

## **Sending Back The Syrians Living in Turkey: Assessment Within The Context of Non-Refoulement Principle in International Law**

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### **Abstract**

With the Syrian Civil War, Turkey has been the destination of one of the largest mass migrations resulted in the entry of approximately 4 million refugees into the country. In response, there has recently been a political rhetoric and the public trend towards the forced return of foreigners. This article investigates whether Turkey can send back the asylum-seekers to their countries within the context of the non-refoulement principle. I argue that, since Turkey is a party to the 1951 Refugee Convention, and adopted the principle in its domestic law, it cannot be able to send back asylum-seekers to their home countries.

### **Keywords**

Non-refoulement • international refugee law • forced migration • Syrian refugee crisis • Turkish refugee law.

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# Türkiye'de Yaşayan Suriyelileri Geri Göndermek: Uluslararası Hukukta Geri Göndermeme İlkesi Bağlamında Bir Değerlendirme

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## Öz

Suriye İç Savaşı ile Türkiye, yaklaşık 4 milyon mültecinin ülkeye girişiyle sonuçlanan en büyük kitlesel göçlerden birinin hedefi olmuştur. Buna cevaben, son zamanlarda siyasi bir retorik ve yabancıların zorla geri dönüşüne yönelik kamusal bir eğilim olmuştur. Bu makale, Türkiye'nin sığınmacıları geri göndermeme ilkesi kapsamında ülkelerine geri gönderip gönderemeyeceğini araştırmaktadır. Türkiye'nin 1951 Mülteci Sözleşmesi'ne taraf olması ve bu ilkeyi iç hukukunda benimsemesi nedeniyle sığınmacıları ülkelerine geri gönderilemeyeceğini savunulmaktadır.

## Anahtar Kelime

Geri göndermeme • uluslararası mülteci hukuku • zorunlu göç • Suriyeli mülteci krizi • Türk mülteci hukuku.

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**Başvuru Tarihi:** 25 Kasım 2021

**Kabul Tarihi:** 10 Aralık 2021

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ISSN 2149-4398 • eISSN 2458-8962

Kış 2021 • 6(1) • 21-38

## Introduction

The Arab Spring, which started in 2011 in the Middle East and North Africa as a mass reaction to the economic, political, and social disruptions of authoritarian regimes caused low-profiled violence in some countries while paving the way for severe armed conflicts that escalated to civil war in others. Syria is undoubtedly the most unlucky one of the second group. The country where political turmoil, violence, and coups set the agenda after gaining its independence from France in 1936, has never been achieved sustainable peace and prosperity due to social tension resulting predominantly from the Alevist minority ruling over the Sunnite majority. The political inequality and the sectarianism that increased during the presidency of Bashar Assad caused the country to be dragged into an atmosphere of low-profile rebellion and protest movements which, in a short time with the moment of Arab Spring, converted into armed resistance against the long-standing confessionalism of the unitary dominant-party system based on hereditary military dictatorship. The skirmishes first turned into an armed conflict not of an international character; then, partly with the involvement of state actors such as Russia, Turkey, Iraq, and Iran, and non-state actors like Islamic State of Iraq and Syria, and Syrian Democratic Forces, evolved into an international armed conflict after 2014.

One of the most dramatic results of the war is irregular migration causing hundreds of thousands of asylum-seekers to flee to Turkey, Lebanon, Iraq, and Europe via Greece, constituting one of the biggest mass/forced migration movements in contemporary history. Partly with the effect of its geographical location, in this process, the country that received the most asylum-seekers has been Turkey. The number of refugees, which reached 1.5 million in 2014 and 2.8 million in 2016, was recorded as 3.6 million as of September 2021. According to World Bank, Turkey's response, which is based on a non-camp-government-financed approach, to the refugee crisis has been different from most other countries. While only less than a third of Syrians live in camps, the majority of them have obtained the right to reside in big cities such as Istanbul, Izmir, and Ankara, and these refugees under temporary protection have access to work, education, shelter, and health, thanks to the domestic legal regulations that will be examined below.

As a result of these mass/forced migration movement which resulted in Turkey becoming a target country, the refoulement of Syrians to their home countries has come to the fore, and, following that, negative opinions on the recent crisis began to be expressed from the government officials, the media, and the public. These statements, whose legal validity is controversial, and generally made with political concerns and nationalist reflexes, have dominated the public agenda recently, and it has been observed in the surveys that the majority of the society is in favor of the repatriation of asylum-seekers and refugees to their home countries. This article aims to examine the status of these asylum-seekers and refugees according to Turkish domestic law and to investigate whether a refoulement policy is possible under both international law and domestic law. The main research questions of this study are, (i) to what extent does Turkish domestic law comply with the principle of non-refoulement; and (ii) considering its domestic law and international refugee law, can Turkey send back asylum-seekers and refugees to their home countries? In the first part of the article, the political background that causes the migration movement of Syrian asylum-seekers and refugees will be explained and the reactions of the political power to mass/forced migration will be examined. The international conjuncture on migration will also be included in this section. In the second part, the basics of the principle of non-refoulement in international law will be discussed. In this section, the fundamental human rights guarantees provided by the principle, the international conventions on which it is based, and whether it creates a custom in this regard will be explained. In the last part, focusing on the relevant laws enacted in 2013 and 2014, Turkey's legal legislation regarding asylum-seekers and refugees will be discussed. Also, recommendations on Turkey's refugee policy will be outlined in this part of the article.

## Refugee Problem Resulting From Syrian Civil War

The mass protests that started in the Middle East and North African countries in 2011 as a reaction to the social and political inequality, corruption, and economic stagnation quickly morphed into armed conflicts between the authoritarian regimes and the opposition groups demanding democratization. In Syria, one of the countries dragged into severe violence, fight for human rights which began with the Arab Spring turned into a civil war while the conflict that continues has caused many Syrians to lose their lives and forced others to seek shelter in nearby countries (Akar & Erdoğan, 2019). Turkey has been one of the countries most adversely affected by mass/forced migration. As the war has continued with the growing number of arrivals from Syria, a so-called ‘temporary protection regime’ was introduced in October 2011 in Turkey, thereby, it was decided that all Syrians, Palestinians, and stateless persons living in Syria and seeking protection would benefit from this regime (Koca, 2019). At that time, the Turkish government did not recognize officially the Syrian refugees as asylum-seekers, causing two important implications. First, they cannot apply for asylum in a third country; and second, unlike the refugee status, the unofficial guest status implies that refugees can be relocated by the Turkish government without any legal process. However, to alleviate the conditions of the Syrian refugees and to limit uncertainty, the government enacted a temporary protection policy that ensures an open border between Turkey and Syria, and that promises no forced exits (Akgündüz et al, 2015). As a matter of fact, in the early years of the Syrian crisis, Turkey maintained a positive response to the refugee flows from Syria, perceived as a humanitarian issue. In 2013, the Foreign Minister at the time, Ahmet Davutoğlu, defined the Syrians as ‘guests’ and ‘brothers’ – which have no legal denotations – stressing that closing the doors to them should be ruled out. A year after this definition, the Deputy Prime Minister of Turkey was going to declare the same approach representing the hosting of refugees as *ansar* (İçduygu & Nimer, 2019).<sup>3</sup>

In 2013, the Turkish parliament passed the Law on Foreigners and International Protection (LFIP), which will be assessed in the third part in detail, provided for the asylum-seekers from outside Europe the first legal framework and the status of ‘conditional refugee’ in line with the standards of the European Union (EU) and international conventions. The same law also precipitated the foundation of The Directorate General of Migration Management (DGMM) that is deemed to be responsible for registering and providing services to those needing protection. In 2014, the Turkish state issued a new Temporary Protection Regulation [TPR], which will also be assessed below, based on the LFIP. This new regulation situated the Syrian refugees under the status of the beneficiaries of ‘temporary protection’ (Bélanger & Saracoglu, 2019). This directive on temporary protection was adopted by the Council of Ministers and went into effect on 22 October 2014 (Koca, 2019). The directive maintains the previously guaranteed rights and approaches in three issues, as follows: (i) open border policy; (ii) no forcible returns [in line with non-refoulement principle]; (iii) registration with the Turkish authorities and support inside the borders of the camps (Özden, 2013). As Ineli and Ciger expressed, before the adoption of the TPR in 2014, there was no legal instrument clarifying the rights and entitlements of Syrians in Turkey, and the TPR improved the protection standards afforded to Syrians by clarifying the rights and entitlements of temporary protection beneficiaries (2017).

As entered the fifth year of the war, Syrian refugees started to cross to European countries via Turkey, thus, for stopping the flow of irregular migration, the EU established a legal cooperation framework with Turkey. Therefore, predominantly resulting from social, economic, and security concerns of Europe, on 18 March 2016, the EU and

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<sup>3</sup> *Ansar*, or *ensar*, in Arabic, means ‘helper’ or ‘one who helps others’. The adjective derives from the name Ansar to the Muslims of Medina who helped the immigrants who migrated from Mecca to Medina in 622 AD.

<sup>4</sup> DGMM was renamed as the Department of Migration Management (DMM) on 11 October 2021, yet, it is referred to by the previous name in many government documents, media, and academic studies. Therefore, the abbreviation DGMM is used in this study.

Turkey signed the EU-Turkey Deal which outlined several initiatives for jointly addressing the Syrian refugee crisis and managing irregular refugee migration into Europe. As part of the deal, Turkey has agreed to admit returned irregular migrants, and in exchange, will send Syrian refugees in Turkey to Europe for resettlement – a type of population swap (Rygiel et al., 2016). According to the deal, for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria; Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU; the EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March [of 2016] (European Council, 2016). However, as Rygiel et al. remind us, it has come under severe criticism for allowing European governments to shirk their international commitments to refugee protection as signatories to the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. In a similar vein, lawmakers from the European Parliament's Subcommittee on Human Rights put negative comments on the Turkish side. On 18 May 2016, a Member of the European Parliament Marietje Schaake said that Turkey should not use Syrian refugees as a bribe for the process of visa liberalization for Turkish citizens inside the European Union (Guler, 2016). However, the deal – which the main purpose was not to stop the flow of immigrants – did not have a reducing effect on the number of asylum-seekers. With continuous refugees fleeing their country, by 2018, Turkey has been reported in hosting 63.4 % of all the Syrian refugees in the world. This left Turkey with 3.564.919 registered refugees in total, while these figures raised dramatically to 3.718.332 in 2021 (UNHCR, 2021).

## Recent Legal and Political Refoulement Debates

Although the claims that refugees, conditional refugees, and asylum-seekers in Turkey, especially Syrians, should be sent back to their countries have not been justified in detail with convincing legal arguments, it has been started to be voiced openly by the government and the public, especially after 2019, when social opinion about immigrants turned negative. For today, it seems that the ruling conservative party has given up its previous willingness to embrace the open-door policy it followed in the first years of the civil war, and concordantly, the majority of the society argues that refugees and asylum-seekers should be sent back. This exclusionary approach has led to a debate in the public about the status and future of refugees recently.

After the 2019 local elections, the juridical supervisions and administrative inspections on refugees living in big cities, where the secular main opposition party, Republican People's Party, (Cumhuriyet Halk Partisi, CHP) came to power, increased. In this context, although it is stated in the news that was made public that the deported persons were sent to safe areas such as Afrin, it was also claimed that nearly 400 asylum-seekers were sent back to Idlib – a northwestern governorate of Syria where severe armed conflicts continuing (Arpacik, 2019). Individual statements and news supporting these claims were also reflected in reliable media either. A Syrian who spoke

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<sup>5</sup>There are no definitive Vulnerability Criteria under the UN regulations, while several directives have been introduced to constitute a protective framework for victims of mass/forced migrations. UNHCR, together with International Detention Coalition, has produced a Vulnerability Screening Tool for identifying and addressing vulnerability. United Nations Development Programme (UNDP) also published a Discussion Paper titled Towards a Multidimensional Vulnerability Index. However, none of them brought a comprehensive set of standards in measuring the vulnerability conditions for refugees or asylum-seekers in need of international protection.

<sup>6</sup> The EU Facility for Refugees in Turkey, managing a total of 6 billion euros in two tranches, provides for a joint coordination mechanism, designed to ensure that the needs of refugees and host communities in Turkey are addressed in a comprehensive and coordinated manner. The Facility focuses on humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support. For more information see The EU Facility for Refugees in Turkey, at [https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-09/frit\\_factsheet.pdf](https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-09/frit_factsheet.pdf).

to the BBC correspondents whose identity has not been disclosed for security reasons told that he was forcibly returned to his country, lived in a refugee camp in Idlib for two months, and then returned to Turkey as a fugitive (Öztürk & Yalçınalp, 2019). To complicate matters further, there are also Syrians who have been sent back without trial, and with no evidence of their involvement in any crime that may cause them to be deported. According to Ayşegül Karpuz, a lawyer who briefed DW Turkish on the subject, there are serious problems with the practice of refoulement based on a crime. To deport any foreigner who is alleged to have been involved in a crime in Turkey, the court must give a verdict, yet this principle is not always followed in practice, and [between 2011 and 2019] many Syrians were sent back without waiting for a final verdict on them (Karpuz, 2019). There are no reliable official data or research results on how many Syrians or other foreigners have been illegally sent back. However, it seems that some foreigners with refugee, conditional refugee, or asylum-seeker status have been sent back to their countries in violation of domestic legal regulations, international agreements, and customary law on refugees.

On the other hand, the government's approach to the problem has reflected a certain and pragmatic cautiousness. In his statement on the subject, Foreign Minister Mevlüt Çavuşoğlu stated that [the ruling conservative party] is working to return refugees, especially Syrians, to their countries, and emphasized that they are trying to find a solution by producing new policies to solve this problem (2021). CHP leader Kemal Kılıçdaroğlu also defended the policy of refoulement, yet, taking care to use a similar humanist language. In his speech, he said, "I have a word to the nation. If I come to power with your votes, I will send the Syrians to their countries with celebrations." (2021). These discourses of the government and opposition about refoulement have found a strong response in the public, and, as a result, especially in the post-2015 period the negative attitude towards refugees and asylum-seekers has increased. In an opinion research conducted in 2016, 62.4 % of the respondents stated that they no longer want asylum-seekers in Turkey (KONDA, 2016). In another survey conducted in 2020, 6 out of 10 people living in big cities said that Syrian refugees should be sent back to their home countries (IstanPol, 2020). According to a more recent poll, 58.2 % of the respondents expressed an opinion in favor of the sending back of Syrians (MOTTO, 2021).

Discussions and claims about the forced return of Syrian refugees and asylum-seekers seem to remain valid in Turkey in the coming period. Both the ruling conservative elite and secular opposition approach the problem from a populist perspective and present the policy of repatriation as a viable option; while public engages in a deeper emotional alienation and marginalization behavior towards refugees and asylum-seekers due to economic, social, and cultural reasons. Under these circumstances, the principle of non-refoulement which is one of the peremptory norms of international refugee law is a candidate to be the subject of more polarizing legal and political debates.

### **Non-refoulement Principle in International Refugee Law**

The term non-refoulement originates from the French word *refouler*, which means to 'drive back' or 'repel'. It is a fundamental principle of international law that forbids a country from returning asylum-seekers to a country in which they would be in likely danger of persecution, and, considered a principle of customary international law because it applies even to states that are not parties to the [1951] convention and its [1967] protocol (Muma, 2018). The principle of non-refoulement, meaning 'forbidding to send back' first appeared as a requirement in history in the work of international societies of international lawyers (Molnár, 2016). At the 1892 Geneva Session of the Institut de Droit International it was formulated that a refugee should not by way of expulsion be delivered up to another state that sought him unless the guarantee conditions set forth concerning extradition were duly observed. Later on, as Molnár explains, with a view to the growing international tension in the period between the two World Wars, the principle of non-refoulement explicitly appeared in an increasing number of international conventions, stipulating that refugees [under life-threatening conditions] must not be returned to their countries of origin (2016).

Before World War II, a small number of European states did enter into agreements restricting expulsion of Russian or German refugees who faced the risk of mistreatment upon repatriation, if they had been granted the right to reside in a contracting state, which resulted in, states that fought the war retained plenary control over admission and deportation of aliens (Padmanabhan, 2011). After the war, the principle has begun to be embodied in international agreements with more explicit definitions. In this sense, the prohibition of refoulement was formulated within the framework of a distinct norm in the 1949 Geneva Convention relative to the Protection of Civilians Persons in Time of War. According to Article 45 of the Convention, “In no circumstances shall a protected person be transferred to a country where he or she may have a reason to fear persecution for his or her political opinions or religious beliefs.” (Geneva Conventions, 1949). The mantra of non-refoulement in Geneva Law was applicable for prisoners of war for obvious reasons and political/legal realities of the post-war era. The first, and for today, the only agreement in which the principle is regulated in its current sense, is the 1951 Convention Relating to the Status of Refugees (Refugee Convention) which is currently the main legal source on refugees and asylum-seekers. Approved at a UN conference on 28 July 1951, and entered into force on 22 April 1954, it put the principle in the most concrete form. Article 33 of the Refugee Convention affirms that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Refugee Convention, 1951). <sup>7</sup>From this convention, the principle became a binding and valid norm for all times, regardless of the question of whether the doctrine will be applied in war or peacetime. In a holistic context, it is also important to emphasize that, although this provision seems to indicate a right only valid for refugees, it applies to asylum-seekers at the same time (Goodwin-Gill & McAdam, 2007).

The principle of non-refoulement has been one of the topics of interest in international law during the Cold War and détente periods when human rights began to be heavily discussed in the agenda of the international community and took place in some important multilateral conventions. One of these is International Covenant on Civil and Political Rights (ICCPR) in which it sets out the principle within Article 7 indirectly. The related article asserts that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” (ICCPR, 1966). The non-refoulement obligation was also formulated in the Convention Against Torture (CAT), this time explicitly, in the Article 3 as, “No State shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” (CAT, 1984).

Outside of its historical context, an important topic of discussion about the principle is whether non-refoulement is customary in international law. The issue is somehow controversial, and according to one view the principle constitutes a custom, while in another approach it cannot be considered customary. In a 1994 submission to the Federal Constitutional Court of the Federal Republic of Germany, United Nations High Commissioner for Refugees (UNHCR) wrote:

“The view that the principle of non-refoulement has become a rule of international customary law is based on a consistent practice combined with a recognition on the part of States that the principle has a normative character. This conclusion is supported by the fact that the principle has been incorporated in international treaties adopted at the universal and regional levels to which a very large number of States have now become parties.” (UNHCR, 1994).

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<sup>7</sup> It is almost certain that the principle constitutes a peremptory norm in international law. However, the general rule here is that the person who wants to benefit from the principle of non-refoulement has the burden of proof. In Cardoza-Fonseca case, the U.S. Supreme Court pointed out that “[Article 33] requires that an applicant satisfy

However, some analysts have reservations about UNHCR's generic approach which is based on a broad interpretation. Lauterpacht and Bethlehem in their invaluable assessment on the content of the principle of non-refoulement in customary international law state that [o]verriding reasons of national security or public safety will permit a [s]tate to derogate from the principle in circumstances in which the threat of persecution does not equate to and would not be regarded as being on a par with a danger of torture or cruel, inhuman or degrading treatment or punishment and would not come within the scope of other nonderogable customary principles of human rights (2003). Correlatively, according to Criddle and Decent, legal scholars have debated also whether international law characterizes the duty of non-refoulement as a peremptory norm of general international law (2020). Emphasizing the 1951 Refugee Convention does permit states to deny protection on a case-by-case basis when 'there are reasonable grounds for regarding [a particular refugee] as a danger to the security of the country in Articles 1(F), and 33(2), they remind us that it is debatable whether this characterization of the duty [of the principle] as a peremptory norm is now part of general customary international law (2020). In a similar vein, Chaudhary claims that non-refoulement constitutes only a very weak version of customary international law, asserting that to qualify as customary international law practice must be so widely applied that it becomes 'an international custom as evidence of a general practice accepted as law.' Some countries as India may protect refugees, while they retain some sort of discretion that could override the rule at any point (2004).

Apart from the international plane, the principle of non-refoulement has also been regulated by regional agreements. One can identify three regional systems of human rights protection as the European system, structured upon the European Convention; the inter-American system, based upon the American Convention; and the African system, incumbent to safeguard the Banjul Charter (Marques, 2016). The European Convention on Human Rights implicitly prohibits returning refugees and asylum-seekers to countries where there is strong and credible evidence that they may be subjected to inhumane treatment. Article 3 of the European Convention on Human Rights (ECHR, 1950) states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment' (ECHR, 1950). Although the principle is not directly regulated in the EHRC, it has been accepted in several cases before the European Court of Human Rights (ECtHR), where Article 3 also covers the principle of non-refoulement. In the *Soering v. the United Kingdom* case, the Court essentially confirmed that the prohibition on refoulement is inherent to the obligation under Article 3 (*Soering v. the United Kingdom*, 1989). A similar judgment was reached in another decision asserted that an act of repatriation would constitute a breach of Article 3 if the individual concerned would face a real risk of being subjected to torture or inhuman, or degrading treatment or punishment in the receiving state (*Vilvarajah v. the United Kingdom*, 1991). Similarly, Banjul Charter accepts implicitly the principle in Article 5 which says "Every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment, and treatment shall be prohibited" (1981). The interpretation of the inter-American system for the principle is no different from these norms which constituted in the aforementioned convictions. Non-refoulement in the inter-American system can be inferred as an obligation derived from the prohibitions comprehended by the domain of *jus cogens*, e.g., the prohibition of torture, and other cruel, inhuman, and degrading treatments (Marques, 2016).

### **Turkey's Refugee Law and Policy Choices**

Even though Turkey is one of the drafters and original signatories of the 1951 Refugee Convention, it preserved both time and geographical limitations. Ratified the 1967 Protocol Relating to the Status of Refugees, and this time lifting the time limitation – partly for historical reasons – Turkey continued to maintain the geographical limitation, meaning that non-European asylum-seekers were not granted refugee status (Koca, 2016)<sup>8</sup>. The country has been exposed to mass/forced migration movements from its border neighbors to its lands since signing the 1951 Refugee



Convention and 1967 Protocol. Due to the assimilation and oppression of the Turkish minority living in Bulgaria between 1984 and 1989 by the communist regime, approximately 360.000 people immigrated to Turkey. As a result of the aggression carried out by the Iraqi forces in the Halabja region in 1988, nearly 70.000 Iraqis who fled from Saddam's Ba'ath regime were resettled in temporary resettlement areas in the eastern and southeastern regions of Turkey. The mass/forced migration movement of Syrians who entered the country due to the Syrian Civil War is the last and the largest one in terms of the number of refugees or asylum-seekers in this historical process. As of today, Turkey is home to the world's largest refugee population, 3.6 million of whom are Syrians under temporary protection, and close to 370.000 are refugees and asylum-seekers of other nationalities. Over 98 % of refugees in Turkey live among the host community and less than 2 % in Temporary Accommodation Centres. Turkey's refugee response is based on a comprehensive legal framework, in particular the LFIP and the TPR (UNHCR, 2020). The significant legal instrument particularly enacted for Syrian citizens is The 2012 Directive on the Admission of Syrians Who Came to Turkey En Masse. This has been the first regulation that considers Syrians under temporary protection.

In April 2013, Turkey adopted a comprehensive, EU-inspired LFIP, which establishes a dedicated legal framework for asylum in Turkey, and affirms Turkey's obligations towards all persons in need of international protection, regardless of country of origin. The law created DGMM as the agency responsible for migration and asylum which conducts the status determination procedure. Toward the end of 2018, DGMM took over all tasks relating to international protection, while UNHCR and its implementing partner, the Association for Solidarity with Asylum Seekers and Migrants (SGDD-ASAM) phased out of registration of international protection applicants (European Council on Refugees and Exiles, 2020). The LFIP provides three types of international protection status as follows: (i) persons who fall within the refugee definition of the 1951 Refugee Convention and come from a 'European country of origin' qualify for refugee status; (ii) persons who fall within the refugee definition of the 1951 Refugee Convention but come from a so-called 'non-European country of origin' are instead offered conditional refugee status; (iii) persons who do not fulfill the eligibility criteria for either refugee status or conditional refugee status but would, however, be subjected to the death penalty or torture in country of origin, if returned, or would be at 'individualized risk of indiscriminate violence' due to situations of war or internal armed conflict, qualify for subsidiary protection (European Council on Refugees and Exiles, 2020).

In the context of this classification, refugees have access to education, the labor market, social assistance, and health services in Turkey (LFIP, 2013). As such, for asylum-seekers, the refugee status can be identified as the most generous international protection status in Turkey (Heinrich Böll Stiftung, 2019). Conditional refugees are also entitled to access education, social assistance, and health care, though they may work only six months after having submitted their applications for international protection (LFIP, 2013). This provides less protection compared to that available to refugees coming from Europe (Heinrich Böll Stiftung, 2019). Subsidiary protection beneficiaries receive resident permits valid for one year and may apply for travel documents, although in their case as well, it is not guaranteed they will receive the travel documents. They are entitled to access education, social assistance, health

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<sup>8</sup> Geographical and time limitations are the narrowing efforts imposed by the Convention on the regions from which the immigrants come and the date on which the Convention will be valid. Convention regulated these limitations under General Provisions in Article 1, emphasizing that, "The words events occurring before 1 January 1951 in article 1, section A, shall be understood to mean either (a) events occurring in Europe before 1 January 1951 or (b) events occurring in Europe or elsewhere before 1 January 1951."

<sup>9</sup> Popularly known as 'refugee camps', Temporary Accommodation Centres are the large-scale camps in the south of Turkey that accommodate refugees from Syria subject to the temporary protection regime. They mustn't be confused with The Reception and Accommodation Centres referred to in the 2013 Law on Foreigners and International Protection.

<sup>10</sup> Article 89 (1), (2), (3).

<sup>11</sup> Article 89 (4) (a).

care as well as the labor market, and enjoy the right to family reunification (LFIP, 2013)<sup>12</sup>. In Article 91 of the LFIP, the outline regarding temporary protection was determined, and it was foreseen that the details would be regulated by a [further] regulation.

Based on this provision, prepared by the Council of Ministers, the TPR was published and entered into force on 22 October 2014. The Regulation covers Syrians, stateless people from Syria, and refugees under the temporary protection regime, especially with the open border policy, the obligation to comply with the principle of admission to the territory of the country, non-refoulement, and meeting the basic and urgent needs of the incoming people (TPR, 2014). Within the context of this directive, it has been stated that health, education, access to the labor market, social assistance and services, and translation, and similar services will be provided to foreigners (Topal, 2015). TPR also stipulates in which cases it cannot be applied. Accordingly, those who are considered to pose a danger to national security, public order, or public security, and those who are considered to pose a danger to society by being convicted of a serious crime are not included in the scope of temporary protection – therefore, may be subject for a refoulement verdict.

Social, political, and economic difficulties created by Syrians, and refugees, and asylum-seekers from other countries, have become a problem for Turkey and the EU, especially since 2012 when the migration movement started to accelerate rapidly making it necessary to make a mutual regulation. From this point of view, it was agreed that the solution should be built on the readmission agreement. In fact, the process for the Turkey-EU readmission agreement began on 28 November 2002, when the European Commission was given the mandate to negotiate a readmission agreement with Turkey. In March 2003, the EU sent the draft of the readmission agreement it prepared to Turkey; however, Turkey did not formally respond to this invitation until March 2004. A readmission agreement was signed between the EU and Turkey on 16 December 2013, and the dialogue process for visa exemption included in the agreement signed with the agreement officially started on the same date (Çelik & Şemşit, 2020). Readmission agreements generally regulate the return of persons who are illegally present in a country, or a set of bordered countries to the contracted country of origin, or the country of last transit. Based on reciprocity, the Turkey-EU Readmission Agreement aims to return persons who do not or cannot meet the conditions for entry, stay, or residence in Turkey or one of the EU member countries, to the relevant country within the framework of the conditions and rules set out in the Agreement. The agreement between Turkey and the EU was implemented on 18 March 2016, and the parties decided to end the irregular migration from Turkey to the EU. According to basic principles of the agreement, all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey; for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria; and, the fulfillment of the visa liberalization roadmap will be accelerated vis-à-vis all participating Member States to lift the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met (European Council, 2016).<sup>13</sup>

By becoming a party to the 1951 Refugee Convention, hereby Turkey normally accepted the principle of non-refoulement which was also explicitly accepted in the LFIP and TPR. According to law, “No one shall be sent to a place where he will be subjected to torture, inhuman or degrading punishment or treatment, or where his life or freedom will be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (LFIP, 2013)<sup>14</sup>. By law, the qualifications required by the third countries to which the

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<sup>12</sup> Article 89 (4) (b).

<sup>13</sup> At the Turkey-EU Summit held on 29 November 2015, the European Commission committed to creating a fund of 3 billion euros for Syrian refugees in Turkey. At the second summit held on 18 March 2016, it was announced that if this fund runs out, it will provide an additional 3 billion Euros. As of the date of this study, 4.3 billion euro

refugee, asylum-seeker, or conditional refugee will be sent are also listed. According to Article 74, to define the countries which refugees to be sent to as 'safe', the principle of non-refoulement shall be applied in those countries (LFIP, 2013). The principle is stated also in the TPR using the same expressions with identical wording in the LFIP provision (TPR, 2014).<sup>15</sup>

It is interesting that, in addition to these two basic legal documents that regulate the principle of non-refoulement in Turkey, other decisions, regulations, and strategy documents related to the non-refoulement principle were already published on different dates even long before the LFIP and TPR came into effect. It has been stated in the Strategy Document on the Projected Work in the Field of Asylum in Turkey's European Union Accession Process that persons under international protection will benefit from the basic human rights brought by the non-refoulement principle. According to the statement in the document dated 2002, 'the principle of non-refoulement will continue to be applied with the same sensitivity.' (Foreigners Communication Center, 2002). In another directive in which DGMM defines the three basic elements of temporary protection as "(i) allowing access to safe lands; (ii) enforcing the ban on refoulement, and (iii) meeting basic and urgent humanitarian needs", it has been clearly stated that the principle would apply to persons under international protection status (DGMM, n.d.). Another document named Turkish National Action Plan on the Adoption of the European Union Acquis in the Field of Asylum and Migration published in 2003 is also significant in terms of its recommendation that the principle of non-refoulement should be made a generally accepted state behavior. Within the statement in this document, it was underlined that the 1951 Geneva Convention [Refugee Convention] should promote the habits of applying the principle of non-refoulement with the same sensitivity within the framework of the European Convention on Human Rights and other relevant international standards (2003). By this discourse, it was implicitly argued that efforts should be made to interpret the principle as a precedent, emphasizing that in this way non-refoulement will be made a customary law.

Moreover, being a party to the 1951 Refugee Convention which was accepted under the Constitution of the Republic of Turkey stands as the most important and powerful limiting and deterrent factor in front of a probable refoulement policy decision. According to the Constitution, international agreements will be considered as domestic laws. The relevant article of the Constitution is as follows:

International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made concerning these agreements, on the grounds that they are unconstitutional. (Sentence added on May 7, 2004; Act No. 5170) In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail (Turkish Constitutional Court, 2018).<sup>16</sup>

As it can be clearly understood from the wording of the article, international agreements have been made equivalent to the legal regulations applicable in domestic law by force of Article 90. Therefore, the 1951 Refugee Convention is statutory, and the current or future governments in Turkey have to comply with the regulation brought by it, as long as the law remains in force, which means that the principle of non-refoulement must be respected without derogation. It has been accepted in all domestic laws, directives, and other regulations regarding refugees – particularly in LFIP and TPR – as well as in strategy documents published by the government that the principle of non-refoulement should be applied with no exception. Furthermore, as shown above, an approach has been taken that efforts should be made to make the principle a customary law. In this case, sending refugees, conditional

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of the fund was paid to Turkey, and The European Commission has announced that an additional 3 billion euros will be allocated until 2024 under the agreement.

<sup>14</sup> Article 4 (1).

<sup>15</sup> Article 6 (1).

<sup>16</sup> Article 90, Constitution of Republic of Turkey.

refugees, or asylum-seekers coming to Turkey from Syria or other countries to their home countries – or to third countries where the principle is not applied – will neither be a legal, nor an ethical policy option in any way. The official statements mentioned in the first part of this study, expressing, or implying that asylum-seekers or refugees should be sent back; or the expectations and comments voiced in the public and media reflect approaches that seem to serve certain superficial political purposes rather than legal ones. Transferring of these populist discourses which are dominated by an ultra-nationalist understanding into a forced-return policy will create a serious contradiction with the non-refoulement principle and the spirit of protection norm provided by international human rights law and customary international law on refugees.

### **Recommendations**

Turkey should provide international protection to asylum-seekers who come to the country without geographical restrictions, thus putting an end to the refoulement discussions. As Human Right Watch comments correctly years before the Syrian crisis, by maintaining the anachronistic geographical limitation, Turkey puts itself at odds with the contemporary norm of refugee protection (2000). For this reason, it is necessary to remove the geographical limitation requirement set in the 1951 Refugee Convention.

The second problem of all refugees and asylum-seekers living in Turkey, especially Syrians, is that they lack a planned and long-term integration policy with society. Social integration often constitutes an obstacle to the realization of economic and legal integration, which can negatively affect the working life and labor rights of foreigners. In Makovsky's words, should Turkey fail to integrate its Syrian population effectively, it would likely face profound social consequences, some of which are already visible such as the hundreds of thousands of school-age children who missed out on education entirely (2019).

Third topic is related to the local government's ability to find an effective working and cooperation environment with the central government. Asylum-seekers mostly live in three big cities (Istanbul, Ankara, Izmir), and the local administration in these cities passed to the main opposition party, CHP, after the 2019 elections. It is a well-known fact that the conservative government does not support local authorities enough because of the deep ideological polarization. However, it is essential for the authorities in both local and central government that constitute a long-term roadmap which should include measures designed to local initiatives provide municipalities with funding that reflects their actual population, both Turkish and Syrian, so that local authorities can address the needs of refugees without sacrificing the quantity and quality of services available to citizens (Crisis Group, 2018).

Fourth problem is about cohesion policies of Turkey. The government, which sometimes makes statements that tolerate refugees, and sometimes utter nationalist jargon that excludes them, has not seemed to have a profile that sincerely supports the cohesive policy. Turkey is required to face the reality, make its strategic decisions, and consider Syrians, not as 'guests' but people who will continue to live, include refugees in its decision-making mechanisms, and develop data-based policies instead of sentimental ones (Erdogan, 2019).

Finally, a last recommendation can be made about burden-sharing problem, which is one of the important topics of international law. Burden sharing is a subset of international cooperation in which states take on responsibility for refugees who, in terms of international refugee law, would fall under the protection of other states (Newland, 2011). When looking at the developments to date, it is seen that burden-sharing has not been met to the required extent, and the EU provides support for asylum-seekers, but rather fulfills this by considering its own social, political, and economic interests. Turkey, on the other hand, is not inclined or willing to establish the necessary cooperative dialogue with the international community due to the isolationist – for some theorists, expansionist or quasi-

revisionist – foreign policy it adopts. The government’s revision of this policy will not only help put its relations with the West on a more rational and realist basis, but it will also pave the way for more constructive and sustainable cooperation models in burden-sharing.

## Conclusion

Turkey is one of the countries with the largest number of refugees and asylum-seekers in the world. Despite the economic deterioration caused by high inflation, current account deficit, and exchange rate problems together with the political authoritarianism of the conservative ruling party, its relatively high level of prosperity together with geographical proximity to Syria make it one of the most preferable destinations in the Middle East for asylum-seekers. With the Syrian Civil War, nearly 4 million asylum-seekers benefiting from the open door policy adopted by the government came to the country and started to live under the conditional refugee status recognized by the laws and regulations that came into force at the first of half of the past decade. However, due to the economic, social, and cultural problems caused by foreigners, there have been vigorous debates among politicians and the public – which lack a legal basis, but have strong political and social support – arguing that asylum-seekers should be returned to their home countries. In this study, within the scope of international law, I argued that, despite geographical limitation reservation, Turkey is a party to the 1951 Refugee Convention, therefore, accepted the principle of non-refoulement; and, within the scope of domestic law, the principle will be applied in the LFIP and TPR regulations that came into force respectively in 2013 and 2014. In addition, it was concluded that there is an official policy which can be seen in different strategy documents and legal regulations issued in previous years that the principle of non-refoulement should be adopted as a basic refugee policy and necessary conditions should be created for its implementation. For this reason, advocating the sending back the refugees, conditional refugees,

or asylum-seekers to their home countries, or to third countries where the principle of non-refoulement is not accepted, will neither be ethical, nor legal.

As emphasized by many international refugee law experts and non-governmental organizations, Turkey should accept the refugee problem as a political, economic, and social reality and determine its strategy for refugees and asylum-seekers in the country accordingly. A strategy apart from removing the geographical limitation requirement, adopting a collaborative approach serving to burden-sharing, and implementing a policy for long-term integration and cohesion policies will not serve Turkey’s national interests, and will cause serious violations of peremptory norms of international law. Those who will suffer the most from this situation will be the refugees and asylum-seekers who have no other purpose than to ensure their right to life.

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