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Syrian Refugees, Health and Migration Legislation in Turkey

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Abstract

This paper discusses the crucial effects of Turkish health and migration laws on Syrian refugees' access to public health services and social determinants of health. Key aspects of current Turkish laws affect the health of both refugees and Turkish citizens in many ways. The huge influx of refugees is increasing communicable disease risks, overcrowding hospitals, and more generally straining financial and health resources. Turkey's United Nations membership and its candidacy for European Union (EU) have led to increased alignment of Turkey's refugee and migration policies with international law. Major differences remain, however, and Turkey's remaining non-compliance with international refugee laws is a major force driving Syrian refugee's flight to EU countries, as refugees desperately seek the right to better health and social services.

Keywords

Migration; Public health; Refugee health; Health legislation; Turkish refugee policy; Turkish migration legislation

Introduction

The concept of refugee status became a subject of increased concern at the beginning of nineteenth century, when the borders of many nation states, and concrete protections for those borders were established. The UN Declaration of Human Rights in 1948 was the first international document to stipulate the “right to seek and to enjoy in other countries asylum from persecution.” The rights of asylum, and the concept of being a refugee, are described more explicitly in the 1951 Geneva Convention and the 1967 Protocol. These documents define a refugee as “someone who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country” [1, 2].

The terms asylum-seeker and refugee are often confused. An asylum-seeker is someone who declares that he or she is asking to be given the refugee status and rights, but whose claim has not yet been definitively evaluated and approved by the authorities. National asylum systems are there to decide which asylum-seekers actually qualify for international

protection. Those judged through proper procedures and approved become a refugee with access to rights and freedoms assured by international law [2].

However Turkish law differs from international law in this respect. Turkey has a geographic reservation to implementation of the Geneva Convention which means that only asylum seekers originating from European countries can apply to be recognized as refugees. The non-European asylum seekers and asylum seekers who are non-European, but have arrived Turkey from a European country do not have a right to apply to be recognized as refugees.

Anatolian lands and Europe have been subject to large refugee movements throughout their history [3]. However, it is hard to say that these migration waves have helped Turkey to prepare to the current crisis. One of the reasons for that is, the migration movements to Turkey have been mostly from Turkish consanguine populations of Caucasia, Middle Asia and Middle East. These migrants had similar cultural values, religious beliefs, language and customs with Turkish people so that, the integration of these groups were relatively easy and seamless. Furthermore these migration waves were very small in number when compared to the current Syrian migration flow. Turkey has also been receiving migrants from some African countries, such as Eritrea, Somalia, Egypt and Sudan. These migrants consider Turkey not as the final destination of their travel to hope, but rather a transit country [4]. Since Turkey has been considering these people “temporary transit visitors”, has not been eager to develop policies for the social inclusion of these groups and has been telling these people to live in one of the 63 “satellite residential areas” located in the outskirts of major cities [5].

In recent years, Turkey has become one of the world’s most prominent country of destination for regular migration, but more importantly a notable transit and destination country for irregular migrants fleeing the Syrian Crises, including the ongoing civil war that has already killed more than a quarter million people. The number of people who had to flee from Syria has now passed four million and became the world’s largest refugee crisis in twenty-first century [6]. Turkey has been the first choice of the Syrian asylum seekers because of its geographic closeness [7]. In 2013, 352,643 people were granted a temporary residence permit, mainly for short stays, family reunification, and work and education purposes [8]. In 2013, the number of officially registered Syrian refugees in Turkey was 224,655, but the unofficial estimate overall population of Syrian refugees in Turkey was more than 550,000. In 2014 there were 21 camps in 10 cities in Turkey and the number of Syrian refugees staying in camps is 220.000 [7].

By 2015, the number of Syrian refugees in Turkey had reached 2 million. The desperate attempt to escape the unemployment and lack of social and legal rights in Turkey has led the Syrian refugees to search for ways to flee from Turkey to other European countries. 2015 has witnessed repeated instances of refugees including dozens of children who drowned or died while trying to cross the Aegean Sea to Greece as a gateway to eastern European countries. In the Aegean Sea 590 refugees died, about 30 % of these deaths have been children. United Nations International Children’s Emergency Found (UNICEF) stated that one in five of the victims were aged 2 years or less. The official total number of irregular migrants who passed through Turkey to Europe between 2009 and 2013 is 225,590. The

Turkish coastal Guard Unit is dedicated to rescue and salvage people at sea. This Unit is also in charge of keeping refugees from crossing sea borders illegally. They work together with local police and military units and collaborate with Greek Authorities when needed. EU and Turkey signed a Joint Action Plan to strengthen the cooperation to prevent irregular migration flows from Turkey to the EU. According to this plan, Turkey is supposed to start land based operations to prevent irregular departures, to step up information sharing on migrant smuggling among the Turkish law enforcement bodies and with EU and Member 11 States actors as well as facilitating cooperation in the framework of the NATO operation in the Aegean Sea, and, increase national efforts to fight more effectively against smuggling of migrants [9]. However the capacity of these units to deal with the high number of illegal movements was not sufficient to stop the tragedy in 2015 [10].

Europe, also, was not ready for the Syrian refugee flow. The unrest and wars in countries of origin such as Syria, Somalia, Afghanistan, Pakistan, and Eritrea force more people out of their countries each day. Hence, the European countries faced an unexpected flow of refugees. The number of refugees arriving in Europe has almost doubled in 2015. However, the European countries are reluctant to accept Syrian refugees because of economic burden and fear of changing demographics, civic identity and culture. Countries that form the EU border, such as Greece and Italy, are the ones struggling most, since EU's Dublin Regulation requires refugees to be kept in the first EU country of arrival until their asylum claims are processed. Hungary and Austria have been tightening their borders to avoid refugee flows, which is contrary to the spirit of Shengen Area that allowed freedom of movement between EU countries [11].

Turkish Legislation on Migration

Turkey did not have a specific refugee policy until the 1950s and did not have a strategy for the social inclusion of migrants and therefore was not ready for the recent high influx of migration. The first policies to be implemented regarding migration and refugees came with the establishment of UN. Turkey signed the Geneva Convention in 1951 [12], but Turkey's policies regarding migration, refugees and asylum seekers were not properly developed until the last two decades [13]. The dramatic increase in migration driven by Syrian refugees, together with the Turkey's candidacy to EU motivated Turkey to develop new policies in accord with EU legislation [14].

Migration to Europe is regulated by a set of legislations including national laws of EU member states and the EU law. In general the EU member states have a sovereign right to control their borders to regulate the entry and long term presence of non-citizens in their lands. However the EU law limits the exercise of this sovereignty by setting some rules. The Treaty of Amsterdam gave the EU new competence across the field of borders, immigration and asylum, including visas and returns. This process culminated with the Treaty of Lisbon which afforded the EU new competence in the field of integration of third-country nationals. These competencies include, laying down conditions of entry and residence for third country-nationals entering and residing legally in one EU Member State for purposes of family reunification. Member states still retain the right to determine admission rates for people coming from third countries to seek work [15].

Article 78 of the Treaty on the Functioning of the EU includes the establishment of a “common European asylum system” in accordance with the member states’ obligations arising from the 1951 Geneva Convention. The EU Charter of Fundamental Rights provides the right to asylum. In Article 18 of the Charter right to asylum is referred as: “the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention [...] and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union [...]” Article 19 of the Charter includes a prohibition “to return a person to a situation where he or she has a well-founded fear of being persecuted or runs a real risk of torture or inhuman and degrading treatment or punishment”. This prohibition is known as the “principle of non-refoulement” and applies to both returns to the country of origin and the transit countries where the refugee is at risk [16].

Although the EU Charter of Fundamental Rights guarantees the right to asylum, the EU law does not facilitate the arrival of asylum seekers. According to the EU law, refugees should have a visa when they apply for asylum in an EU member state [17]. However, often refugees do not qualify for visa for the EU. Moreover, the refugees may be irregular migrants who even do not have any official documents with them. This is the case for Syrian refugees. They are irregular migrants who lack official documents; hence the non-refoulement principle does not apply to them since the Return Directive 2008/115/EC of EU law says illegally-staying third-country nationals cannot be left in limbo. According to this Directive, the EU member states should either regularize their stay or send them back to the country of origin or to the transit country [18].

In 2003, as part of the Accession for Partnership Document for Turkey, Turkey agreed to adopt and implement the EU’s *Acquis* and best practices on migration with a view to preventing illegal immigration. Turkey agreed to continue align with the *Acquis* and its best practices concerning border management, and granting asylum to refugees this including lifting the geographical reservation to the 1951 Geneva Convention, strengthening the system for hearing and determining applications for asylum, and developing accommodation facilities and social support for asylum seekers and refugees, steps required for full implementation of the Schengen *Acquis* [19].

In this respect, EU asked Turkey to sign an agreement concerning the readmission of third-country nationals in 2003. In 2009, a new draft for the readmission agreement was produced. In 2013 Turkey and the EU signed the Readmission Agreement for Third Country Nationals and Stateless Persons. The aim of the Readmission agreement is “to establish on the basis of reciprocity, effective and swift procedures for the identification and safe and orderly return of persons who do not or who no longer, fulfill the conditions for entry to, presence in, or residence on the territories of Turkey or one of the Member States of the Union, and to facilitate the transit of such persons in a spirit of co-operation.” [20]

According to the Readmission agreement, Turkey will readmit, all persons including all third-country nationals or stateless persons, irrespective of the will of the person to be readmitted.

Moreover both the EU member states and Turkey are obliged to restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly.

The readmission agreement requires Turkey to improve the capacity to provide a legal, rapid, secure readmission system, that is respectful to human dignity and fundamental human rights. According to the Agreement, irregular refugees who are readmitted to Turkey will be detained in readmission centers. Turkey's time limit to send them back to their country of origin or to the transit country they came from, is 6 months. If the procedure cannot be completed within 6 months the Turkish administration may ask for another 6 months. This means, the irregular migrants waiting to be readmitted to where they came from, may stay in the readmission centers for 12 months. During this time, Turkey is responsible to provide health services for the irregular migrants who are detained in these centers [20].

Turkey had a very limited number and capacity of readmission centers when the agreement was signed. With the implementation of the Agreement, the EU member states will be readmitting the huge flow of irregular refugees, mostly Syrians who fled to Europe, to Turkey. Hence, Turkey needs to develop the capacity to have all these people back, to provide them basic public services including health and to send them back to their countries safely.

Currently, there are 16 readmission centers, with a capacity of 3210 people in Turkey. 5 new readmission centers are being built, each with a capacity of detaining 750 people. The EU is supporting the establishment of these centers through the EU funds [21].

However constructing the buildings is not enough to have a system that operates in safety and dignity. An integrated system should be developed to provide services in these centers. Health services are of utmost importance, since the people who arrive to the readmission centers are at high risk of health problems arising from unsafe journeys, traumas, lack of proper feeding and high stress. The refugees will be sent to health centers to have a complete health check-up, vaccination and health record before they are placed to the readmission centers. In the readmission centers, there would be need for a physician and a nurse together with a social worker to provide health services and social support.

The scarce human resources in health is the main challenge to establish this system. Turkey has the least number of medical doctors per capita when compared to the other EU member states [21]. Turkey is already struggling with the burden of providing health services to the 2 million Syrian refugees in Turkey. It is obvious that additional resources and alternative approaches are required to avoid flaws in the provision of health services.

Together with the current refugee crises, the readmission agreement led Turkey to revise its legislation on refugees and migrants. In April 2014, the Law on Foreigners and International Protection (LFIP) came into force. The aim of LFIP is to establish a proactive migration policy to cope with migration influxes, without infringing fundamental human rights of asylum seekers.

LFIP is composed of three pillars:

1. Pre-entry and entry measures, visa and residence policies and integration of foreigners;
2. International protection to realize the principle of non-refoulement and status determination of asylum seekers; and
3. Establishment of General Directorate of Migration Management (GDMM)

Pre-entry and entry measures of the LFIP are designed to help reduce irregular migration. GDMM is a specialized institution that was established and officially took on responsibility for implementing the law. GDMM implements strategies and policies related to migration, and it carries out the tasks and procedures involving regular and irregular migration, internal protection, stateless persons and protection of victims of human trafficking.

The EU Commission interprets these developments as “substantial steps towards alignment with EU standards on international protection, treatment of regular and irregular migrants and protection of victims of human trafficking” [8].

Right of Refugees to Health in Turkish Legislation

International law is still not completely settled with respect to the recognition of a right to health for refugees, asylum seekers and migrants. The Geneva Convention and Protocols, the 1969 OAU Refugee Convention in Africa and the 1984 Cartagena Declaration in Latin America, and the Charter of Fundamental Rights of the EU are international Protocols and Conventions that may together be considered as forming a written international consensus regarding the social rights of refugees. These documents spell out several rights that a refugee is entitled to access “in the same circumstances if he were not a refugee” [1]. These rights include the following: acquisition of movable and immovable property, the right of association, the right to engage in wage-earning employment and self-employment, the practice of a liberal profession, housing, public education, and freedom of movement. Unfortunately the right to health and right to the social determinants of health are *not* stipulated among these fundamental rights of refugees. Furthermore, no social rights including rights to health and social determinants of health are defined for asylum seekers and migrants.

Turkey recognizes access to health as a human right in Turkish Constitution. The laws regarding refugees are in many respects in compliance with that of UN and EU. Hence the social rights stipulated in 1951 Geneva Convention and 1967 Protocol are eligible for refugees.

Turkey’s geographic reservation to implementation of the Geneva Convention means that only asylum seekers originating from European countries are recognized as refugees. This limits Turkey’s obligations under the Convention only to refugees originating from European countries. The Turkish law introduced various *sui generis* statuses for originating from non-European countries including Syrian refugees. The Law on Foreigners and International Protection introduces the ‘conditional refugee’ status for refugees from non-European countries, and a ‘temporary protection’ status for Syrian immigrants. The Turkish

Ministry of Health published a “Circular on Health Services for the People under Temporary Protection” to secure access of these Syrian immigrants to health services. However, these statutes lack concrete definitions and they are not consistent with international law [8, 19].

Impact of Syrian Migrants on Health Services and Social Determinants of Health

According to official numbers, in November 2014 the Syrian refugee population in Turkey was 2.1 % of total population. By September 2015 this percentage has reached to 2.5 %. A total of 1.2 million Syrian refugees have been added to the Turkish residential population of 10 million in the cities near the Syrian border of Turkey [22]. This explosive and unexpected increase of the population has had several negative impacts on health and social determinants of health.

Health Services

The refugee camps are located in 10 Turkish border cities. In 2014, 42,241 tents and other shelters were located in 21 camps in these cities. Community health centers provide primary health care services, while field hospitals and polyclinics provide secondary health services. Primary health services consist of routine immunization program for children, surveillance of babies, children and pregnant women, reproductive health services, and health counseling.

Syrian refugees who reside in the camps have free access to primary and secondary health-care facilities in the camp. If more comprehensive treatment is needed, they are transferred to public hospitals and looked after free of charge. Refugees living outside the camps also have free access to primary health and secondary health care services.

The dramatic increase in the population of the territories has created a severe burden on health services, both in terms of human resources and logistics. In 2015 alone, more than half a million Syrian patients were transferred from the camps to public hospitals. According to the Ministry of Health data, 35,000 Syrians gave birth in Turkey. Hospitals in the Syrian border provinces devote 30–40 % of their capacity to Syrian refugees [22]. In addition to these problems of crowding in hospitals local citizens complain about Syrians consuming health resources and preventing the “true” right holders, Turkish people, from getting access to services when needed.

To diminish this burden, refugee health centers are established. These centers are working in alliance with community health centers to provide primary health care services to Syrian refugees. Currently, there are 50 refugee health centers in 13 cities of Turkey. In refugee health centers, social workers, physiologists and translators are employed in addition to standard health personnel, to meet the particular needs of refugees.

Moreover, health staff numbers in the cities near the Syrian border have increased. In Şanlıurfa and Gaziantep, the cities where Syrian refugees mostly reside, the number of medical doctors increased from 156 to 380 and 65 to 179 respectively.

Reproductive health services require particular attention. Pregnant and postpartum refugee women are provided free iron and Vitamin D supplement during their pregnancy. Moreover reproductive health counseling and contraceptive materials are supplied in community health centers free of charge. Leaflets on safe mother-hood, pre and post-partum care, healthy nutrition during pregnancy and safe sex attitudes are prepared in Arabic with United Nations Population Fund (UNFPA), and are disseminated to refugees. Community health centers provide screening tests for Syrian refugee newborns as well. In 2014 over 40.000 newborns are screened for phenylketonuria, hypothyroidism and congenital deafness. Micronutrient supplements such as Vitamin D and iron are provided for newborns. These services are provided in refugee health centers and community health centers free of charge (Table 1).

Communicable Diseases

Communicable diseases are a major public health threat for both refugees and host-country residents. Several factors increase the risk of communicable diseases for refugees. These factors include the high prevalence infectious diseases in the country of origin, as well as exposure to new communicable diseases in the transit and host countries. Incomplete immunization, ecological change, contact with novel antigens, crowded and improper living conditions, and failure to access adequate food, water and sewage... all increase the risk of infectious diseases [23].

In Turkey leishmania and measles cases are common among the Syrian refugees. Hepatitis A, tuberculosis, malaria and smallpox are other infectious diseases with a high incidence in the refugees. Gaziantep, the city with the highest number of Syrian refugees lives, reported the highest number of measles in 2013 [24]. In 2015 the number of Syrian refugees diagnosed for tuberculosis is 215. The number of Syrian refugees with tuberculosis from 2011 up today has reached 597. However, the reliability and validity of data, is poor since they are only collected from refugee camps, in where only 15 % of total Syrian refugees are located. The other 85 % of the Syrian refugees are scattered across various Turkish cities [22]. Thus data only reveal the situation in camps and not the majority of refugees. There are also problems with data collection and processing. For example some health facilities use electronic systems, whereas others use paper documents.

Turkey has been free of polio since 2002. A high importance is therefore being given to polio immunization. Free of charge and extensive oral polio immunization campaign was launched in 2014. All children less than 5 years of age were immunized with 2 doses of oral polio vaccine in the 7 cities located in the Syrian border, and in 5 cities in which refugee camps are present. All people who cross the Syrian border are also given one dose of oral polio vaccine regardless of their age [25]. Moreover, measles, mumps and rubella, tetanus and diphtheria vaccination is provided to Syrian refugees of various ages (Table 2).

Social Determinants of Health

Education—Education is one of the sectors in which the distinction between refugees and asylum seekers is manifest. Public schools admit asylum seekers and refugees who have a passport or official residence card. However, most of the Syrian asylum seekers are irregular migrants so that their children do *not* have official documents required for access to public

schools. Even families who can enroll their children public schools face a language barrier. The refugees who reside in the camps are actually in better position regarding education. The Syrian community leaders and teachers living in the camps are facilitating the education for the refugee students. Nevertheless, only 10 % of Syrian refugees receive any formal education [22].

Municipal Services—Municipalities face great burdens in providing basic services such as garbage collection, city cleaning, clean water supply, and the cultural and social events. Budgets are allocated to municipalities according to the official population in the provinces. The flow of Syrian refugees to border cities rapidly increased the population. For example, the population of Kilis, which used to be a small city in the territory, doubled in just 1 year. Neither the budgets nor infrastructure and human resources, were adequate to serve this unexpected increase in population. The shortfall in municipal services such as working sewage systems and, clean water supplies created public health risks for both local residents and refugees.

Employment and Social Security—Most Syrian refugees are employed as cheap, unregistered labor in agriculture, industry and small enterprises. These jobs are temporary and lack social security. The legislative regulations regarding hiring of refugees under temporary protection are poor. The large increase in people desperate for work is reducing job opportunities both for local residents and refugees.

Main Challenges in Health Service Provision

Language is one of the main barriers to have access to health services. Turkey has been trying to solve this problem by employing translators, but the number of translators is not enough to serve all the needy ones. The mobility of the Syrian refugees in Turkey is another major issue regarding health services. Community health care centers faces difficulties to follow pregnant women, babies and patients with chronic diseases properly, since the Syrian refugees are often moving from one province to another [21].

The official registration of the Syrian migrants is crucial for their access to services including health. The registration in camps has been done systematically since the beginning of the Syrian refugee flow. However, it is hard to say the same thing for the ones who stayed out of camps. Lack of a decent national data system has led to recurrent registrations by various public institutions. Moreover, some refugees are reluctant about being officially registered with the fear of facing deportation in the future. Some other refugees do not get registered simply because they do not know the procedure. This chaos in registration process has caused an ambiguity regarding the actual concrete number of Syrian refugees in Turkey. With the establishment of GMMM, an on-line system is developed for the registration on all refugees. The Syrian refugees need to be enrolled to this on-line system to have access to public services including health. This system improved the official registration process of the Syrian refugees and provided more concrete data [21].

Conclusions

The massive flight of refugees from their home countries has several causes including unrest, civil war, terrorism and infringement of human rights in Syria and other countries of Middle East. Turkey is a transit and final destination country for most of refugees from Middle-East. There are 3 major issues regarding Turkey's current migration policy. The first one is that Turkey does not recognize non-EU asylum seekers as refugees, instead, they are given "temporary protection status", which enables them to access services similar to what they would have if they were recognized as refugees. This status limits Syrian refugees' access to public services on social determinants of health. They neither have the rights of asylum seekers nor the rights of refugees. The temporary protection status does not equip them to claim these services as their "rights". Nevertheless "temporary protection status" is not recognized by international law, which means this status can be abolished anytime by the Turkish Parliament. The illegal transits from Turkey to EU will be very hard to stop if this non-compliance with international law persists.

The second issue is the continuous flow of high number of refugees to Turkey. The "open-gate" policy of Turkey has saved the lives of many people fleeing from war. The opposite would be detrimental and in violation of international law and responsibilities to offer refugee for people fleeing persecution. On the other hand, Turkey, like every country, has limited resources to serve and harbor the refugees. The numbers of camps, as well as costs of social and health services, have reached high and unexpected levels that are very hard to sustain. This has unpleasant consequences for the health and social determinants of health of both refugees and local residents. One major negative impact is on risk of communicable diseases and the challenges of immunizing refugee children. In addition rapid increase in demand for financial and human resources in Turkish border cities has had devastating effect on health services. Municipal services important for public health are also hard to maintain. These unsatisfactory circumstances are driving Syrian refugees in Turkey to flee to other EU countries with the hope of obtaining better public health services as well as safety from the war.

The third issue is Turkey's responsibilities arising from the Readmission Agreement. The readmission agreement will be in force by 2017 and irregular migrants including Syrians, other third country nationals and stateless refugees will be readmitted to Turkey from EU member states. This will inevitably increase Turkey's burden regarding refugees. Despite the high effort of the Turkish government to establish the readmissions centers, the provision of services including health in these centers is still a challenge. The current number and capacity of readmission centers is far below the estimated number of refugees to be readmitted. To be able to host readmitted refugees with full respect to their human rights and their personal dignity, a remarkable amount of financial resource and time is needed. Although the number of refugees to be readmitted is not certain, one can estimate that it will be far more than the limited capacity of the existing readmission centers. Considering the huge number of Syrian refugees already in Turkey, it is obvious that Turkey will need more support from EU and other international organizations to set up a functional system that meets the international and ethical standards for the refugees.

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Table 1

Health services provided to Syrian Refugees in 2011–2015 Ministry of Health Turkey (<http://www.tkhk.gov.tr/Dosyalar/3ff2d5bc1d474b4cbddc2f77d4096b06.pdf>) [24]

Number of outpatients	7,519,668
Number of inpatients	299,240
Number of births	48,193
Number of operations	226,513
Number of polio vaccinations (0–15 ages)	353,041

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Table 2 The communicable diseases in Syrian Refugees between 2012 and 2016 Ministry of Health Turkey

	2012	2013	2014	2015	2016
Diarrhea	5.376	12.769	28.910	54.107	2.769
Hepatitis A	718	509	40	25	4
Respiratory track infections	47.665	239.776	252.169	332.720	39.914
Leishmaniasis	-	-	152	28	-
Tuberculosis	3	15	29	54	-

<http://www.tkhk.gov.tr/Dosyalar/3ff2d5bc1d474b4cbddc2f77d4096b06.pdf>