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THE PORTABILITY OF FAMILY STATUS OF SYRIAN ARAB REPUBLIC CITIZENS UNDER TEMPORARY PROTECTION STATUS IN TURKEY: POLYGAMY AND MARRIAGES WITH MINORS**

Summary: *Since 2011, the civil war in Syria has led nearly 3 million Syrians to seek refuge in Turkey, resulting in various legal challenges. One major issue involves polygamous and child marriages recognised under Syrian law but conflicting with Turkish public order. According to Article 130 of the Turkish Civil Code of 2001, individuals must prove any previous marriages have ended before remarrying. This raises questions about the recognition of polygamous marriages by Syrian men under temporary protection in Turkey. Additionally, Article 124 of the Code prohibits marriage under the age of eighteen, creating legal uncertainty when minors, such as 15-year-old girls, are married in Syria and later seek recognition of that marriage in Turkey. These practices, conflicting with Turkish public order and human rights principles, prompt complex legal evaluations. This paper examines how such marriages are treated under Turkish private international law and the implications from a human rights standpoint.*

Keywords: *Polygamy, minor marriages, Turkish public order, recognition of marriage, temporary protection.*

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1. INTRODUCTION

Syrian asylum-seekers who sought refuge in Turkey on a large scale were granted asylum under temporary protection status. In Article 91 of Law on Foreigners and International Protection (LFIP);[1] Temporary protection is defined as the following:

> Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.

In other words, approximately 3 million Syrians in Turkey are granted protection under temporary protection status rather than refugee status. Turkey has maintained the geographical limitation under the Convention Relating to the Status of Refugees[2] (Geneva Convention), whereby the definition of 'refugee' in the Convention, as applied by Turkey, includes the phrase 'only as a result of events occurring in Europe.' In this context, Article 61(1) of the LFIP defines the term 'refugee' as follows:

> A person who, as a result of events occurring in European countries and due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of citizenship and is unable or, due to such fear, unwilling to avail themselves of that country's protection; or a stateless person who, being outside their former country of residence as a result of such events, is unable or unwilling to return due to such fear, shall be granted refugee status upon the completion of the refugee status determination process.

Accordingly, the scope of the refugee concept in Turkish law is more limited than that defined in the Geneva Convention.[3] According to Article 3(1)(b) of the LFIP, the phrase 'events occurring in Europe' refers to events taking place 'in the member states of the Council of Europe' or 'in other countries designated by the Turkish President'.

Furthermore, Syrians under temporary protection also face legal issues that require resolution within the framework of private international law. Since the enactment of the Turkish Act on Private International Law and the Civil Procedure of 2007 (TAPIL)[4] predates the civil war in Syria, the legislator was unable to anticipate the implications of temporary protection for private international law. For instance, Article 4(1)(a) of the TAPIL establishes alternative connecting factors for stateless persons and refugees in cases where the applicable law is determined based on nationality. However, the application of this provision to Syrians under temporary protection in Turkey remains a subject of debate.[5]

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1 OG, dated 11.04.2013, numbered 28615.

2 For the text of the 1951 Refugee Convention and 1967 Protocol Relating to the Status of the Refugees see: <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees> accessed 15 February 2025.

3 For detailed information on the determination of the legal status of the refugee under Turkish Law, see Neva Övünç Öztürk, *Mültecinin Hukukî Statüsünün Belirlenmesi* (Seçkin Publishing, 2015) 397 *et seq*.

4 OG, dated 12.12.2007, numbered 26728.

5 For the perspective advocating a broad interpretation of the concept of refugee, suggesting that Article 4(1)(a) of the TAPIL should also encompass individuals under temporary protection status, see Ayşe Elif Ulusu Karataş, 'Geçici Koruma Altındaki Suriye Vatandaşlarının Çocuk Yaşta Evliliklerinin Mukayeseli Hukuka ve Türk Hukukuna Göre Geçerliliği' 2020 (78) 1, *İstanbul Hukuk Mecmuası* 47; Sibel Özel *et al.*, *Milletlerarası Özel Hukuk* (3rd edn, On İki Levha Publishing, 2024), 101-102; Cemal Şanlı *et al.*, *Milletlerarası Özel Hukuk* (10th edn, Beta Publishing, 2023), footnote 63. However, for the perspective asserting that the

Variations in foreign laws complicate the recognition of decisions and facts obtained in one country by other countries. The recognition allowed by *vested rights, continuity of personal status* and *comity* may be refused on the grounds of breach of *public order* in the country where it is requested. One of the key issues in private international law is whether a legal family status acquired in Syria remains valid in Turkey, despite being contrary to Turkish public order. For instance, one of the research questions examined in this article is whether the legally recognised polygamous marriages of a Syrian man under Syrian law can produce legal effects and consequences under Turkish law. Furthermore, will a marriage with minor that is legally valid under Syrian law be recognised under Turkish law? This article aims to examine whether a legally acquired family status in a foreign country can remain valid in the country of asylum, even when it contravenes public order. The failure to recognise a legally established relationship in one country as valid in another country will bring to the forefront the issue of *limping legal relationships*, which private international law seeks to prevent. Addressing limping legal relationships is a fundamental responsibility of private international law, which seeks to ensure maximal cross-border consistency and harmony in individuals' identities, as well as their personal and family status. The aim of this study is to investigate solutions to minimise these limping legal relations and to ensure the continuity of the personal status that individuals have acquired in good faith in foreign countries. In this context, the relevant legal category interests and the universal principles of human rights will also be considered.

An analysis of the recognition of marriage under Turkish law will first be provided. In this context, the law applicable to the validity of marriage, along with the relevant provisions of Turkish substantive law on marriage, will be examined. Subsequently, the practices and judicial decisions concerning foreign marriages under Turkish law will be analysed.

2. HOW ARE FOREIGN MARRIAGES RECOGNISED IN TURKEY?

The recognition of a right acquired in a foreign country within the international legal framework should be assessed in accordance with the old theory of vested rights.[6] The international recognition of vested rights constitutes one of the three fundamental topics in private international law[7]. Accordingly, rights lawfully acquired in one country should be recognised in another, regardless of whether they originate from a foreign element.[8] However, the exception to the principle of vested rights is public order. Therefore, in cases where public order is violated, the essence of the right remains unaffected, but the recognition of certain effects arising from the acquired right may be restricted.[9] The influence of public order on the recognition of vested rights should be less restrictive compared to its impact on the acquisition

provision, in its current form, applies exclusively to individuals with formal 'refugee' status, see Nuray Ekşi, *Yargıtay Kararları Işığında Milletlerarası Miras Hukuku* (Beta Publishing, 2013) 37–38.

6 Erdoğan Göğer, *Devletler Hususî Hukuku Hukuku* (4th edn, Ankara University Law Faculty Publishing, 1977) 376.

7 Antoine Pillet, *Traité Pratique de Droit International Privé* (Tome 1, Sirey Publishing, 1923) 2–18.

8 *Ibid.* 122.

9 *Ibid.* 123.

of rights.[10] The public policy exception, typically invoked to exclude the application of foreign law when its content results in an outcome deemed unacceptable based on contemporary societal values, traditionally operates in a moderated or 'attenuated' manner when dealing with a judgment (a vested right) established in another jurisdiction, upon which the parties may have relied (*effet atténué*).[11]

In Turkish private international law, the enforcement of foreign court judgments is explicitly regulated, and recognition is addressed by referencing the conditions required for enforcement.[12] The TAPIL stipulates that foreign court judgments are generally subject to recognition as a standard principle. In other words, only 'court' decisions can be recognised. However, with the addition of Article 27/A to the Law on the Civil Registration Services[13] in 2017, it became possible, under certain conditions,[14] to register divorce, nullity and annulment decisions issued by foreign administrative authorities. However, the TAPIL does not contain any provisions regarding the validity in Turkey of family statuses acquired abroad, except for those established through judicial or administrative authority decisions in a foreign country. However, in certain cases in Turkey, the recognition of foreign family status may arise as a preliminary question. For instance, the validity of a marriage may constitute a preliminary question in divorce proceedings. Therefore, the Turkish judge is obligated to assess the validity of a marriage conducted in a foreign country in order to adjudicate a divorce case. For this reason, analysing the applicable law governing marriage under Turkish private international law will provide clarity on the validity of the marriage when it arises as a preliminary question. Furthermore, to clarify the interpretation of Turkish public policy concerning marriage, it is essential to consider how the application of the relevant foreign law may influence Turkish public policy. This requires providing an explanation of the conditions and impediments to marriage under Turkish substantive law.

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10 Jean-Paulin Niboyet, *Manuel de Droit International Privé* (2nd edn, Sirey Publishing, 1928) 568.

11 Horatia Muir Watt, 'Fundamental Rights and Recognition for Private International Law' 2013(3) European Journal of Human Rights, 15, <http://spire.sciencespo.fr/hdl:/2441/2jsbqv8vmf8qjpmb7q5k0k010r/resources/2013-muir-watt-fundamental-rights-and-recognition-in- private-international-law.pdf> accessed 10 March 2025; Ralf Michaels, 'EU Law as Private International Law? Re-Conceptualising the Country-of-Origin Principle as Vested Rights Theory' (2006) 5 ZERP Diskussionspapier <https://scholarship.law. duke.edu/faculty_scholarship/1573> accessed 4 March 2025.

12 For criticisms on the regulation of recognition with reference to enforcement, see Fügen Sargın and Rifat Erten, 'MÖHUK Hükümleri Dairesinde Tanımanın Hukukî Niteliği, Usûlü ve Karşılaşılan Bazı Sorunlar: "Yeni Bir Düzenleme Yapma Gereği" (2014) 3 (2) Uluslararası Ticaret ve Tahkim Hukuku Dergisi*,* 37–136.

13 OG, dated 29.04.2006, numbered 26153.

14 The requirements for registration are as follows: (a) The foreign decision must be rendered by a judicial or administrative authority that has jurisdiction under the law of the state where it was issued. (b) The decision must be final. (c) The decision must not explicitly contradict Turkish public policy. For detailed information on this registration, see Lale Ayhan İzmirli, 'Nüfus Hizmetleri Kanunu Madde 27/A Çerçevesinde Yabancı Ülkelerde Verilen Boşanma Kararlarının İdarî Yoldan Tanınması' 2018 (22) 4, Ankara Hacı Bayram Veli *Üniversitesi* Hukuk Fakültesi Dergisi*,* 67–126; Emre Esen and Melis Avşar, *Private International Law in Türkiye,* (Istanbul University Press, 2024) 178–179; Burak Huysal, 'Nüfus Hizmetleri Kanunu Kapsamında Yabancı Boşanma Kararlarının Doğrudan Tescili', 2017 (37) 2, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni*,* 473–507; Uğur Tütüncübaşı, 'Yabancı Kararların Türk Hukukunda Tanınması Konusunda 690 Sayılı Kanun Hükmünde Kararname ile Düzenlenen Yenilikler' 2017 (19) 2 Dokuz Eylül *Üniversitesi* Hukuk Fakültesi Dergisi, 103–127. For detailed information on the registration of adoption decisions issued abroad and the registration of rulings by foreign judicial and administrative authorities concerning the dissolution of marriage, see Fügen Sargın, *Türk Milletlerarası Usûl Hukuku,* (Yetkin Publishing, 2024) 910 *et seq.*

2.1. THE LAW APPLICABLE TO MARRIAGE

Under Turkish law, marriage is defined as the establishment of a shared life between individuals of different sexes who meet the legal capacity and conditions for marriage, resulting in legal consequences for the parties involved.[15] In marital relations involving a foreign element, the applicable law should be determined in accordance with the TAPIL rules concerning the parties' capacity and conditions for marriage, as well as the form and legal consequences of the marriage. However, in accordance with Article 1(2) of TAPIL, the provisions of international agreements to which Turkey is a party are reserved.

2.1.1. THE CAPACITY AND CONDITIONS FOR MARRIAGE

Article 13 of TAPIL, titled 'Marriage and General Provisions of Marriage' establishes the applicable law governing marriage. However, it should be noted that, as this provision pertains to family law, it will be subject to renvoi. According to Article 2(3) of the TAPIL, If the provisions of the applicable foreign conflict of laws refer to another foreign law, this referral will only be taken into consideration in conflicts related to personality and family law. The substantive provisions of this foreign law thereof shall be applied.[16]

It is important to note that each state defines the capacity and conditions for marriage based on the principles of its own social order. Therefore, the capacity and conditions for marriage shall be determined by the national law of each party at the time of marriage. Thus, the interpretation of this provision implies that the conditions outlined in the national law of a man apply exclusively to the man, while the conditions in the national law of a woman apply solely to the woman.[17] In the academic literature, certain marriage impediments are characterised as 'bilateral marriage impediments,' with the argument that, even if such barriers are stipulated in the national law of only one of the parties, they should be applied to both parties.[18] These impediments include close kinship, an existing marriage, mental illness, contagious diseases, and same-sex marriage.[19] However, according to an alternative perspective, although public policy intervention exists in our legal system, it is not appropriate to attribute to marriage impediments an authority not explicitly granted by law through interpretation.[20]

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15 Selahattin Sulhi Tekinay, *Türk Aile Hukuku,* (Filiz Publishing, 7th edn, 1990) 63; Mehmet Erdem and Aslı Makaracı Başak, *Aile Hukuku,* (Seçkin Publishing, 2022) 49; Bilge Öztan, *Aile Hukuku,* (5th edn, Turhan Publishing, 2004) 94–95.

16 About renvoi, see Esra Tekin, 'Position of French in Private International Law Theory' in Ljubica Kordić (ed), *Language(s) and Law* (Faculty of Law Osijek, 2023) 64; Neşe Baran Çelik, 'Aile Hukukuna İlişkin Uyuşmazlıklarda Atfın (Renvoi) Uygulanması ile İlgili Bazı Meseleler' in Nuran Koyuncu (ed.), *IV International Necmettin Erbakan Hukuk Kongresi Tam Metin Bildiri Kitabı* (NEU Press, 2024) 7.

17 Şanlı *et al.* (n. 5), 150.

18 Ergin Nomer, *Devletler Hususî Hukuku,* (23rd edn, Beta Publishing, 2021) 245-246; Aysel Çelikel and Bahadır Erdem, *Milletlerarası Özel Hukuk,* (15th edn, Beta Publishing, 2017) 228-232; Gülören Tekinalp, *Milletlerarası Özel Hukuk, Bağlama ve Usul Hukuku Kuralları,* (13th edn, Vedat Publishing, 2020) 136 *et seq.*

19 Çelikel and Erdem (n. 18), 228–232.

20 Şanlı *et al.* (n. 5), 151–152.

The legal consequences of violating the capacity and conditions of marriage are governed by the law of the state that is violated.[21] However, there is ongoing debate regarding the appropriate course of action when the national laws of both spouses, who hold different nationalities, are violated. Some assert that the law of the state imposing the harsher sanction should be applied,[22] whereas others argue that if the sanction itself is identical but carries different legal consequences, the law of the state offering a more lenient solution should prevail.[23]

Foreign nationals intending to marry in Turkey must provide the Turkish Marriage Office with a marriage license document, issued by the authorities of their home country, confirming the absence of any legal impediments to marriage.[24] Under the Turkish Marriage Regulation,[25] a document issued and properly certified by the authorities of an individual's country of citizenship, containing their name, surname, parents' names, date of birth, and confirmation of the absence of any legal impediments to marriage, is recognised as a marriage license certificate. The marriage license certificate must be personally obtained from the authorities of the state where the parties hold citizenship. If this is not feasible, the document may also be requested through the Turkish Directorate General of Civil Registry and Citizenship Affairs via marriage officers, as stipulated in Article 12(4) of the Marriage Regulation. However, the provincial directorates of migration management are responsible for determining whether Syrians under temporary protection have any legal impediments to marriage. This assessment is conducted based on the information and documents contained in their records. Upon verification, the provincial directorates issue marriage license certificates to these individuals (Art. 13).

2.1.2. THE FORM OF A MARRIAGE

Pursuant to Article 13(2) of the TAPIL, the legal form of a marriage is governed by the law of the country in which the marriage ceremony takes place (*lex loci celebrationis*). Therefore, under this provision, individuals who marry in Turkey, regardless of whether they are Turkish citizens or foreign nationals, must comply with the formal requirements prescribed by Turkish substantive law. For instance, in a country where religious marriages are legally recognised, marriages conducted through religious ceremonies are considered valid under Turkish law.[26]

However, the sole exception to the general principle involves marriages conducted at consulates. This is because the law of the state that the consulate represents applies, rather than the law of the country in which the consulate is situated. Under Turkish law, the requirements for marriage at Turkish consulates abroad and foreign consulates in Turkey are outlined in the Marriage Regulation. According to Article 10 of this regulation, heads of missions, including Turkish ambassadors and consuls, or officials authorised by the Ministry of Foreign Affairs to

21 *Ibid.* 153.

22 Çelikel and Erdem (n. 18), 233; Şanlı *et al.* (n. 5), 153; Özel *et al.* (n. 5), 252.

23 Vahit Doğan, *Milletlerarası Özel Hukuk* (8th edn, Savaş Publishing, 2022) 336–337; Çiçek Özgür, *Milletlerarası Özel Hukukta Evlilik Birliğinin Kurulması ve Sona Ermesi,* (Adalet Publishing, 2020), 192.

24 Şanlı *et al.* (n. 5), 153.

25 OG, dated 07.11.1985, numbered 18921.

26 Şanlı *et al.* (n. 5), 155.

carry out consular duties, may officiate marriages if both spouses are Turkish citizens and if the law of the host country grants them this authority. However, as stated in the same article, honorary consuls and honorary vice-consuls do not have the authority to perform marriages.

Article 12 of the Marriage Regulation states that two foreign nationals of the same nationality may marry at the diplomatic missions of their home country in Turkey, as long as their national laws grant the mission the authority to perform such marriages.[27]

2.1.3. LEGAL CONSEQUENCES OF A MARRIAGE

As stated in Article 13(3) of the TAPIL, the legal framework governing the personal and financial effects of marriage, as a shared partnership, is determined by the law of the spouses' common nationality. If they have different nationalities, the applicable law is that of their common habitual residence. If neither applies, Turkish law shall govern.

The legal effects of marriage encompass the spouses' mutual rights and responsibilities, as well as the personal relationships stemming from the marriage. This includes the duty of each spouse to contribute to the expenses of the marital union through their labour and property in proportion to their means, matters related to the family residence, the representation of the marital union, and the impact of marriage on the spouses' surnames.[28]

It is important to highlight that the legal framework governing matrimonial property regimes is addressed in a separate article of the TAPIL from that which regulates the law applicable to marriage. Accordingly, Article 13(3) of TAPIL is not applicable to disputes related to the matrimonial property regime between spouses.

2.2. THE CONDITIONS AND IMPEDIMENTS TO MARRIAGE UNDER TURKISH SUBSTANTIVE LAW

Article 5 of the TAPIL provides that if the application of foreign law is explicitly contrary to Turkish public policy, it will not be enforced, and Turkish law may be applied if deemed necessary. In other words, if the law to be applied pursuant to Article 13 of the TAPIL clearly violates the Turkish public policy, this provision shall not apply. To determine the circumstances in which the public order exception in Turkish law applies, it is necessary to first provide a general overview of the substantive legal rules governing marriage in Turkey.

Under Turkish law, the formation of a valid marriage requires the presence of mutual and concordant declarations of intent by both parties. The will to marry represents a deliberate, earnest, and sincere mental commitment to forming a complete and enduring life partnership with the opposite sex.[29] The capacity to marry is contingent upon meeting the minimum age

27 Ebru Şensöz Malkoç, 'Yabancıların Türkiye'de Evlenmesi Konsolosluk Evlenmelerinin Hukuki Geçerliliği ve Sonuçları' (2017) 37 (2), Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, 891 *et seq.*

28 Şanlı *et al.* (n. 5), 157–159.

29 Öztan (n. 15), 94–95.

requirement and possessing the necessary discernment, as stipulated by legal systems. Under Turkish law, individuals wishing to marry must be at least 18 years old, unless exceptional circumstances exist, in which case judicial approval is required for those who are at least 16 years old (Article 124 of the Turkish Civil Code). The right to marry is not granted to individuals who lack legal capacity, and the marriage of minors who are at least 17 years old, as well as those under restriction, requires the approval of their legal guardians[30] (Articles 125 and 126 of the Turkish Civil Code). Additionally, the law prohibits the marriage of individuals who are diagnosed with a mental illness that renders them medically unfit for marriage, as stipulated in Article 133 of the Turkish Civil Code. Marriage between close relatives, including parents and children, siblings, uncles or aunts and their nieces or nephews, as well as between spouses and their respective descendants or ancestors, is expressly prohibited under Article 130 of the Turkish Civil Code. Women who have not completed the legally mandated waiting period following a divorce are also prohibited from entering into a new marriage, in accordance with Article 132 of the Turkish Civil Code.[31] Finally, individuals afflicted with contagious diseases, including *syphilis*, *gonorrhea*, or *leprosy*, are legally prohibited from entering into marriage (Article 123 of the Law on Public Health).[32] Given its significance to this article, the legal age of marriage in relation to the capacity to marry and existing marriage as a factor constituting an impediment to marriage will be examined in detail both in Turkish law and Syrian law under separate headings.

2.2.1. THE LEGAL AGE OF MARRIAGE

Individuals must attain the minimum age at which they possess the necessary physical, mental, and sexual maturity to enter into marriage.[33] The establishment of a minimum age requirement additionally serves the purpose of preventing child marriages and protecting children from sexual exploitation.[34] As recognised by both the United Nations and the Council of Europe, individuals under the age of 18 are deemed incapable of providing 'free, independent,

30 Esen and Avşar (n. 14) 99.

31 According to Art. 132 of Turkish Civil Code, If the marriage has ended, the woman cannot marry until three hundred days have passed since the marriage ended.
The period ends with childbirth.
If it is understood that the woman is not pregnant from her previous marriage or if the spouses whose marriage has ended want to marry each other again, the court removes this period.
However, The European Court of Human Rights (ECtHR) ruled in *Nurcan Bayraktar v. Türkiye* App No 27094/20 (ECtHR, 27.06.2023) that this provision violated Articles 8 and 14 (Respectively right to respect for private life and prohibition of discrimination) of the Convention. For the full text of the decision see <https://hudoc.echr.coe.int/rum#{%22itemid%22:[%22001-225748%22]}> accessed 17 March 2025.

32 OG, dated 06.05.1930, numbered 1489. However, once these diseases are cured and the risk of transmission has been eliminated, the individuals concerned are legally permitted to enter into a marriage contract; Çelikel and Erdem (n. 18) 231. For the opinion that the provision in question is an overriding mandatory rule of Turkish law, see Feriha Bilge Tanrıbilir, 'Yabancıların Türk Yetkili Makamları Önünde Evlenmesi ve Kamu Düzenine Aykırılık Meselesi' in Bilgin Tiryakioğlu *et al.* (eds), *Milletlerarası Özel Hukukta Güncel Konular Sempozyumu,* (Yetkin Publishing, 2016) 444. However, according to the opposing view, with which we concur, the art. 123 of the Law on Public Health, enacted in 1930, should not be regarded as overriding mandatory rule in light of advancements in medical science since its promulgation: Özgür 23), 111.

33 Kemal Oğuzman and Mustafa Dural, *Aile Hukuku,* (2nd edn, Filiz Publishing, 1998), 60.

34 Ulusu Karataş (n. 5), 27–41.

and full consent' regarding either the choice of spouse or the timing of the marriage; consequently, child marriages are classified as a form of forced marriage.[35]

Each country sets the legal age of marriage in consideration of its unique social, cultural, and economic conditions. For Turkish citizens, pursuant to Article 124/1 of the Turkish Civil Code, the standard minimum age of marriage is established as the completion of seventeen years of age. Furthermore, in exceptional circumstances and for a compelling reason, individuals who have attained the age of sixteen may be permitted to marry with judicial authorisation. However, provisions permitting the marriage of individuals under the age of eighteen are inconsistent with Article 1 of the 'Convention on the Rights of the Child',[36] which defines every person under the age of eighteen as a 'child.' The Turkish Civil Code assumes that individuals below the minimum marriage age lack the requisite capacity for discernment necessary for entering into marriage. A marriage entered into by a minor below the legal marriage age, for instance, a fourteen-year-old, shall be deemed absolutely null and void due to the continuous lack of capacity for discernment.[37]

Additionally, under Turkish law, the offence of sexual abuse of a child is recognised as occurring within the context of marriages involving minors. According to Article 6(1)b of the Turkish Penal Code,[38] anyone who has not yet reached the age of eighteen is a child. Article 103 of the Turkish Penal Code penalises child sexual abuse with imprisonment. Accordingly, the term 'sexual abuse' means any sexual behaviour committed against children who have not completed the age of fifteen or who have completed the age of fifteen but whose ability to perceive the legal meaning and consequences of the act has not developed. Therefore, under Turkish law, child marriages are criminalised pursuant to the provisions of the Turkish Penal Code.

The general law governing Syrian family law relations is the Personal Status Law (PSL) of 1953 (numbered 59).[39] This Law, which was partially amended by Law No. 34 of 1975, is mainly based on Islamic Law.[40] Under the PSL, the attainment of puberty is established as a prerequisite for an individual to possess the legal capacity to marry. The legislator has set the minimum marriage age at eighteen for men and seventeen for women (Art. 16). However, if a boy who has reached the age of fifteen or a girl who has reached the age of thirteen claims to have reached puberty, the judge may permit the marriage of the boy or girl if they believe the claim to be sincere and are convinced that the individual has attained sufficient physical maturity.[41] Syria, which acceded to the Convention on the Elimination of All Forms of Dis-

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35 *Ibid.* 27–28.

36 Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

37 Öztan (n. 15), 94–95.

38 OG, dated 12.10.2004, numbered 25611.

39 Suriyeliler ile Türkiye Cumhuriyeti Vatandaşları Arasındaki Evlilik İlişkileri Araştırması, Republic of Turkey Ministry of Family and Social Services report 2016, <chrome extension://efaidnbm nnnibpcajpcglclefindmkaj/https://www.aile.gov.tr/Raporlar/ATHGM/Suriyeliler_ile_Turkiye_Cumhuriyeti_Vatandaslari_Arasindaki_Evlilik_Iliskileri_Arastirmasi.pdf> accessed 20 February 2025, 11 (hereinafter Report).

40 Report, 11.

41 Ulusu Karataş (n. 5), 38.

crimination Against Women (CEDAW)[42] on March 28, 2003, has made a reservation regarding the second paragraph of Article 16 of the Convention.

2.2.2. EXISTING MARRIAGE

In legal systems where polygamous marriage is recognised, it is not possible to speak of equality between women and men. Polygamous marriages result in significant emotional and financial negative consequences, particularly for women and children.[43] The Turkish Civil Code also enumerates an existing marriage as a legal impediment to contracting a new marriage. Pursuant to Article 130 of the Turkish Civil Code, an individual seeking to remarry is required to provide evidence that their previous marriage has been legally dissolved. Furthermore, pursuant to Article 145 of the Turkish Civil Code, the fact that one of the parties is already married at the time of the marriage constitutes an absolute ground for nullity. Accordingly, the public prosecutor is obligated to initiate legal proceedings for the annulment of the second marriage. An annulment of the second marriage can also be requested by anyone concerned. The Civil Code exceptionally protects the spouse in the second marriage who is acting in good faith in a specific circumstance. According to Article 147, paragraph 3 of the Turkish Civil Code, if the first marriage has been dissolved due to the death of one of the spouses, annulment, divorce, or a dissolution decision before the annulment of the second marriage is ruled due to absolute nullity, and if the spouse in the second marriage is in good faith, the second marriage can no longer be annulled.

Indeed, Article 10 of the 1982 Constitution of the Republic of Turkey[44] explicitly guarantees the principle of equality between women and men. Moreover, pursuant to paragraph 1 of Article 230 of the Turkish Penal Code, entitled 'Multiple Marriages, Fraudulent Marriage, Religious Ceremony,' an individual who enters into a marriage with another person while already being legally married is subject to a penalty of imprisonment ranging from six months to two years. Therefore, polygamy[45] is not legally recognised under Turkish law.

Polygamy is recognised as legal in Syria.[46] A judge may prohibit a married man from marrying another woman unless he provides a valid justification for the union and demonstrates the financial capability to support both wives.[47] This regulation is interpreted as a limited

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42 Adopted 18.12.1979 by United Nations General Assembly resolution 34/180. Entry into force: 3 September 1981, in accordance with article 27(1). Art. 16(2) of the Convention 'The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory' <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> accessed 17 March 2025.

43 Report, 49.

44 OG, dated 09.11.1982, numbered 17863.

45 Polygamy refers to the legal capacity to enter into marital unions with multiple spouses. The practice of a man being married to multiple women is referred to as polygyny, whereas the practice of a woman being married to multiple men is termed polyandry: See Larry O. C. Chukwu, 'The Metamorphosis of Polygamy in Private International Law' (2011) 15 (1) The Nigerian Law Journal, 165. In the context of this article, polygamy is used to refer to polygyny.

46 Mousa Daad, *Syrian Personal Status Law,* (Friedrich-Ebert-Stiftung, 2018), 5.

47 *Ibid.* 5.

acceptance of polygamous marriage in the Syrian PSL.[48] In a marriage contract, if the woman puts forward a condition limiting the rights and freedoms of the man and he accepts it, this condition is valid (PSL Art.14 (3).[49] It cannot be demanded through the court that the man complies with such a condition; however, the man's behaviour contrary to the aforementioned contractual condition may constitute a justified ground for divorce for the woman.[50] Therefore, if there is a clause in the contract prohibiting the husband from marrying for the second time, if the husband marries for the second time despite this clause, the first spouse cannot ask the court to terminate the second marriage based on the agreement between them. However, she can file for a divorce based on just cause due to the second marriage.

3. WHAT IS THE PRACTICE IN TURKEY IN RELATION TO FOREIGN MARRIAGES?

3.1. EXTENT OF THE PROBLEM IN PRACTICE

It is clear that both child marriage[51] and polygamy are illegal under Turkish law. Indeed, both child marriage and polygamy are deemed incompatible with Turkish public order. Child marriages cause major problems for the physical and mental health of children. In child marriages, there is an elevated risk not only of placental abruption, maternal mortality, and obstetric fistula but also of sexually transmitted infections and cervical cancer.[52] Moreover, girls who marry at an early age face a heightened risk of experiencing domestic violence.[53] According to the Care report, girls who marry at an early age often experience social isolation and loneliness.[54] 'Child marriage' is not solely a human rights issue, defined by the necessity of free, independent, and informed consent for marriage; it is also a significant public health concern.[55] In addition, child marriage is a form of gender-based violence, as girls are more likely to be subjected to it than boys, and it is also a harmful practice in terms of women's and children's rights.[56] In this regard, the practice of child marriage directly or indirectly falls

48 J. N. D. Anderson, 'The Syrian Law of Personal Status' (1955) 17 (1) Bulletin of the School of Oriental and African Studies, University of London, 36.

49 *Ibid.* 35–36.

50 *Ibid.* 35–36.

51 In our assessment, the exceptional provisions regarding the minimum age of marriage in Turkish law create a legal framework that permits child marriages. In our view, it is evident that individuals under the age of 18 lack the necessary cognitive and emotional maturity to fully comprehend the legal provisions and social consequences of marriage. Therefore, even under exceptional circumstances, permitting marriage for persons below this age threshold should not be allowed. For the abolition of provisions in German and Swiss law that permitted the marriage of minors by judicial authorisation, within the context of efforts to combat forced and early marriages, see Özgür (n. 23), 130–131.

52 Report, 60.

53 Report, 76.

54 Care Gender and Protection in Humanitarian Contexts: Critical Issues Series 1, 'To Protect Her Honour 'Child Marriage in Emergencies -The Fatal Confusion Between Protecting Girls and Sexual Violence (Report), 2015, 14.

55 Ulusu Karataş (n. 5), 29.

56 UN Women, 'Inter-Agency Assessment: Gender-Based Violence and Child Protection Among Syrian Refugees in Jordan with a Focus on Early Marriage' (2013) 29, <https://www.unwomen.org/sites/default/ files/Headquarters/Attachments/Sections/Library/Publications/2013/7/Report-web%20pdf.pdf> accessed 20 March 2025.

within the framework of numerous international conventions concerning fundamental human rights, women's rights, and children's rights, and is recognised as a violation of these principles.[57]

Polygamy is likewise considered contrary to Turkish public order, as stipulated by the Turkish Constitution and the Turkish Civil Code. Indeed, polygamy is fundamentally incompatible with the principle of gender equality. Although polygamy is prohibited under Turkish law, it is observed that legally married Turkish citizen men engage in de facto unions with Syrian women or girls, particularly in the Southeastern Anatolia region.[58] As registered unions are not legally recognised as marriages under Turkish law, women in such unions are not entitled to legal rights including inheritance and maintenance. In addition, children born to these women are in practice registered in the name of the legal female spouse. This results in ambiguity regarding the legal determination of children's lineage. This situation is undoubtedly contrary to the Constitution of the Republic of Turkey, which recognises equality before the law. Indeed, children born to a lawful spouse and children born from a de facto union do not have equal status in terms of lineage. A child born within a de facto union is not legally entitled to inherit from the woman who gave birth to him or her. Consequently, polygamy is not conducive to safeguarding the best interests of the child.

Under Turkish law, provisions concerning polygamy are incorporated within the LFIP. Accordingly, the family residence permit is classified as a type of residence permit intended to facilitate family reunification and cohabitation.[59] Pursuant to Article 34(2) of the LFIP, in the event of a marriage involving multiple spouses under the law of the country of nationality, only one spouse shall be eligible for a family residence permit. However, children from other spouses may also be granted a family residence permit. The regulation stipulates that eligibility for a family residence permit is granted to only one spouse, whereas all children qualify for a family residence permit. However, this provision stands in contradiction to the principle of vested rights as recognised in private international law. A distinction, within the meaning of Article 8 of the ECHR (Right to respect for private and family life), would likewise arise concerning the children of men who, under their national legal systems, are permitted to enter into marriage with more than one woman. In practice, it remains unclear which spouse will be granted a family residence permit in the context of such a polygamous marriage.[60] In our view, although a state possesses exclusive competence to regulate residence permits in accordance with its immigration policies, the exercise of this authority should not produce outcomes that are incompatible with human rights obligations. From a feminist perspective, within a legal system that lawfully permits polygamy, restricting the issuance of a family residence permit to only one spouse effectively subjects the right of women and children to respect for family life to the discretion of the male spouse.

57 On international instruments prohibiting child marriage, see Ulusu Karataş (n. 5), 29 *et seq*.

58 Report, 65–69.

59 Vahit Doğan *et al.*, *Türk Yabancılar Hukuku,* (7th edn, Savaş Publishing, 2023) 86 *et seq.*; Esra Tekin, Yabancılar ve Uluslararası Koruma Kanununa Göre Yabancıların Türkiyede İkameti, Master Thesis, Dicle University Graduate School of Social Sciences, 88 *et seq*.

60 Doğa Elçin, 'Yabancılar ve Uluslararası Koruma Kanunu'nda Aile İkamet İzni: Aile Hayatı Hakkı mı? Aile Birleşimi Hakkı mı?' (2017) 30 Türkiye Adalet Akademisi Dergisi, 169.

It is noteworthy that a Syrian individual holding temporary protection status in Turkey is prohibited from entering into marriage with more than one woman, on the grounds that such a practice is deemed contrary to Turkish public order. In determining the law applicable to Syrians residing in Turkey, there is a lack of consistency in practice regarding whether they fall under the scope of Turkish law pursuant to Article 4(1)(a) of the TAPIL, given that they are not formally recognised as refugees under Turkish law. In our view, since the LFIP had not yet come into effect at the time TAPIL was drafted, the various forms of international protection established under Turkish law were not encompassed within the scope of TAPIL.[61] Consequently, Syrians should also be included under Article 4(1)(a).[62] It is important to note that the 'temporary' nature of the protection provided does not affect the state's obligation to ensure protection.[63] Even if Syrian law is deemed the applicable law in practice, access to it remains difficult due to the ongoing internal unrest in Syria.[64]

It is evident that Syrian nationals are not permitted to enter into polygamous marriages or child marriages in Turkey. However, the issue of whether such marriages can be legally recognised and regarded as valid family relationships when individuals who have previously entered into these marriages in Syria apply for asylum with the competent authorities in Turkey is central to this article. When a polygamous man applies for international protection in Turkey, one of the female spouses is registered as the legal spouse and the other women are registered as 'family relatives' and 'single'.[65] All children are also legally registered as children of the registered female spouse.[66] There is no consistent practice in this regard, even within the country.[67] For example, in some cities, all women except one are registered as 'life partners.' It should be noted that these women will be able to remarry because they are considered single. It is absurd to consider these individuals as single while simultaneously denying them the right to remarry. Furthermore, since all children are registered under the legal wife's name, an inequality in terms of lineage will arise among the children.

It has also been noted that marriages involving minors are considered crimes under the Turkish Penal Code. Therefore, in the case of marriages involving underage individuals, the male spouse may face the risk of imprisonment in Turkey. According to the case of Z. H. and R. H. v. Switzerland[68] of 8 December 2015, the ECtHR determined that Article 8 does not require any state party to the Convention to recognise a marriage, whether religious or otherwise,

61 Due to short-term crisis management, such matters in private international law have not been sufficiently clarified: Jinske Verhellen, 'La Portabilité Transfrontalière du Statut Personnel des Réfugiès' (2017) 2 (2) Revue Critique de Droit International Privé, 175.

62 For a court decision to the contrary, see Esra Tekin, 'Türkiye: Divorce Petition of Syrian Arab Republic Nationals in Türkiye' 2024 Winter, American Society of Private International Law PILIG Newsletter.

63 Ayşe Dicle Ergin and Yiğit Kader, 'Uluslararası Koruma ve Geçici Koruma Rejiminde Geçicilik Unsuru: "Geçici" Olan Nedir?' (2024) 42 (2) İnsan Hakları Yıllığı, 117.

64 For cases demonstrating the lack of consistency in practice regarding the determination of the applicable law, see Esra Tekin, 'Application of Foreign Law in Turkish Courts', in *18th Regional Conference on Private International Law, Private International Law and International Organizations*, (Niš, Serbia, 2024) 247.

65 Gülüm Bayraktaroğlu Özçelik, 'When Migration Meets Private International Law: Issues of Private International Law in Divorce Actions of Syrian Migrants under Temporary Protection Before the Turkish Courts' (2024) 20 (1) Journal of Private International Law, 238.

66 *Ibid*. 238.

67 The information in question was obtained through private discussions with immigration officials in various cities.

68 ECtHR, No. 60119/12, <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-159050%22]}> accessed 6 July 2024.

involving a 14-year-old. Additionally, such an obligation cannot be inferred from Article 12 of the Convention, which pertains to the right to marry.[69] In these cases, the state's interest in controlling migration conflicts with the parties' interest in maintaining their legally acquired personal status. While the majority of European Union Member States refrain from undertaking arbitrary actions that would undermine the unity of a refugee's family, they equally exhibit a reluctance to assume proactive responsibility in implementing positive measures aimed at facilitating family reunification.[70] In *Biao v. Denmark,*[71] the ECtHR reaffirmed that Article 8 of the Convention does not entail a general obligation upon States to permit family reunification within their territory.

It is important to note that both civil servants and members of the judiciary encounter private international law issues that emerge in the context of asylum. These issues are likewise significant for the effective long-term management of refugee flows and the facilitation of integration processes.[72]

3.2. EXPERIENCE OF COURTS

3.2.1. POLYGAMY

The judgment of the 2nd Civil Chamber of the Turkish Court of Cassation explicitly demonstrates the intervention of public order in matters concerning polygamy.[73] Although the judgement is not related to Syrian asylum seekers, it is important in terms of determining the framework of public order regarding polygamy. Pursuant to Article 12(1)(b) of the Turkish Citizenship Law,[74] those who do not work in Turkey but will invest in Turkey in a scope and amount to be determined by the President of the Republic, their foreign spouses, and their minor or dependent foreign children may acquire Turkish citizenship under certain conditions. In the judgment, the Afghan citizen who obtained Turkish citizenship through investment has two marriages legally recognised under his national law. Upon acquiring Turkish citizenship, multiple spouses were recorded in the Turkish civil registration record. As this situation contradicts the principle of monogamy established in the Turkish Civil Code, the Civil Registry Directorates reported the multiple marriage records in the civil registry to the Public Prosecutor's Offices. Consequently, the Public Prosecutor's Offices initiated legal proceedings in the Civil Courts of First Instance to annul the marriage. The Civil Court of First Instance accepted this case. According to the Turkish Civil Code, the existing marriage is a ground for absolute nullity.[75] The fact that the individual in question held both Afghan and

69 Verhellen (n. 61), 179.

70 *Ibid.* 181.

71 ECtHR, No. 38590/10, <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-163115%22]}> accessed 6 July 2024.

72 Verhellen (n. 61), 181.

73 Turkish Court of Cassation, Registration No 2023/5004, Decision No 2024/3734, Dated 22.05.2024. For the full text of the Judgment see <www.lexpera.com.tr> accessed 17 February 2025.

74 OG, dated 12.06.2009; numbered 27256.

75 For an assessment of this judgement in terms of different areas of law, see Ahmet Canik İyilikli and Oğuz Ersöz, 'Türk Vatandaşlığına Geçişte Yabancıların Birden Fazla Evliliğinin Nüfus Siciline Tescilinin Türk Kamu Düzenine Aykırılığı Üzerine Bir İnceleme (Türk Hukukuna Etkisi)' (2023) 71 Adalet Dergisi, 827–851.

Turkish citizenship did not exempt him from the prohibition of polygamy. Consequently, the Court of Appeal upheld the decision of the Court of First Instance as appropriate. Then, the parties appealed to the Court of Cassation on the grounds that the annulment of the marriage was not appropriate due to this absolute nullity. The Court of Cassation upheld the judgement of the Court of Appeal by a majority of votes.

However, an analysis of the dissenting opinion reveals noteworthy explanations. Article 145(1) of the Turkish Civil Code, which is the basis of the case and the judgement, is a provision regulating the annulment of the second marriage of a person who is married as a citizen of the Republic of Turkey, without proving that the first marriage has ended (Article 130 of the Turkish Civil Code). However, Article 13 of TAPIL states that 'The capacity and conditions of marriage shall be governed by the national law of each of the parties at the time of marriage. In the present case, while the parties were citizens of Afghanistan, they formalised their marriage contract in accordance with the national law to which they were subject. There is no legal provision under Turkish law for the annulment of a legally valid marriage contracted in accordance with the parties' national law solely on the grounds of acquiring Turkish citizenship. As stated in Article 5 of TAPIL, if the provision of the competent foreign law applicable to a particular case is clearly contrary to the Turkish public order, this provision shall not be applied, and Turkish law shall be applied where deemed necessary. If it is asserted that the second marriage of the defendants, who were initially citizens of Afghanistan and subsequently acquired Turkish citizenship, contravenes Turkish public order, the matter should be addressed as a 'case for correction of the civil registration' in the Civil Court of First Instance, in accordance with the general provisions. The first paragraph of Article 21 of the Implementing Regulation on the Civil Registration Services,[76] titled 'Registration of Civil Registration Events of Persons with Multiple Citizenship,' stipulates that for personal status changes made by individuals holding multiple citizenships under the identity of another state to be recorded in the family registers, the event in question must occur in accordance with Turkish law. Given that this record in the civil registry constitutes an irregular registration, it should be rectified through a legal action for correction.

After the explanations regarding the decision, it should be noted that it is not appropriate to annul a marriage legally made under foreign law on the grounds that it does not comply with Turkish law. Indeed, the terms of the marriage are governed by the national law of the parties at the time of marriage. The sanction for violating the conditions is determined by the law whose provisions have been breached. The cancellation should only have an effect on the Turkish civil registry, as these marriages are valid under Afghan law. Therefore, the rights and responsibilities of the spouses arising from marriage and family law must be preserved.[77] It is important to note that public order may differ based on the time and location.[78] Indeed, the strengthening of the parties' connections with Turkey enhances the influence of public order intervention. The acquisition of Turkish citizenship by the individuals in question is sufficient to establish this level of connection.

76 OG, dated 09.05.2020, numbered 31122.

77 İyilikli and Ersöz (n. 75) 839 .

78 Ahmet Gündüz Ökçün, *Devletler Hususî Hukukunun Kaynakları ve Kamu Düzeni,* (Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayını, 1967) 151 *et seq.*

3.2.2. CHILD MARRIAGES

In contrast to polygamy, there is a significant body of case law regarding child marriages. However, it should be noted that most of these judgements were issued by Criminal Courts. Syrian individuals holding temporary protection status in Turkey are prohibited from engaging in child marriages, as such actions would constitute a violation of the Turkish Civil Code. In accordance with Article 13(2) of the Regulation on Marriage,[79] the provincial directorates of migration management are responsible for determining whether individuals under temporary protection from Syria have any legal impediments to marriage. This assessment is conducted based on the information and documents contained in their files maintained by the provincial directorates of migration management. Upon verification, these authorities issue marriage license certificates for the individuals in question. However, these individuals often form de facto unions through religious marriages, which are not legally recognised in Turkey. When 'Syrian girls' who become pregnant as a result of these unions seek medical care for childbirth in hospitals, their cases are reported to the Prosecutor's Offices.

As mentioned before, this situation constitutes the offence of sexual abuse of a child in Turkey. The 9th Criminal Chamber of the Court of Cassation[80] affirmed the judgment rendered by the Istanbul 11th High Criminal Court. It has been established that both the victim and the defendant are Syrian nationals. The victim, born in 2000, gave birth to a male child on December 18, 2014, at Okmeydanı Training and Research Hospital, with the defendant identified as the child's father. In his statements, the defendant asserted that he is a Syrian citizen and that they entered Turkey through Gaziantep five months prior. He further stated that he and the victim had legally married in Syria approximately one year earlier and possessed official documents confirming their marriage. According to the defendant, the victim became pregnant during their time in Syria and later gave birth in Turkey. The victim corroborated the defendant's statements, affirming that they had legally married in Syria a year prior with the consent of her parents, that she became pregnant, and that they subsequently came to Turkey. She also declared that she did not wish to file a complaint against the defendant. The documents submitted by the defendant were translated by a certified translator. It was established that a case regarding the confirmation of marriage had been initiated before the Tartus Legal Court on behalf of the people of the Syrian Arab Republic, resulting in a ruling dated June 15, 2014. This ruling affirmed the validity and legitimacy of the marriage between the defendant and the victim, which had taken place on February 15, 2014, in Tartus. The Istanbul 11th High Criminal Court, upon reviewing the submitted document, determined that although the victim was under the age of 15 at the time of the offense, certain mitigating factors warranted consideration. Specifically, both the defendant and the victim were Syrian nationals who had entered Turkey after lawfully marrying in Syria, a marriage later confirmed by a Syrian court ruling. The victim subsequently gave birth in Turkey on December 18, 2014. Given these

79 OG, dated 07.11.1985, numbered 18921. While the original provision regulated only the 'Marriage of Stateless Persons or Persons with Unstable Citizenship Status,' its scope was expanded to include individuals under temporary protection through an amendment introduced by Article 4 of the Regulation annexed to the Council of Ministers Decision dated 28.11.2017 and numbered 2017/11079.

80 Turkish Court of Cassation, Registration No 2021/10080, Decision No 2024/28, Dated 08.01.2024. For the full text of the Judgment see <www.lexpera.com.tr> accessed 17 March 2025.

circumstances, the court concluded that the defendant had acted under an unavoidable error regarding the illegality of his actions, as outlined in Article 30(4) of the Turkish Penal Code.

In reaching this conclusion, the court took into account several factors, including the fact that the defendant and the victim had fled from a Middle Eastern country where the marriage of girls under the age of 15 is legally and socially accepted. Additionally, upon arriving in Turkey, they continued to live as a married couple. The court also considered the personal and economic conditions of both individuals. Based on principles of equity and justice, and in accordance with Articles 30(4) of the Turkish Penal Code and 223(3)(d) of the Criminal Procedure Code,[81] the court ruled that no penalty should be imposed on the defendant.

However, in cases of these de facto unions involving Syrian nationals under temporary protection in Turkey, the defendant is convicted of sexual abuse based on the presumption that it is improbable for them to have resided in Turkey for an extended period without being aware of the legal framework.[82]

4. DIFFICULTIES (THE INTEREST OF ASYLUM SEEKERS IN MAINTAINING THEIR PERSONAL STATUS V. PUBLIC ORDER OF THE STATE OF PROTECTION)

Within a legal system, an individual who acquires a subjective right has a legitimate expectation that it will remain undisputed in the future.[83] In accordance with the principle of legal certainty, the state guarantees, to a certain extent, the stability of lawfully established situations.[84] However, personal status is largely safeguarded against state interference.[85] The non-recognition of a legally acquired personal status in one country by another results in limping legal relationships. Preventing the occurrence of limping legal relationships is essential for maintaining international judicial harmony, a fundamental objective of private international law. Indeed, minimising methodological nationalism would undoubtedly serve to ensure the international judicial harmony.

It is unequivocal that both polygamy and child marriage are inconsistent with fundamental human rights principles. The violation of human rights in these matters would require intervention by Turkish public order. These persons seek international protection in a foreign country due to the civil unrest in the Middle East. In other words, they were compelled to leave their countries due to pressing circumstances. Recognising such marriages legally concluded in their home countries should be possible on a case-by-case basis on the grounds of the right to family life and the best interests of children. It is clear that recognising such marriages of such persons would violate Turkish public order. This situation may be an incentive for

81 OG, dated 17.12.2004, numbered 25673.

82 Adana Regional Court of Justice, Registration No 2020/168, Decision No 2022/815, Dated 25.04.2022. For the full text of the Judgment see <www.lexpera.com.tr> accessed 19 March 2025.

83 Silvia Pfeiff, *La Portabilité du Statut Personnel dans L'Espace Européen,* (Bruylant, 2017), 15.

84 *Ibid.* 15.

85 *Ibid.* 16.

the low-educated population in the cities close to Syria. Indeed, the Turkish Civil Code has adopted the principle of monogamy. Again, Turkish law does not recognise the marriage of a 13-year-old girl.

5. AS A CONCLUSION: RECOMMENDATIONS

The Geneva Convention of 1951 is an international instrument setting out minimum standards of refugee protection. According to art. 12 of the Geneva Convention, The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognised by the law of that State had he not become a refugee.

It is important to emphasize at the outset that Syrian temporary protection beneficiaries should also be included within the scope of Article 4(1)(a) of TAPIL. In continental Europe, the indicative conflict of laws rules determined by Savigny's method have accepted the 'national law' connecting factor for personal status. Does this connecting factor extend to beneficiaries of international protection as well? Considering that Syrians in Turkey are under temporary protection status, it is thought-provoking what should be understood by this temporariness. Considering the infrastructure problems in Syria, it is clear that these people will not be able to return to their countries in the near future. Since Turkey did not experience such a significant influx of migrants when the TAPIL was drafted, no provision was made for temporary protection status, and only the term 'refugee' was used. However, considering the reasoning of the provision, the term 'refugee' should be understood to include all international protection holders and even temporary protection holders. In disputes regarding the personal status of refugees, legal scholars have argued that the parties should be granted the option to request the application of either their national law or the law of the country in which they are habitually resident.[86]

When it comes to migration, the policies of states regarding migration should not be ignored. However, it should not be forgotten that migration will also bring long-term problems to the agenda such as private international law problems. Therefore, associations or international organisations dealing with private international law have a great responsibility. In our view, it would be beneficial to compile a report on the practices of different countries in order to determine the appropriate approach in this regard. This step may potentially serve as an inspiration for the international community to adopt a unified treaty. Therefore, limping legal relationships are minimised.

Polygamy and child marriage are clearly contrary to human rights. Indeed, child marriages are based on gender discrimination. This situation, which harms the physical and mental

86 Jean-Yves Carlier, 'Droit d'asile et des réfugiés de la protection aux droits', in *Collected courses of the Hague Academy of International Law 2007*, T. 332 (Martinus Nijhoff Publishers, 2007) 314.

health of the child, should be prohibited in all legal regulations. Polygamy is also contrary to the equality of men and women. However, the recognition of such marriages must be based on the equity of the concrete case. Article 8 ECHR and the legal expectation to protect the personal status of refugees should not be sacrificed to public order. In fact, due to economic hardship, the majority of Syrian families in Turkey seek to marry off their children to older individuals. They even subject Syrian girls to de facto unions as second wives. In order to protect these girls, the education of Syrian refugees should not be disrupted. Legal training programs should also be organised to facilitate the integration of Syrians into Turkish legal system. For example, information should be provided regarding the legal age for marriage and the prohibition of polygamy under Turkish law. Turkey bears a heavier burden in the Syrian crisis compared to European countries. Ensuring children's access to education is essential for social integration. Polygamous marriages and child marriages should not be permitted in Turkey. However, the non-recognition of these legally conducted marriages in Syria will lead to adverse consequences for women and children. States do not have an obligation arising from the ECHR to recognise such marriages. However, in our opinion, when making an assessment regarding recognition, it is essential to consider the right to respect for family life and the best interests of the child, and to make decisions that ensure substantive fairness in the specific case.

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PRENOSIVOST OBITELJSKOG STATUSA DRŽAVLJANA SIRIJSKE ARAPSKE REPUBLIKE POD STATUSOM PRIVREMENE ZAŠTITE U TURSKOJ: POLIGAMIJA I BRAKOVI S MALOLJETNICAMA

Sažetak

Od 2011. godine građanski rat u Siriji prisilio je gotovo tri milijuna sirijskih državljana na pronalazak utočišta u Turskoj, što je rezultiralo nizom pravnih izazova. Značajan problem pojavljuje se u situacijama kada su poligamni i maloljetnički brakovi valjani prema sirijskom pravu, ali su u sukobu s turskim javnim poretkom. Prema članku 130. Turskog građanskog zakonika iz 2001., osoba koja ponovno sklapa brak mora dokazati da je prethodni brak valjano raskinut, što otvara pitanje priznavanju poligamnih brakova sirijskih muškaraca pod privremenom zaštitom u Turskoj. Nadalje, članak 124. Zakonika zabranjuje sklapanje braka osobama mlađima od osamnaest godina, što stvara pravnu nesigurnost u slučajevima kada su maloljetnice, primjerice petnaestogodišnjakinje, sklopile brak u Siriji te naknadno zahtijevaju njegovo priznavanje u Turskoj. Takve prakse, koje su u sukobu s turskim javnim poretkom i načelima ljudskih prava, zahtijevaju složenu pravnu analizu. Ovaj rad razmatra postupanje prema takvim brakovima u okviru turskog međunarodnog privatnog prava te njihove posljedice sa stajališta ljudskih prava.

Ključne riječi: *poligamija, maloljetnički brakovi, turski javni poredak, priznavanje braka, privremena zaštita*

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