ombudsman Institution. However, according to the Art. 17/2 of the Law No. 6328, in order to submit a complaint, foreigners should indicate their passport numbers. This requirement indirectly restrains refugees and asylum seekers as well as undocumented migrants that does not hold a valid passport. Thus, those who are legally residing in Turkey can apply to the Ombudsman Institution.

The existing legislative framework provides no effective and accessible means of judicial or quasi judicial remedies, redress or compensation to the victims of right to housing. It seems that there is a need for judicial and quasi-judicial protection mechanisms that are easily accessible to disadvantaged groups who have suffered from violation of right to housing can apply and acquire reparative outcomes.

2) Impact of International and European Law

2.1) Challenges to national rules based on international instruments

Have rules on access to housing/housing benefits and/or eviction in national constitutional documents, legislation, regulations or other binding legal measures been challenged by reference to international instruments (notably the ICESR, CRPD, CRC, CAT, Refugee Convention, etc). With what effect?

Has the international law protection of the right to property (or other internationally protected rights) be invoked to challenge national rules on access to housing/housing benefits and/or eviction? Please refer to background paper (Deliverable 3.3), section 4) Justice in the Rights to Vote, Housing and Education in International Law for relevant information.

Have international monitoring bodies (HRC, CESR, CRC, CRPD, CAT, CERD, Special Rapporteur on the right to adequate housing, etc) adopted opinions/decision on the compatibility of those rules with international law? Did it produce any effect on national law?

Please provide necessary information concerning the incorporation and position/authority of international law, Council of Europe's instruments, and EU law in your country, which are of relevant to understand the protection of the right to housing in your country? In particular, does you state follow a monist or dualist approach? Can national courts invalidate/set aside national laws against international, Council of Europe and EU instruments?

It is worth to mention the status of international law in Turkish law. Turkey has been party to nearly all the major human rights treaties adopted by the UN. The Art. 90 of the CRT set forth that "International agreements duly put into effect have the force of law." Considering the status of international treaties in Turkish law, the treaties duly ratified should be implemented as in the case of laws adopted by the legislature. Moreover, as pointed out in the last sentence of Art. 90, "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." Thus, the self-executing provisions of the international treaties are directly applicable in a conflict with a Turkish law. Other provisions should also be taken to interpret Turkish law in order to comply with the obligations derive from the treaties.

The two primary standards concerning the right to housing in international law is Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to housing should not be interpreted to mean the acquisition merely of a structure that will provide a roof over a person's head, nor should a house be seen solely as a living space. The right to housing is the right to live in peace and security in a place befitting human dignity, and it is everyone's right regardless of their income or their level of access to economic resources. Within the context of that right, it is essential that the housing be located in a place that is accessible for the parties concerned.[56]

Within the scope of the right to housing, the UN Committee on Economic, Social and Cultural Rights (CESCR) has elaborated the concept of 'adequate housing', which demands the following:

[56] CESCR, General Comment No. 4, para. 8.

- Right to usage must be guaranteed in a way that will ensure legal protection against forced eviction, harassment, and other threats.
- There must be sustainable access to natural and shared resources, clean drinking water, means for the cooking and storing of food, sufficient energy for heating and lighting, infrastructure for cleaning and washing, a system of garbage collection, water waste and solid waste disposal, and emergency assistance services.
- The housing expenses of an individual or household should not be so high that they prevent the tenant from covering the cost of other key needs or force them to make sacrifices in doing so.
- The housing must offer sufficient space for the tenants and protection against the cold, humidity, heat, rain, wind, and other threats against health, as well as offer protection against structural threats and agents of infection.
- The elderly, children, disabled individuals, ill individuals on the brink of death, individuals with HIV, the permanently ill, victims of natural disasters, individuals living in areas prone to disasters, and members of disadvantaged groups must be provided with a certain amount of preferential treatment in terms of housing.
- Housing must be located in an area that provides access to employment opportunities, health care services, schools, child care centres, and other social opportunities.
- The style of the construction of residences, construction materials, and the policies employed in construction must make it possible to express cultural identity and diversity.[57]

Turkey has submitted only one state party report to the CESCR, dated 25 June 2008. In its concluding observations, the Committee expressed concern at the acute shortage of housing in Turkey and regretted the absence of information on homelessness and inadequate housing in the State party. Taking into account current situation, the CESCR called on Turkey "to step up efforts, including through the adoption of a national housing strategy, to increase the availability of adequate housing, particularly in view of the fact that the number of houses built under the auspices of the Housing Development Administration (TOKI) meets only 5 to 10 per cent of the housing needs. The Committee also calls on the State party to review the 1984 Mass Housing Act to ensure that it provides an adequate framework for realizing the right to adequate housing."[58] The Committee also emphasized the difficulties faced by the PwDs in Turkey in exercising right to housing and urged Turkey to ensure accessibility of buildings and allocate resources for making the necessary accommodations to public and private infrastructure and services.[59]

The leading instrument as regard to persons with disabilities is UNCRPD was ratified by Turkey in 2009 and its Optional Protocol in 2012 without a reservation. Since then, there has been no communications submitted to and concluded by the Committee on the Rights of Persons with Disabilities. Since ratification of the UNCRPD, Turkey has submitted only one state report, however, as of October 2018 it has not been reviewed by the Committee yet.[60] The country review expected to be carried out during 21st session which will be held in March-April 2019. In order to comply with UNCRPD, the Law on Persons with Disabilities (Law No. 5378) comprehensively amended in 2014, including right to education. Turkish Government stated that The Law on Persons with Disabilities (Law No. 5378) renovated on 6 February 2014 in line with the obligations stipulated by the UNCRPD and the principles of the Convention were strongly reflected to the Law. In that context the

[57] *Ibid*.
[58] CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey, E/C.12/TUR/CO/1, 12.07.2011, para. 28.
[59] *Ibid*, para. 11.
[60] CRPD, Initial report submitted by Turkey under article 35 of the Convention, CRPD/C/TUR/1, 04.10.2017

Government exampled redefinition of the term of "person with disability" based on human rights approach of the UNCRPD.[61]

2.2) Challenges to national rules based on European (Council of Europe) instruments?

Have national rules on access to free primary and secondary education and inclusive/institutionalized/segregated education been challenged by reference to Council of Europe's law, in particular Article 2 Protocol 1 ECHR, Article 7, 9-10, 15 and 17 of the RESC, the ECRML (notably Article 8), or the FCPNM (Article 12 and 13).

Have any cases concerning on access to free primary and secondary education and inclusive/institutionalized/segregated education taken to/decided upon by the ECtHR? With what effect? Was national law adjusted to comply with the ECtHR decision(s)? Have ECHR decisions made with respect to other countries had implications in your country (on the basis of the ECHRs erga omnes jurisdiction?

Has the Committee on Economic and Social Rights issued decision against your country for non compliance with the RESC? Was national law adjusted to conform to the RESC?

Turkey has been a member of Council of Europe since 1949 and has been a party to regional instruments such as European Convention on Human Rights (ECHR) and European Social Charter (Revised) (ESC-R) since respectively 1954 and 2007. As the ECHR and ESC-R are the only regional treaties with a monitoring mechanism as regards right to housing, the cases or reports referred below is mainly focused on these mechanisms.

Although not explicitly included in the ECHR, European Court of Human Rights (ECtHR) may review the cases, which are relevant in the fight against homelessness and housing exclusion, in terms of right to life in Art. 2, prohibition of torture or inhuman or degrading treatment in Art. 3, right to respect for private and family life in Art. 8, prohibition of discrimination in Art. 14, protection of property in First Protocol Art. 1. As of December 2018, there has been no cases directly regarding right to housing or regarding other rights that are relevant with right to housing of PwDs. The cases brought before ECtHR by asylum seekers or refugees, which the Court assessed in terms of prohibition of torture or inhuman or degrading treatment were regarding the poor conditions of the applicants' detention conditions in repatriation centres.

Turkey made the following declaration while ratifying ESC-R: "In accordance with Part III, Article A, of the European Social Charter (revised), the Republic of Turkey declares that it considers itself bound by the following articles, paragraphs and sub-paragraphs of Part II of the revised Charter: Article 1; Article 2, paragraphs 1, 2, 4, 5, 6 and 7; Article 3; Article 4; paragraphs 2, 3, 4 and 5; Articles 7 to 31." The declaration demonstrates that there is no reservation for articles related with housing such as 15 and 31. While the Art. 15 points out right to housing of PwDs, Art. 31 provides a general protection to right to housing of all:

[61] Contribution of the Republic Of Turkey for the Thematic Report of the Special Rapporteur On Adequate Housing, https://www.ohchr.org/Documents/Issues/Housing/Disabilities/States/Turkey.docx (Last accessed: 15.12.2018)

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources."

Turkey has not been ratified Additional Protocol to the European Social Charter providing for a system of collective complaint, nor declare by notification that it accepts the supervision of its obligations under ESC-R following the procedure provided for in the said Protocol. Thus, currently the collective complaint mechanism is not available for complaints against Turkey. The only monitoring mechanism valid for Turkey is the reporting procedure in every two years for the accepted provisions of the ESC-R.

Having looked at the former conclusions of the Committee, it can be seen that the Turkey has been always found incompatible with the requirements set forth by the ECSR concerning the right to housing. According to the latest conclusions of the ECSR in the field of housing, the Committee found the existing situation in Turkey not inconformity with the Art. 31/1, due to lack of definition of adequate housing, lack of rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and lack of legal protection of the right to adequate housing through adequate procedural safeguards.[62] Although the ECSR has not explicitly criticize Turkey as regards forced evictions due to lack information to be provided by Turkey, it has concluded that Turkey was not in conformity with the Art. 31/2 of the Charter particularly as regard to refugee children. The Committee stipulated that "the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children unlawfully present in their territory for as long as they are in their jurisdiction."

The ECSR differentiate between those lawfully resident or regularly working within the territory of a state party and people unlawfully present within the territory of a state party. For the former, accommodation in emergency shelters must be regarded as a temporal remedy and they must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 within a reasonable time. However, as for the latter, since there is no requirement for an alternative accommodation for the states, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity. The Committee further recalled that eviction from shelters without the provision of alternative accommodation is prohibited.[63]

Turkey in its report submitted to the ECSR in 2016 stated that, Temporary Protection Centres have been established in order to accommodate displaced people from Syria and at that time currently about 253.045 Syrian immigrants were hosted in 26 Temporary Protection Centres. Those centres and their surroundings are subject to security measures and provided with cleaning services, water, heating and lighting. Turkey also added that residents in those centres cannot be evicted from the centres they are living in against their will. The Committee concluded that those persons who can benefit from the centres are under temporary protection and the report gave no further information as regards people without having obtained any other status and request information concerning

[62] ECSR, Conclusions 2017, Turkey, Article 31-1, 2017/def/TUR/31/1/EN, 08.12.2017.
[63] ECSR, Conclusions 2017, Turkey, Article 31-2, 2017/def/TUR/31/2/EN, 08.12.2017.

homeless persons exist in Turkey and whether the law prohibits eviction from shelters or emergency accommodation. As a conclusion, due to these reasons, Turkey found not inconformity with the Art. 31/2 of the ESC-R.[64]

With respect to Art. 31/2 of the Charter, the Committee evaluates the housing program run by the HDA. As noted above the housing program of the HDA, the houses constructed by HDA are sold to applicants through a lottery supervised by a public notary. Under these circumstances, the Committee, with the absence of a comprehensive housing program and without any information regarding the waiting period for the persons expecting to be allocated a house, found the situation not to be in conformity with the Charter on this point. In addition, the Committee recalled that states parties must introduce housing benefits at least for low-income and disadvantaged sections of the population. As an individual right housing benefit must be provided to all qualifying households and in case of a refusal legal remedies must be available. The Committee concluded that even though social housing program provided housing for low-income groups and in some cases vulnerable groups have no legal right to apply for this programs and thus, there is no legal remedies provided for them in case of a refusal of a request.[65] The conclusion drew by the ECSR is that, Turkey again was inconformity with the Art. 31/3 of the ESC-R.

Art. 15 of the Charter focuses on PwDs and its third paragraph is as follows:

> "With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
> …
> 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

The ECSR in its latest conclusions regarding the Art. 15/3 of the Charter, found Turkey not in conformity with the obligations stemmed from the said article since therefore "it is not clear whether anti-discrimination legislation applies to all the fields covered by Article 15/3". However, with the adoption of TİHEK Law (Law No. 6701) in 2016, discrimination in enjoying right to housing is prohibited with different aspects. On the other hand, the assessment of the Committee was not limited to anti-discrimination legislation. Although the Committee welcomed the legislation about the accessibility of PwDs, it also asked for updated information on the progress made in promoting accessible housing in the next report of Turkey.[66]

Considering the explicit referral to PwDs in the Charter, the review regarding right to housing of PwDs comes as no surprise. However, the assessments of the Committee related with the refugees, asylum seekers and undocumented migrants are so limited. Nonetheless, the conclusions pointed out a need for concrete legal framework and certain housing policy for the vulnerable groups. In conclusion, the findings of the ECSR are mostly verbalised in general terms and up until now, almost all of them seems ignored by Turkey.

[64] ECSR, Conclusions 2017, Turkey, Article 31-2, 2017/def/TUR/31/2/EN, 08.12.2017.
[65] ECSR, Conclusions 2017, Turkey, Article 31-3, 2017/def/TUR/31/3/EN, 08.12.2017.
[66] ECSR, Conclusions 2016, Turkey, Article 15-3, 2016/def/TUR/15/3/EN, 09.12.2016.

Within the scope of Council of Europe mechanisms, ECRI is one of the most important monitoring mechanisms in Europe with regard to racism, xenophobia, anti-Semitism and intolerance from the perspective of the protection of human rights and fundamental freedoms. It also focuses on discrimination on grounds of race, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity. ECRI's statutory activities cover, inter alia, country monitoring and Turkey has been visited for five times by the ECRI in the last two decades. In its reports ECRI also focuses on the refugees and asylum seekers. The last report published by the ECRI on October, 2011 for the visit conducted in 2010, along with other recommendations also recommended Turkey to withdraw its geographical reservation concerning the origin of refugees and asylum seekers.[67] An additional recommendation was related with the integration policies for refugees, asylum seekers and other migrants. ECRI recommended that Turkish authorities develop statistical data and a set of indicators to evaluate and improve the integration and living conditions of the beneficiaries of integration policies in core areas such housing.[68] when the reports of ECRI examined, it appears that the Commission although deals with the issues of the refugees, asylum seekers and undocumented migrants, the main focus is not housing conditions or access to housing. Besides, disability is not a category of persons that the ECRI focused upon, thus the reports provide no outputs as to PwDs. In parallel with the conclusions of ECSR, the recommendations of the ECRI, although strictly limited to certain areas, seems consistently overlooked by the Turkey.

2.3) Challenges to national rules based on EU law

Has EU law, in particular EU free movement of workers and EU citizenship rules, EU immigration and refugee law, EU non-discrimination law, EU consumer law, EU internal market (eg free movement of services), EU state aid and competition law, EU public procurement law, EU tax law, EMU law, or the European Pillar of Social Rights, been invoked in domestic courts to challenge national rules concerning access to housing/housing benefits and/or eviction?

Has the European Commission launched enforcement actions against your state for violation by national rules regarding access to housing/housing benefits and/or eviction of EU law? Did the Commission take your state to the CJEU? Was national law adjusted to comply?

Have they been referrals to the CJEU, and decisions, related to a violation of EU law by your member state's rules regarding access to housing/housing benefits and/or eviction? If yes, where they follow by any effect?

The history of EU-Turkey relations goes back to the 1950's. The fluctuating relations have always had a great influence on the democratization process and human rights policy of Turkey. As can be seen above, the main motive behind the amendments made in the CRT is the close relationship between the EU and Turkey. This can also be traced by the Turkey's policy of ratification of international treaties. The main motivation behind the human rights reforms after the World War II has always been the integration of Turkey into the EU.[69] Despite the ratification of ECHR in 1954, the acceptance of the jurisdiction of the ECtHR in 1989 and the ratification of the core United Nations Human Rights Treaties after 1999 are not a coincidence since all the given dates were the main

[67] ECRI, 4th Report on Turkey, CRI(2011)5, 2016, para. 133.
[68] ECRI, 5th Report on Turkey, CRI(2016)37, 2016, para 65.
[69] See, "Human Rights: Policy Objectives and Development", Ministry of Foreign Affairs, http://www.mfa.gov.tr/İnsan-hakları.en.mfa (Last accessed: 01.10.2018)

historic moments in relation to the integration process. It would not be an exaggeration to say that leading law reform packages were the consequences of the close ties between Turkey and EU.

Turkey and EU maintain their relations which they started with "association" in 1963, with full membership process of Turkey. In 1963, the Agreement Establishing an Association Between the European Economic Community and Turkey (Ankara Agreement) establishing an Association between the European Economic Community and Turkey was signed by Turkey and by the Member States of the European Economic Community and the Community. Also in 1987, Turkey submitted a formal request for full membership. The European Commission rejected the request on the grounds that Turkey manifested grave democratic deficiencies in 1989. However, it confirmed that Turkey was still eligible for full EU membership. Both association and status of "candidate state" require harmonization of laws.

The Ankara Agreement builds the association in the frame of an economic integration including customs union and free movement of persons, services and capital.[70] It presents a framework for Turkey's gradual integration into the Community. The instruments that followed, such as the Additional Protocol of 1973, and Decision No. 1/95 of the Association Council, filled this frame. According to the Art. 28 of the Agreement "As soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of the accession of Turkey to the Community." Hence, harmonization of laws is inherent in the gradual integration model of this association.[71] As a first instrument, the Additional Protocol of 1973 followed the Agreement and regulated the issues regarding attainment of free movement of goods (customs union) and adjunct free movement of persons and services, approximation of economic policies and approximation of laws.[72]

Decision No. 1/95 of the EC-Turkey Association Council which was established by the Ankara Agreement to ensure the implementation and promotion of the association regime, and was given power to take decisions, is the most detailed instrument referring to the approximation of legislation. In this context, "approximation of legislation" was set out as a separate chapter and protection of intellectual, industrial and commercial property rights, competition, trade defence instruments, government procurement, direct and indirect taxation were regulated under this chapter.[73] Moreover, this Decision provides a general obligation clause stating "In areas of direct relevance to the operations of the Customs Union[74] … Turkish legislation shall be harmonized 'as far

[70] For the text of Ankara Agreement in English, see, https://www.ab.gov.tr/_117_en.html (Last accessed: 01.10.2018)

[71] İlke Göçmen, "Avrupa Birliği ile Türkiye İlişkileri Çerçevesinde Türk Mahkemelerinin Avrupa Birliği Hukuku Karşısındaki Tutumuna Yönelik Bir Öneri: AB-Dostu Yorum Yöntemi", Ankara Üniversitesi Hukuk Fakültesi Dergisi, Vol. 63, No.1, 2014, p. 135.

[72] See respectively Art. 2 and following articles, Art. 36 and following articles, Art. 43 and following articles of the Additional Protocol.

[73] For instance, Art. 39 (1) of the Decision states "*With a view to achieving the economic integration sought by the Customs Union, Turkey shall ensure that its legislation in the field of competition rules is made compatible with that of the European Community, and is applied effectively. "*

[74] These areas are commercial policy and agreements with third countries comprising a commercial dimension for, industrial products, legislation on the abolition of technical barriers to the industrial products, competition and industrial and intellectual property law and customs legislation (Decision No. 1/95 of the Association Council Art. 54 (2))

as possible' with Community legislation."[75] Last but not least, the Decision includes a clause regarding "interpretation" stating "The provisions of this Decision, in so far as they are identical in substance to the corresponding provisions of the Treaty establishing the European Community shall be interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the Court of Justice of the European Communities."[76]

Pursuant to its formal request for full membership in 1987, Turkey obtained the status of a candidate state in the 1999 Helsinki Summit Meeting and started the membership negotiations in October 2005. For full membership every candidate state must fulfil the Copenhagen criteria (political, economic and EU *acquis* criteria) and beside adapting *acquis* it must have the administrative and institutional capacity to implement it effectively.

The negotiations are carried out through the Negotiating Framework.[77] According to the Negotiating Framework, "Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the *acquis* of the Union. Turkey will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the *acquis*."[78]

Moreover, "In all areas of the *acquis*, Turkey must bring its institutions, management capacity and administrative and judicial systems up to Union standards, both at national and regional level, with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system."[79]

The Regular Progress Report of 2016 on Turkey states that regarding its ability to assume the obligations of membership, Turkey has continued to align with the *acquis* and with despite the visa liberalization related work, its efforts continued at a limited pace. The report points out that, Turkey is well advanced in the areas of company law, trans-European networks and science and research and it has achieved a good level of preparation in the areas of free movement of goods, intellectual property law, financial services, enterprise and industrial policy, consumer and health protection, customs union, external relations and financial control.[80] In areas especially regarding the titles under the political criteria, human rights and protection of minorities[81] and environment and climate change,[82] Turkey should ensure legislative alignment with the *acquis*. The political climate in Turkey in recent years caused harsh criticism among EU institutions and member states with respect to human rights and related fields.

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[75] Decision No. 1/95 of the Association Council, Art. 54 (1)
[76] Art. 66.
[77] European Council, Negotiating Framework, Luxembourg, 3 October 2005, https://www.ab.gov.tr/files/pub/2016_progress_report_en.pdf (Last accessed: 01.10.2018)
[78] Negotiating Framework, Art. 10
[79] Negotiating Framework, Art. 17
[80] European Commission, Turkey 2016 Report, SWD (2016) 366 final, Brussels, 9.11.2016, p. 18.
[81] The report namely underlines that the anti-terror law and its implementation, freedom of assembly and non-discrimination in law and practice are not in line with the *acquis*. (European Commission, Turkey 2016 Report, p. 25)
[82] European Commission, Turkey 2016 Report, p. 86.

The laws adopted in the last three decades show that the influence of the EU law mostly valid only in certain fields of law, such as intellectual property law, labour law and competition law. This is mainly based on the leading motives behind the relevant laws. Such an influence is the necessity of the EU accession process which requires Turkey to harmonize its laws with the *acquis*. Right to housing of refugees and other related persons or PwDs are not at the agenda of EU-Turkey relations thus Turkey receives no harsh critics for lack of harmonizing its legislation in conformity with international standards.

As stated above, pursuant to the art. 90 of the Turkish Constitution "international agreements duly put into effect have the force of law" and "in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." The Constitutional Court also interpreted the given article in a way to give precedence to the judgments of ECtHR in a conflict with laws. As Turkey is not an EU member and is not party to EU treaties, EU law in general does not have a binding effect in Turkish Law, nor prevail over Turkish Law. Consequently, Turkish judiciary do not feel themselves under an obligation to follow EU law in general or CJEU jurisprudence as a rule.

1999 is the year in which Turkey was officially regarded as a candidate country and so far EU has published a Progress Report each year in which the human rights and democratization reforms were assessed. Having looked at those reports, one can easily say that ratification policy of the international human rights treaties and realized legal reforms can be regarded as an answer to the criticisms therein. Thus it can be claimed that motivation behind the ongoing harmonization process of the Turkish legislation with the Copenhagen criteria, the EU *acquis communautaire* and the Council of Europe human rights standards has been the aspiration of EU integration. The relationship between EU and Turkey affects the level of conformity with the international human rights standards. In order to illustrate the correlation, the figures regarding the applications that lodged against Turkey before the ECtHR can be pointed out. Accordingly, when viewed from this aspect, preserving the relations and enhancing the cooperation with Turkey are closely connected with the promotion of human rights in Turkey as well.

Finally, the legal status of EU law also causes less attention to EU law in comparison with the ECtHR or other international instruments. The main underlying reason may be the non-binding rules of EU law in Turkish law. As mentioned above, pursuant to the Art. 90 of the CRT "international agreements duly put into effect have the force of law." Art. 90 also provides that "In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." The TCC also interpreted the given article in a way to give precedence to the judgments of ECtHR in a conflict with laws.[83] As Turkey is not an EU member and is not party to EU treaties, EU law in general does not have a binding effect in Turkish Law, nor prevail over Turkish Law. Consequently, by contrast with the executive and the legislature, Turkish judiciary do not feel themselves under an obligation to follow EU law as a rule which affected the positive impact of EU law with regard to PwDs.

[83] TCC, *Sevim Akat Eşki*, B. No: 2013/2187, 19.12.2013; *Adalet Mehtap Buluryer*, B. No. 2013/5447, 16.10.2014.

As to refugees, asylum seekers and undocumented migrants, Turkey and the EU signed Readmission Agreement on 16 December 2013 and it entered into force on 1 October 2014. It was decided that the implementation of the Agreement for the third country citizens would begin on 1 October 2017. However, some steps were taken to draw back the date of the readmission of third-country nationals and stateless persons. with the European Union on 15 November 2015 Joint Action Plan between Turkey (EU-Turkey joint action plan) is prepared. On 18 March 2016, at the summit held in Brussels with Prime Minister of Turkey at the summit between the leaders of the EU member countries Turkey and EU agreed on changing the date of implementation of the terms regarding third country nationals readmission to 1 June 2016.[84] Decision Number 2/2016[85] was adopted by the Joint Reception Committee to commence the implementation of the treaty for third country nationals on 1 June 2016.[86] In exchange, the EU promised to: resettle one Syrian refugee from Turkey to the EU for each Syrian refugee returned from Greece to Turkey, up to a maximum of 72,000 people; provide up to 6 billion EUR for a "Facility for Refugees in Turkey," grant visa-free travel for Turkish nationals by June 2016, and revive the stalled negotiations for Turkey to accede to the EU.[87]

The main objective of the EU-Turkey Readmission Agreement is, within the framework of principle of reciprocity, to determine the procedures for readmission of people who do not fulfil the conditions for entry to, presence in or residence in the territories of Turkey or one of the Member States of the Union in a quick and systematic way the territory of the other side of each side, This agreement covers the readmission of both the EU member states and the Turkish nationals who have entered into or directly from the territory of the other Party on the territory of the other party and all other persons, including third-country nationals and stateless persons. According to the Agreement the return costs of irregular migrants to be returned under the Readmission Agreement shall be borne by the sending country. Cost of shelter during the period in which they held in administrative detention centres and costs related to their return to their own country of irregular migrants who have been identified to have entered to EU states and returned to Turkey shall be born by Turkey. In return the EU promises providing financial assistance for Syrian refugees and accepting them in legal ways.[88]

3) Right to Housing, Justice as Redistribution and Vulnerability

When reviewing the national legal framework and, where relevant, references to International and European norms, could you identify arguments engaging different conceptions of justice as

[84] Nuray Ekşi, "18 Mart 2016 tarihli AB-Türkiye Bildirisinin Hukuki Niteliği", Conress-İktisat ve Sosyal Bilimlerde Güncel Araştırmalar, Vol. 1, No. 1, 2017, pp. 51- 52.

[85] The European Union has ratified Decision 2/2016 of the Joint Admissions Committee with the decision of the Council of the European Union. Council Decision (EU) 2016/551 of 23 March 2016 establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation from 1 June 2016, OJ 9.4.2016 L95, p. 9-11.

[86] Ekşi, p. 54.

[87] Council of European Union, EU-Turkey Statement 18 March 2016, https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ (Last accessed: 15.12.2018)

[88] See, https://www.dw.com/tr/ab-t%C3%BCrkiye-m%C3%BClteci-anla%C5%9Fmas%C4%B1n%C4%B1n-ikinci-y%C4%B1l%C4%B1-doldu/a-43027606 (Last accessed: 15.12.2018)

redistribution (refer to 3.3 section -). In particular, pay attention to priority rules or conditions of eligibility in access to housing, or conditions surrounding evictions, and who they identify as main beneficiaries.

Please specify whether these were part of court's reasoning or parties' arguments, and if the later, provide any relevant information that could help evaluate who mobilized the law to achieve greater justice (eg NGOs, etc.).

Does the concept of vulnerability play a role in the context of access to social housing/housing benefit or the protection from eviction in your country? Please explain how, and provide some representative illustrations.

Human rights instruments, which include the right to housing are intended to provide protection not just in theory but in practice as well.[89] Since housing is a social right, two obligations arise for states. Firstly, they are obliged to ensure that everyone has equal access to the standards expressed by those rights. The obligation to implement anti-discrimination policies needs to be carried out immediately, and PwDs in Turkey must be granted equal access to their rights. Secondly, states are obliged to take progressive steps to raise standards concerning the right to housing to the highest level possible. The obligation of progressive implementation is focused not only on results but also on whether effective measures are applied to ensure qualitative and quantitative progress.[90] On this point, states are expected to achieve measurable progress using a maximum of resources within a specified timeframe to institute a given right.[91] In terms of progressive obligations, a national housing strategy should be agreed upon that has goals targeting the improvement of housing conditions. The strategy to be implemented should, taking into account the existing resources, consider the most financially efficient way to achieve the goals in question and should set out the relevant responsibilities and deadlines.[92]

According to the ECSR, states should not be content with just instituting legal regulations.[93] In order to achieve the goal of effectively protecting a given right, the necessary practical measures must be put in place to a sufficient degree. If realizing a right turns out to be exceptionally complex and costly, states should take the necessary steps within a reasonable period of time to achieve measurable progress by using the maximum amount of existing resources.[94] States can and must strike a balance between the public interest and certain groups' interests while at the same time delineating certain priorities,[95] and the most disadvantaged groups should always be prioritized.[96] When marginalized or excluded groups are unable to gain sufficient access to the right to housing, this has a negative impact on their ability to access other rights as the PwDs has experienced. When states take steps to bolster the right to housing, it is necessary to pay special attention to disadvantaged groups and afford them priority.[97]

[89] ECSR, *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, 09.09.1999, para. 32.
[90] ECSR, *ERRC v. France*, Complaint No. 51/2008,19.10.2009, para. 30.
[91] ECSR, *ERTF v. France*, Complaint No. 64/2011, 24.01.2012, para. 101.
[92] CESCR, General Comment No. 4, para. 12.
[93] ECSR, *International Movement ATD Fourth World v. France*, Complaint No 33/2006, 05.12.2007, para. 61.
[94] ECSR, *ERRC v. Bulgaria*, Complaint No. 31/2005, 18.10.2006, para. 35.
[95] ECSR, *ERTF v. France*, Complaint No. 64/2011, 24.01.2012, para. 95.
[96] ECSR, *Autism Europe v. France*, Complaint No. 13/2002,04.11.2003, para. 53.
[97] para. 11.

In terms of positive obligations, certain special measures must be put in place with regard to disadvantaged groups such as PwDs. The use of the word "special" here points to measures that facilitate and accelerate the concrete realization of the goal of real equality for social groups that are subjected to discrimination. In other words, the aim of such measures is to support the attainment of a "special" goal. As for the term 'measures', if we cadge the scope from the Committee on the Elimination of Racial Discrimination (CERD), this includes social service or support programmes, the allocation of resources, priority treatment and administrative and regulatory steps concerning legislation and implementation such as time-based quantifiable goals and quota systems, as well as policies and their implementation.[98] Special measures are geared towards accelerating the realization of actual equality. Measures targeting the housing rights of PwDs need to be designed in a way that takes into account the problems they experience. Having looked at the existing legislation there is no special measure adopted for PwDs. The only piece of legislation targeting PwDs is the TİHEK Law (Law No. 6701) prohibiting discrimination in the fielding of housing.

When a group of people is subjected to discrimination or is vulnerable to discrimination, it is the government's responsibility to conduct research concerning the scope of the problem. On the condition that precautions are taken to protect privacy and prevent abuse of the information acquired, data should be obtained that can then be used to carry out analyses, identify problems and develop solutions so that effective evidence-based policies can be created.[99] For instance, the first step the government must take is to gather disaggregated data in order to develop policies to solve the housing problems of the PwDs, as well as increase their access to housing. Although there is no official segregated data with regard to housing, Roma and similar groups seems as the leading groups that disproportionately affected from the lack of proper and humane housing and the most vulnerable group.[100]

HDA affirms that disadvantaged groups (disabled, martyrs and people with disabilities) are given priority in certain proportions in its social housing supplies.[101] However, there is no information regarding rate/number of persons with disabilities who are beneficiaries of social housing program. As noted above, the Government stated that HDA acted in accordance with that article of Law No. 3194 and all of its subsidiary regulations such as "Requirements of Accessibility in Buildings fort he Persons with Disabilities and People with Limitations on Movement Ability" and "Rules of Structural Measures on Avenues, Streets, Squares and Roads and Design Markings for the Persons with Disabilities and the Old People" were being followed in construction of all buildings in its mass housing projects.[102] On the other hand, there is no audit report on how accurate the information is. As no audit has been carried out regarding HDA, it is unclear how far the standards are complied with in construction or construction. Based on the information provided by the Government, it is understood that the regulations are only for the physically disabled. For example, which regulations for visual, hearing and speech disability are not available. Taking into account above-mentioned case, it seems that there is a lack of legal regulation with respect to priority rules and accordingly any

[98] CERD, General Recommendation No. 32, para. 13.
[99] ECSR, *ERRC v. Italy*, Complaint No. 27/2004, 07.12.2005, para. 23.
[100] See, Ulaş Karan, Roma Access to the Right to Housing and Education in Turkey, Minority Rights Group International, London, 2017.
[101] HDA, Corporate Profile, s. 63.
[102] Contribution of the Republic Of Turkey for the Thematic Report of the Special Rapporteur On Adequate Housing, p. 5, https://www.ohchr.org/Documents/Issues/Housing/Disabilities/States/Turkey.docx (Last accessed: 15.12.2018)

mechanism to challenge it or appeal to the decisions of rejection. In addition, there is no legal right to housing-related benefits.

The vast majority of the country's asylum-seekers and refugees are living in privately rented accommodation. The LFIP explicitly requires international protection applicants and beneficiaries to pay for their own accommodation. According to the Fact Sheet of the UNHCR about Turkey,[103] more than 90% of the refugees have to live outside of the camps. This means that more than 3 million asylum-seekers and refugees in Turkey are left to try to meet their own shelter needs as best they can. A discretionary provision in the LFIP authorizes DGMM to establish "reception and accommodation centres". The Temporary Protection Regulation also contains a discretionary provision on accommodation stating that Syrians outside of the camps who are "in need may also be accommodated, to the extent possible, in places to be determined by the governorates. According to the Report of Amnesty International in 2016, the authorities refused to provide any information about the extent to which these discretionary provisions on shelter have been implemented. [104]

According to the LFIP and Regulation on Temporary Protection refugees and asylum seekers residing outside of the camps are supposed to meet their own accommodation needs. Refugees and asylum seekers are unable to provide for their own accommodation for a range of reasons, including lack of money, inability to work due to age or illness, and particular vulnerability, but Turkey's facilities to house asylum seekers and refugees who cannot provide for themselves are inadequate. In January 2016, the CERD expressed concern about Syrian refugees' poor living conditions across Turkey, as well as the general inadequacies in the economic and social conditions of migrants, asylum-seekers and refugees.[105]

The fact that they do not have the necessary financial means for a favourable residence obliges refugees and asylum seekers to remain in a lack of infrastructure, inadequate in hygiene and health, and sometimes in a non-insulated house with a crowded population. The property owners commonly rent their houses which are evacuated under the decision transformation project to the refugees until the demolition decision are implemented. Moreover, as there are no standards and controls on the conditions of housing, asylum-seekers and refugees rent these houses at high prices, which do not meet the minimum requirements as a result of the arbitrary practices of the proprietors or real estate agents. In addition, the fact that some proprietors do not want to rent their homes to refugees and asylum seekers because they are foreigners, or even rent out their basic needs, usually because they want a one-year lease in advance, are other problems experienced by those living outside the camps.[106]

The current legal framework concerning right to housing, instead of putting forward a claimable right, opt for only recognizing a right without any possibility of invoking it. This situation suggests an approach based on a justice as recognition rather than justice as redistribution with respect to different conceptions of justice. This observation is more apparent with respect to right to housing of

[103] UNCHR, Fact Sheet, Turkey, October 2017, https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/11/UNHCRTurkeyFactSheetOctober2017.pdf (Last accessed: 15.12.2018)
[104] Amnesty International, "No Safe Refuge", 2016, p. 25. https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=575137a84
[105] CERD, Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Turkey, CERD/C/TUR/CO/4-6, 11.01.2016, paras. 33- 35.
[106] Mülteci-Der, Türkiye'de Mültecilerin Kabul Koşulları, Hak ve Hizmetlere Erişimi, 2015, s. 43. http://www.madde14.org/images/c/cc/MulteciderMultKabulKosul2015.pdf (Last accessed: 15.12.2018)

PwDs. On the other hand, non-recognition of refugee status connoted that even a concept of justice as recognition is not applicable under these circumstances. Considering the lack of availability of representing these groups in courts, impossibility of NGO led litigation and flaws in consultation in any housing project, the concept of justice as representation also comes not into play.

During the research, with regard to right to housing of refugees and asylum-seekers as well as other undocumented migrants, no direct reference to the concept as justice as redistribution and vulnerability on the side of state institutions and judiciary. Only in a section headed as "Receiving Information from Related Persons and Institutions" in "Report on Migration and Adoption" that is prepared by Refugee Rights Sub-Commission of Human Rights of Grand National Assembly of Turkey, it is stated that a program carried out in cooperation with civil society organizations and the government, has been initiated in the form of emergency case management within the scope of humanitarian intervention and under the program, assistance such as rent assistance and drug procurement is provided as detecting the vulnerable cases.[107]

[107] TBMM, İnsan Haklarını İnceleme Komisyonu Mülteci Hakları Alt Komisyonu, "Göç ve Uyum Raporu", 2018, p. 100, https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2018/goc_ve_uyum_raporu.pdf (Last accessed: 15.12.2018)

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