

**THE RIGHT TO HEALTH OF MIGRANTS NATIONAL AND INTERNATIONAL
EXAMINATION IN TERMS OF HEALTH LAW¹**

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ABSTRACT

In this study, the data obtained from open sources, Turkish and international judicial decisions were analyzed and how the right to health of immigrants was handled in the context of health law was examined. The phenomenon of migration, which is accepted to have started with the history of humanity, is one of the important international problems of today. In terms of our subject, immigrants' right to health has been examined in terms of health law since it is within the scope of medical law. In the study, it is aimed to reveal the national and international legal bases that will be taken as a basis for the solution of the health problems experienced by immigrants in our country. Turkey is used as a destination and transit country by immigrants due to its strategic and geographical location. Our country has been faced with ongoing wars, life safety, hunger and health problems, and immigration waves, especially from Syria, Iraq and Afghanistan. In line with the solution of problems arising from migration, Türkiye has implemented an open-door policy. The government has ensured that immigrants have access to housing, social assistance, education and health services within the framework of the relevant articles of the Regulation on the Implementation of the Law on Foreigners and International Protection. It has cooperated with Turkey in this process in accordance with the United Nations (UN) and European Union (EU) regulations. It is known that Turkey has a national health policy regarding foreigners who have to immigrate within the framework of national and international law, and in line with this policy, it provides shelter, education and economic support as well as health services to immigrants. Although Turkey has some deficiencies such as legal regulation, infrastructure and qualified workforce, it has displayed a holistic approach to immigrants.

Keywords: Immigration, Temporary Protection, Immigrant Health, Patient Rights.

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GÖÇMENLERİN SAĞLIK HAKKININ ULUSAL VE ULUSLARARASI SAĞLIK HUKUKU AÇISINDAN İNCELENMESİ

ÖZET

Bu çalışmada açık kaynaklardan elde edilen veriler, Türk ve uluslararası yargı kararları analiz edilerek göçmenlerin sağlık hakkının sağlık hukuku bağlamında nasıl ele alındığı incelenmiştir. İnsanlık tarihi ile başladığı kabul edilen göç olgusu günümüzün önemli uluslararası sorunlarından biridir. Konumuz açısından göçmenlerin sağlık hakkı, tıp hukuku kapsamında olması nedeniyle sağlık hukuku açısından incelenmiştir. Çalışmada göçmenlerin ülkemizde yaşadıkları sağlık sorunlarının çözümünde esas alınacak ulusal ve uluslararası yasal dayanakların ortaya konulması amaçlanmıştır. Türkiye, stratejik ve coğrafi konumu nedeniyle göçmenler tarafından varış ve geçiş ülkesi olarak kullanılmaktadır. Ülkemiz devam eden savaşlar, can güvenliği, açlık ve sağlık sorunları ile özellikle Suriye, Irak ve Afganistan'dan gelen göç dalgaları ile karşı karşıya kalmıştır. Göçten kaynaklanan sorunların çözümü doğrultusunda Türkiye açık kapı politikası uygulamıştır. Hükümet, Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına İlişkin Yönetmeliğin ilgili maddeleri çerçevesinde göçmenlerin barınma, sosyal yardım, eğitim ve sağlık hizmetlerine erişimini sağlamıştır. Birleşmiş Milletler (BM) ve Avrupa Birliği (AB) mevzuatları gereği bu süreçte Türkiye ile iş birliği yapmıştır. Türkiye'nin ulusal ve uluslararası hukuk çerçevesinde göç etmek zorunda kalan yabancılarla ilgili ulusal bir sağlık politikası olduğu ve bu politika doğrultusunda göçmenlere barınma, eğitim ve ekonomik desteğin yanı sıra sağlık hizmetleri sağladığı bilinmektedir. Türkiye'nin yasal düzenleme, altyapı, nitelikli iş gücü gibi bazı eksiklikleri olmakla birlikte göçmenlere bütüncül bir yaklaşım sergilemiştir.

Anahtar Kelimeler: Göçmenlik, Geçici Koruma, Göçmen Sağlığı, Hasta Hakları.

LOGIN

Migration is the settlement of individuals in other areas by leaving their habitats individually, with their families or groups, or in groups, for political, economic, social and ecological reasons. (Brycet,2010:42-43).

TDK migration is the act of moving individuals or communities from one country to another, from one settlement to another for economic, social and political reasons, moving, emigration, emigration"(TDK Dictionary Introduction. 27.08.2021, Latest Update. 10. 09. 2022 (Access: 11. 09. 2022).

The phenomenon of migration is as old as human history. Although the reasons for migration in ancient times were different from the reasons for migration today, they also have many common aspects.

Causes of Migration in Antiquity; Drought as a result of climate changes has made it difficult to access food resources. This led to famine. Due to the increase in the human population, the cultivated lands and the product obtained were insufficient to feed the population (Taşöner, 2012:85-103).

As a result of hostilities between other tribes or the invasion of another tribe by one tribe, migrations were experienced due to the security of life of the invaded tribe, the desire to loot other lands, the endangerment of health due to fire, earthquake, social diseases (Kayhan:2019:122). - 130).

Causes of Migration in the Modern Age; Migration and migration waves, which were accepted as human mobility in the archaic period, continue today. In addition to reasons such as war, natural disasters and exile, the rapid development of industry, the globalization of science have increased labor deficits (Lewis, 1954: 139-191).

While the national labor force was sufficient to produce in the first years of the industrial revolution, the introduction of the manufactured industrial products to the international market created the need for more educated or uneducated manpower to produce. In addition, there were "voluntary" migrations who wanted to maintain their lives in better conditions (Yılmaz, 2014:1685-1705).

The use of the country as a destination or transit country due to the international waves of illegal, intense and uncontrolled immigration will not make a difference in terms of acute or chronic problems to be experienced, in terms of causing problems such as economic security, politics and health problems to the country of immigration (Sirim.,Demir.2020:70- 89) Because the authorities of the country where immigrants entering the country illegally are less likely to control for a certain period of time compared to immigrants who enter the country through legal means. For this reason, current problems such as accommodation, nutrition, security and health may not be known and resolved by the authorities of the country in a short time.

1. ENTRY WAYS OF MIGRANTS TO TURKEY

International immigrants enter Turkey in three ways. First, they enter by following the legal procedures required by the country, secondly, they enter secretly without the consent of the country's official authorities, and thirdly, through human smugglers. The intensity of migration leads to an increase in the population.

The entry of immigrants into the production area as cheap labor causes the informal economy to increase and the country's labor force to be pushed out of production (Chassamboulli., Peri., 2015:792-821). The stated factual situation paves the way for sociological, cultural and ethnic conflicts, albeit at a local level, for some social explosions.

At the same time, the problems that immigrants face in terms of accommodation, nutrition and hygiene pose a threat to the health of immigrants, while causing the spread of social diseases, thus affecting the health security of the general population living in the country. (Gümüş., Bilgili.2015:63-67).

Necessary measures should be taken in order to protect the local population from the diseases that are likely to be experienced with the migration from different geographies to Turkey and to treat and cure the immigrants carrying the current disease. A sustainable and manageable migrant health policy has been developed by governments based on the projections of the state.

1.1. Immigrant Population in the World in the Recent Period

By the end of 2021, 53.2 million people worldwide have been displaced and forced to migrate to other lands within the country. A total of 89.3 million people, including 27.1 million refugees and 4.6 million asylum seekers, left their lands forcibly (Unhcr.org.tr/). Since a significant part of them are in our country, they receive various health services as well as many services. Immigrants are provided with health services in accordance with their population and the language and culture they speak.

1.2. Preventive Health Services for Migrants

In order to provide preventive health services and primary health care services to immigrants in our country more effectively and efficiently, to overcome the problems arising from language and cultural barriers, and to increase access to health services, immigrant health centers affiliated to district community health centers are located in places where these people live densely. (Health Book Ankara 2019)

In other words, on average, Immigrant Health Units (İHU) were established to include one physician and one health personnel for 4,000 people. The physical and technical standards defined for family medicine are also defined for İHU.

IHUs work technically similar to family medicine practiced in our country. In case the "Temporary Accommodation Center", which is far from the public hospital, has a population of over 20 thousand and there is no full-fledged health center or hospital with technical facilities, professional staff and equipment, strengthened İHU was established.

In the strengthened İHU; In addition to primary health care services, internal medicine, child, obstetrics, oral and dental health and psychosocial support services are provided by relevant specialists. Tertiary health services are also supported by imaging and laboratory services, which are narrower than the health institutions provided.

It is aimed to reduce the workload of health institutions that provide tertiary health care services, while ensuring that immigrants receive services by facilitating their access to health services.

Syrian health personnel were employed in IHUs, as well as bilingual (Arabic-Turkish) patient referrals and support services personnel.

These centers were formed as "TSM Affiliated Units" in line with the "Regulation on Community Health Centers and Affiliated Units".

Expenses related to the dissemination and operation of GSM and the employment of health personnel are financed within the scope of the SIHHAT Project. Data including primary health care services offered to Syrians under temporary protection. It is recorded using the "Examination Information Management System" (<https://hsgm.saglik.gov.tr/tr/g%C3%B6%C3%A7men%C4%9F%C4%B1%C4%9F%C4%B1-centers.html>, Access.22.09.2022).

2. THE CITY WITH THE MOST CLUSTERS OF ILLEGAL IMMIGRATION TO TURKEY

Istanbul has been the most preferred city for illegal immigrants, due to its large population, cosmopolitan nature, being on a transit route, and access to the sea.

2.1. Number of Foreigners Registered in Turkey

According to TÜİK data, as of December 31, 2021, the total number of immigrants who declared a valid residence address or who have an identity document and work permit instead of a residence permit is 1 million 792 thousand 36. According to this figure, long or short term education, tourism, scientific research etc. Foreigners with visa or official residence permit for less than 3 months and Syrians with temporary protection status are also included in this number.

According to the statement made by the General Directorate of Immigration Administration, Harmonization and Communication on May 18, 2022, there are a total of 5 million 506 thousand 304 foreign nationals in Turkey, including foreigners who are Syrians under temporary protection. (<https://www.goc.gov.tr/uyum-ve-iletisim-genel-mudurlugu>).

It should be noted that those who have been exposed to the persecution of their country's rulers or some groups or groups or who, in order to avoid serious harm that may develop, leave their lands and seek security in another country, and who seek refugee status within the framework of documents in accordance with the national legislation of that country or international documents. Whoever is waiting for the result of his application for recognition, in case of a negative decision, he has to leave the country. (Editors Richard Perruchoud and Jillyanne Redpath – Cross. International Organization for Migration (IOM), International Migration Law Dictionary of Migration Terms, No 31, Second Edition, p. 74).

As stated, if people who are not allowed to stay in the country for humanitarian or other reasons continue to stay, they become irregular migrants without legal basis. Therefore, these people can be deported by the authorities of the country in which they are located.

2.2. Health Problems Caused by Irregular Migration

With the joint coordination of the Ministry of Interior, on 05.08.2022, the General Directorate of Security, the Gendarmerie General Command and the Coast Guard Command units have the possibility of accommodation or hiding in the fight against irregular migration and migrant smuggling, in cooperation with the provincial units of the Migration Administration. Areas and buildings with derelict places that are not suitable for living and sheltering, "public" entertainment venues, truck garages, bus terminals, ports, fishermen's shelters, passenger stops and public transportation stations with "32 thousand 428 personnel and 156 detector dogs". It has been stated that raids were carried out at 7,330 points to combat Irregular Migration.

As a result of the inspection of 21,845 places in total, including 6 thousand 252 abandoned buildings, 10 thousand 453 public places, 639 terminals, 4,501 other places, which were controlled and inspected by law enforcement.

With 25 organizers and 5 foreigners, 5 of which were foreign nationals, 1,414 irregular migrants were caught (<https://www.egm.gov.tr/Access>. 16. 09 2022).

According to the data of the General Directorate of Security, illegal immigrants caught in Istanbul Tarlabasi, Dolapdere are shelters for illegal immigrants, just as it is for the urban poor. Although not regular in a job in Aksaray and Laleli, it is possible to find a job.

In this way, they can temporarily solve their job and accommodation problems. However, parallel to the increase in the immigrant population, they are sheltering in the worst shantytowns of the provinces and districts of Van, Ankara, İzmir, Mersin, Mugla, Gazi Antep, Adana, Hatay, Mardin, Adapazarı, Kocaeli, or in devastated districts in the city center, especially in Istanbul. Especially Zeytinburnu, Edirnekapı, Avcılar, Esenyurt, Kirac, which was under the devastating effect of the earthquake, are some of these districts.

While men work unskilled and uninsured long hours such as transportation, porter and construction workers, women are subjected to heavy labor exploitation in inhumane conditions in informal jobs such as cleaning, sick and babysitting. Along with the threat of deportation, they are exposed to many threats and dangers. In order to survive and meet their most basic human needs, most of the immigrants find solutions through their own personal efforts and take care of themselves.

Immigrants or immigrant groups attempt to establish solidarity networks based on relative religion, ethnicity or country of origin in order to make their lives relatively easier. However, this partial and ineffective solution method cannot provide immigrants with the opportunity to live, shelter, work and education in healthy conditions. According to the 2020 World Migration Report of the International Organization for Migration (IOM); Last year, 26 million people were displaced/had to migrate due to the violence and conflict they were exposed to, and 55 million due to epidemics (pandemics), disasters, conflicts and violence in the country they live in.

Highlights from the report include,

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IMO states that the world's second migration corridor is the route used by people who have been displaced from Syria due to war and conflict and come to Turkey, and that this corridor was used by approximately 4 million Syrian refugees in 2020.

Syria is the 5th country in the ranking of the countries with the highest number of immigrants in the world. Turkey is the country that hosts the most refugees in the world (<https://m.bianet.org/bianet/goc/254470-turkiye-dunyada-en-fazla-multeyi-host-country> Access.17.09. 2022).

Crises and impoverishment caused by wars and conflicts on a global, regional or country basis are factors that trigger population mobility. In this context, migration is a result, not a cause.

Human mobility in various countries of the world causes health problems as well as economic and social problems, the development of diseases that are difficult to cope with in the region of immigration and increasingly on a global scale.

3. RELATION OF MIGRANTS' RIGHT TO HEALTH WITH NATIONAL AND INTERNATIONAL LAW

Health, According to the World Health Organization (WHO), health is not just illness and disability, but “a state of complete physical, mental and social well-being” (Metin, 2017:46-50).

WHO sees health as a social phenomenon as well as a personal one. It points out that individuals should live in full social well-being and that their social life should be at a certain level (For detailed information, see Prof. Nusret Fişek's Unpublished Writings-1 Health Management).

It can be said that people live in a state of complete well-being only when work and life security and income distribution are balanced.

3.1. Right to Health

Being able to live healthy can be expressed as the protection and maintenance of health. The right to health can only make sense with the existence of other social rights. Taken on its own, it is limited to an explanation at the conceptual level.

In order for a person to have the expected health and maintain a healthy state, he must have some opportunities that must be provided by the state, and the right to demand the provision of these opportunities must be legally recognized and guaranteed by the state (Kanadođlu, 2015: 11-35).

The consequences of the recognition of the right to health as a right by the legal system of a country and the definition of it within the economic social rights, that is, as one of these rights, are different.

In the regulation made in Article 49 of the 1961 Constitution regarding the right to health, he stated that the State has a "duty" to ensure that everyone can live physically and mentally healthy and that their medical care needs are met, and to take measures to meet the housing needs of poor or poor families in accordance with the "health" conditions.

The 1961 Constitution saw people living in mentally and physically healthy conditions within the conditions of being healthy. It is a right adjacent to the right to live a healthy life that the state take measures to meet the needs of people who cannot live in housing that meets the health conditions with their own means, and stated that they should take this measure. As it can be seen, the relevant article of the Constitution does not see the full use of the right to health limited to preventive and curative health services, but deals with the right to live in housing suitable for health conditions. It envisaged that the State should act actively in order to fulfill this right.

The 1982 Constitution, on the other hand, regulated the right to health under the title of Health, environment and housing, instead of regulating the right to health in a separate article of law. Article 56 of the Constitution states that "everyone has the right to live in a healthy and balanced environment, it is the duty of the state and citizens to develop the environment, protect environmental health and prevent environmental pollution. (CONSTITUTION OF THE REPUBLIC OF TURKEY, Law No: 334 Date of Adoption: 09.07.1961).

The 1982 Constitution addressed the right to health within the ESKH. Because the 56th article of the Anyasa corresponds to the regulation in the 12th article of the ESKHS. According to article 12, the member states of the UN state that they will recognize the right to the highest possible standards of mental and physical health (the Convention was adopted by the United Nations General Assembly resolution 2200 A (XXI) of 16 December 1966 and It was opened for signature on 19 December 1966. The Convention entered into force on 3 January 1976).

If attention is paid, countries undertake to comply with the contract within their economic possibilities. Accordingly, in my opinion, Turkey, which is one of the member states of the UN and has adapted the ECHR to its own internal regulation, does not have a priority to transfer resources to the right to Health. Because the right to the highest level of mental and physical health is a broad interpretation.

The right to health is a right to benefit in terms of human rights. Positive status is one of the rights in terms of constitutional law. As can be understood from the place of the right to health in the system of rights, it constitutes the basis of the right to life. The guarantor of the protection and use of the right to health is the provisions of the Constitution and laws in force.

Article 65 of the Constitution states that the State will fulfill its duties determined by the provision of the Constitution to the extent of the adequacy of its financial resources, taking into account the priorities in social and economic fields.

For this reason, it should be noted that the fact that a right that constitutes the basis of life is not regulated separately by an article of the Constitution or a law contradicts the principle of the social state, which is stated in Article 2 of the Constitution. The state's priorities are determined by political preferences. Providing the necessary financial support to the right to health is a right that is so important and worth protecting in terms of the right to live that it cannot be left to the mercy of the current ruling power.

The value protected by the right to health is not the service provided in a narrow framework in the context of restoring deteriorated health. WHO draws a holistic framework for the right to health. (See Figure 1. Comparison of health-related recommendations made for each health category during the first and second EPI cycles, health review within the first and second cycles of the Universal Periodic Review European Union Civil Think Health Association 2022 Publication No: 1).

Because the right to health is the basis of the right to life. Namely; The state makes it possible to use the right to health by taking measures to protect the person from diseases, to maintain and maintain his health, to create the necessary conditions for living in a house and environment suitable for health conditions. Otherwise, the right to health cannot be used in its entirety.

3.2. The Relationship between Migrants' Right to Health, Right to Housing, Safe Work and Education

3.2.1. The Relationship between the Right to Health and the Right to Housing

Countries have accepted the right to health as a fundamental human right with national and international legal regulations and declared that they recognize this right to every individual living on the territory of the country without any discrimination. Since the value protected by laws or contracts constitutes the basis of the right to life, it is out of question for immigrants not to benefit from this right (Universal Declaration of Human Rights art. 2, 3).

In the context of ensuring the right to health and protecting life, the European Convention on Human Rights has positive obligations regarding the "Protection of Life and Health" (Metin, 2010: 111-132) Everyone has the right to protect and develop the health of themselves and their families in a healthy environment (Metin, 2010:111-132) Helvacı, 2017:108). It is critical for everyone to have a safe home and environment ((Wide, 1918:481-488).

People who live in a house with healthy living facilities have a sense of self-confidence. Homelessness, unsuitable house for health conditions, or frequent change of house for compulsory reasons adversely affect physical and mental health. It causes organ and tissue disorders or insufficient development in the elderly and children, especially in the household.

Mental depression, anxiety disorders and inability to cope with developing psychological problems may result in irregular sleep, aggression or other social behavior disorders. Having a shelter suitable for permanent and healthy living standards at an affordable cost, a clean bed and clean clothes will positively affect the protection and continuation of current life and health.

The fact that immigrants do not have the specified opportunities or the fear of losing what they already have will affect every area and every period of their lives. In other words, maintaining the current situation will keep the effects of poverty and therefore unhealthy life at an acceptable level. The ability of people to maintain their physical and mental health is parallel to having a shelter suitable for health. According to Constitution 56/1, everyone has the right to live in a healthy and balanced environment. The Constitution has regulated 57 articles with the title of "Right to Housing".

The article states that the state should create a plan by considering the environmental conditions, take measures to meet these needs, and encourage the construction of mass housing if necessary. The high housing prices in our country for renting and owning, and the inability to access the right to housing do not make it possible for immigrants to live in healthy homes for a long time. Because most of them do not have a regular and permanent job with high income. For this reason, they live in derelict or unhealthy houses. The lack or insufficient technical infrastructure of these houses makes it difficult for them to use water and cleaning materials. This puts all households, especially children, at risk of health problems.

CONCLUSION AND RECOMMENDATIONS

Immigrants, in order to lead a healthy life, live in shelters suitable for health, have access to clean water, protect their health, have access to medical services, have the right to a safe job and social security, and this will prevent them and their families from worrying about their future.

Most of the immigrants are internally displaced persons, lacking a state apparatus to represent them politically and economically. Since they do not have the right to participate in the countries they are in, they cannot influence the state authorities, the taking of any decision or the implementation of the decision taken. In order to plan the advanced stages of the immigrants' life and to acquire a profession, the right to reach an equal and fair education should be legally guaranteed by the administrators of the country in which they live.

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