



## Türkiye's Policy towards Syrian Asylum Seekers in Light of the Normative Power of the European Union and Carl Schmitt's Critique of Liberal Democracy

Avrupa Birliği'nin Normatif Gücü ve Carl Schmitt'in Liberal Demokrasi Eleştirisi Işığında Türkiye'nin Suriyeli Sığınmacılara Yönelik Politikası

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### Abstract

This study analyses Türkiye's policy towards Syrian asylum seekers in light of the normative power of the European Union (EU) and Carl Schmitt's critique of liberal democracy. The article hypothesises that Türkiye, under the influence of the EU's normative power, prioritised the collectivist discourse in its Syrian asylum seeker policy, pushing universal principles to the background, and finally politicising and bringing them to the bargaining process. This hypothesis was tested, using a qualitative research design, with semi-structured interviews conducted with officials from the Türkiye Red Crescent (TRCO), the Presidency of Migration Management Officer (PMMO), and the Ministry of Foreign Affairs of the Republic of Türkiye (MFAO). Furthermore, data was collected through a quantitative survey with non-random sampling from 390 Turkish citizens who were affected by these policies, residing in the Istanbul/Fatih, Mersin/Mezitli, and Kilis city centres, to determine their perceptions. The data shows that Schmitt's concerns about liberal democracy are reflected in EU-oriented Türkiye's asylum seeker policies. The conflict between the legal texts covering universal human rights and the national interests of EU Members and Türkiye should only be resolved by harmonized universal principles and collectivist consent.

**Keywords:** Liberal democracy, Asylum seeker policy, Normative power, National interests, Legitimacy

### Öz

Bu çalışma, Avrupa Birliği'nin (AB) normatif gücü ve Carl Schmitt'in liberal demokrasi eleştirisi ışığında Türkiye'nin Suriyeli sığınmacılara yönelik politikasını analiz etmektedir. Makalenin hipotezi, AB'nin normatif gücünün etkisiyle Türkiye'nin Suriyeli sığınmacı politikasında kolektivist söylemi ön planda tutarak evrensel ilkeleri geri plana ittiği ve son olarak bunları siyasallaştırıp pazarlık sürecine soktuğu yönündedir. Bu iddiayı test etmek amacıyla Türk Kızılayı, Göç İdaresi Müdürlüğü ve Türkiye Cumhuriyeti Dışişleri Bakanlığı yetkilileriyle nitel bir araştırma yöntemi olan yarı yapılandırılmış görüşmeler yapılmıştır. Ayrıca İstanbul/Fatih, Mersin/Mezitli ve Kilis il merkezlerinde ikamet eden ve bu politikalardan etkilenen, tesadüfi olmayan örnekleme yoluyla seçilen 390 Türk vatandaşından algılarını belirlemek amacıyla nicel bir anket yoluyla veriler toplanmıştır. Veriler, Schmitt'in liberal demokrasiye ilişkin kaygılarının AB odaklı Türkiye'nin sığınmacı politikalarına da yansımaları gösteriyor. Evrensel insan haklarını kapsayan hukuki metinler ile AB üyelerinin ve Türkiye'nin ulusal çıkarları arasındaki çelişki ancak uyumlaştırılmış evrensel ilkeler ve kolektivist rıza ile çözülebilir.

**Anahtar Kelimeler:** Liberal demokrasi, Sığınmacı politikası, Normatif güç, Ulusal çıkarlar, Meşruiyet

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## Introduction

The EU has normative power due to its capacity to impose its perception of security on others. Yet, this feature has left the EU in a dilemma between freedom and security, justifying Carl Schmitt's perception. Largely based on communitarian interests rather than cosmopolitan, the EU's policies including Türkiye about asylum seekers<sup>1</sup> have been exemplary in this regard.

As Carl Schmitt asserted in his theoretical framework, major decisions made by the West regarding liberal democracy are highly likely to undermine minority rights. Despite this being the case, since the EU has normative power with regard to border security concerns, it converts not only the structures of its member states, but also the social order of the third countries.<sup>2</sup> As a consequence, humanity continues to suffer from them. For this reason, this study aims to handle migration management of the EU and Türkiye with reference to Schmitt's perspectives.

The study begins by explaining Schmitt's theoretical approach. It highlights the differences between liberal equality and the equality observed in parliamentary democracies. He argues that a pluralistic approach may not be successful in democracies that are not ideal homogeneous societies (Schmitt, 2008; Mouffe, 1997). For instance, the utilitarian understanding of nation-state citizens regarding immigration renders pluralism ineffective (Walzer, 1990; Mann, Hall, 2011; Pierson, 2015). The issue at hand is that legal texts originate from a political context where decisions are often based on group identity (Kymlicka, 1998; Abbey and Taylor, 1996). This makes it challenging to have faith in and comply with legal texts that are influenced by the political process. Doubts about the legitimacy of legal texts can lead to crises (Schmitt, 1998; Schmitt, 2005; Schmitt, 2007). The next section explains the research methods used in the study and the background of the data obtained to test Schmitt's arguments.

The next part of the study focuses on the notion fact that the EU is considered a normative power for the sake of the perception of Europeanization (Börzel and Risse, 2009, p. 7; Olsen, 2002, p. 924). Its normative power, therefore, stems from its administrative structure and legal texts that impose such power on other countries (Smith, 2012, p. 278-279; Sjursen, 2006, p. 237-238; Manners, 2006, p.194; Koca, 2016, p. 56-57). Member states have also included a security dimension for social, economic and political issues by relying on normative power for their own benefit, initiating an unethical process (Buzan, 1991, p. 439; Wæver, 2011, p. 446). For that reason, migration policies would be politicized and minorities would face exclusion (İçduygu, 2017, p. 35; Hutter and Kriesi, 2021, p. 2), as suggested by Schmitt. Also, in this part is about the EU's agreements that politicize migration policies including the security issue (Innes, 2021, p. 972; Shutes and Ishkanian, 2021, p. 3-4). After the 9/11, Paris and Madrid attacks triggered a policy, revealing the concept of the 'Fortress Europe' (Katharine and Matt, 2006, p. 270; Thomas, 2021, p. 1). And then, the concept turned into 'Friends Circle'

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1 In this study, Syrians under temporary protection in Türkiye are referred to as asylum seekers. The term asylum seeker is used for those who seek international protection but whose status is not yet determined.

2 Türkiye can be considered a first country of asylum for Syrians pursuant to article 35(b) asylum procedures directive. Applications for international protection by Non-Syrians may be declared inadmissible by Greece articles 33(1) and (2) (c) APD because Türkiye can be regarded as a safe third country pursuant to article 38 APD (UNHCR, 2017, 498-508).

within the framework of the 2003 European Security Strategy (Bilgin, 2022, 51; Biscop, 2004, p. 25; Fontana, 2022, p. 92).

In the last part, the democratic gap of the EU is explored in respect to Schmitt's concerns (Schmitt, 2007, p. 100; Schmitt, 2005, p. 13-14; Vinx, Schmitt, 2019; Grey, 2017, p. 346; Schmitt, 1988, p.16-17). The asylum seeker negotiations between the EU and Türkiye are then examined in accordance of this discourse. This process clearly shows that how interest-based decisions were made in a functional way (Abdelaaty, 2019, p. 2831; Fouskas, Gökay & Vankovska, 2020, p. 299). The study's conclusion is that Türkiye's asylum seeker policy in the EU axis is politicised and caught between national interests and universal principles. This condition of being stuck in the middle was revealed in light of data obtained from field studies.

### **Theoretical Framework: Asylum Seeker's Policies in the Liberal Democracies in Terms of Critique of Carl Schmitt's**

Schmitt argued that liberal rules and democratic principles are incompatible, leading to conflicts between concepts such as freedom, pluralism, legality, and legitimacy. He provided examples to demonstrate that true pluralism does not function effectively within nation-states.

For democracy to function effectively, equality should be understood as substantial rather than material, legal, or moral. Members of a democratic society experience their freedom as being shaped and supported by common habits and identities (Schmitt, 2008, p. 43). Therefore, he thinks that democracy is based not only on equality between equals but also on equality between unequals, making homogeneity a main factor of democracy (Mouffe, 1997, p. 22). While equality for a person evaluated in the liberal ground is inherently equal, in the democratic systems, a person belongs to the demos, and is therefore excluded politically. So, citizenship is the way to gain rights in all forms of equality (Mouffe, 1997, p. 23). Schmitt argues that democracies, which attach common affiliations as a condition for demanding democratic rights, have moved away from the humanity (Mouffe, 1997, p. 25). Because today's societies have a heterogeneous structure, it is very difficult to achieve religious, moral, and cultural unity in these societies (Mouffe, 1997, p. 32). Therefore, democracy cannot assume formal equality, nor can it guarantee specific or multiple freedoms (Schmitt, 2008, p. 43).

In other words, emphasizing their belonging to different groups (Kymlicka, 1988, p. 181) communitarians are sceptical of situations that could disrupt their own order (Abbey and Taylor, 1996, p. 1). According to them, there is a free rider problem between producers and non-producers in the society (Walzer, 1990, p. 16); therefore, some could be excluded from the public. As Michael Mann stated, the issue of migration is about crime, housing and welfare problems in Europe, and reflected by racist backlash (Mann, Hall, 2011, p. 69-70). In addition, some EU members have applied a societal sense of citizenship for social closing against migrants (Pierson, 2015, p. 181). According to Schmitt, the reason is that if a state has internal conflicts, they will be weak in foreign policies and dominant ones impose their own security perception (Ejdus, 2009, p. 13). Schmitt further stated that while there are different political discourses in the society (Schmitt, 2007, p. 100) the decision of the dominant one at times of crisis (Schmitt, 2005, p.13-14)

determines who the enemy is and who the friend is (Vinx, Schmitt, 2019). For Schmitt, political power can reject or accept something foreign through democracy. Therefore, he viewed the immigration management prepared with a liberal approach with suspicion and emphasized that it was wrong to look for reliability and morality in refugee law (Grey, 2017, p. 346). States have the power to make decisions in times of emergency (Schmitt, 2005, p. 17). Sovereigns independently evaluate norms, laws and their interpretations and make decisions (Schmitt, 2005, p. 72).

In this respect, Schmitt argues that liberalism and democracy cannot coexist successfully, but democracy can function in homogeneous societies (Mouffe, 1997, p. 21-22). He also says that while equality is considered the natural state of people in liberal thought, the concept of ‘demos’ in democracy includes exclusion (Mouffe, 1997, p. 23-24). Indeed, in societies that lack diversity and disregard human rights, conflicts between the majority and minority groups will arise (Schmitt, 1988, p. 16-17). Therefore, when discussing matters of public interest in such environments, a parliamentary crisis will be unavoidable (Schmitt, 1988, p.73-74). The argument is based on the dilemma between politics and law, according to his opinion.

For Schmitt, politics is prior to law, and law, in short, cannot constitute legitimacy by itself. Law that is not informed by a particular political will is likely to undermine the legitimacy of a political order (Schmitt, 2008, p. 9). According to Schmitt’s anti-normative position, legal order is always contingent on the state (Schmitt, 2008, p. 14). In his argument, the legitimacy of law derives from the satisfaction of social expectations. Otherwise, crisis is inevitable (Schmitt, 2008, p. 14).

### **Research Methodology**

This study evaluates the impact of the EU’s normative power on Türkiye’s asylum seekers policies with the following issues:

- How EU’s Normative Power Affects Its Periphery
- Türkiye’s Asylum Seeker Policy
- De jure and De facto Background

The starting point of the study was the legitimacy of the refugee policy, based on Schmitt’s views on the legitimacy crisis. The concept of legitimacy has been discussed in terms of consent, necessity and legality. In this context, semi-structured interviews were conducted by employing a qualitative research approach with the authorities of the Türkiye Red Crescent (TRCO), the Presidency of Migration Management Officer (PMMO) and the Department of Asylum of the Ministry of Foreign Affairs of Türkiye (MFAO).<sup>3</sup> Additionally a quantitative research method was used through data collected through a survey, to understand the thoughts of Turkish citizens living in the Istanbul/Fatih, Mersin/Mezitli and Kilis city centres. Of the participants, 58.5% are from Istanbul/Fatih (228 people), 26.2% are from Mersin/Mezitli (102 people), and 15.4% are from Kilis (60 people).<sup>4</sup> The regions were selected based on a method prepared jointly by the State

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3 Semi-structured interviews were held with PMMO on 13 December, 2018, and with TRCO and MFAO on 22 January, 2019 in Ankara.

4 For this study, a group of individuals selected through non-random sampling, was used referred to as the

Planning Organization and the Türkiye Statistical Institute during the EU harmonization process. The method was summarized at three levels, known as the Türkiye Statistical Regional Units Classification (NUTS), in accordance with law no. 4720 in 2020. The Istanbul/Fatih region differs from others due to its high immigration rate and diverse demographics. The Mersin/Mezitli region is known for its port trade and tourism, while the Kilis provincial centre is a border region with a social structure based on agriculture and animal husbandry. The Istanbul/Fatih region was classified as 1st Degree developed, the Mersin/Mezitli region as 2nd Degree developed, and the Kilis city centre as 6th Degree developed due to these variations. When the data collected from the interviews, and the survey were evaluated together, democracy deficit occurred in the negotiations on asylum policies between the EU and Türkiye, drawing parallels to Schmitt's thought.

### **How EU Normative Power Affects Its Periphery: The Case of Türkiye**

With the Article 3(5) 21 TEU, the EU penetrated international rules and established its own legal spaces such as Euro zone and Schengen area (Ott, 2021, p. 206). For instance, in the Schengen area, the EU leads the world in terms of the abolition of the death penalty, the expansion of children's rights, and management of the market (Campbell and Nolting, 2022, p. 4-5). In addition, the Court of Justice of the European Union (ECJ)'s texts to protect the union's internal market, shared values, and security, made the EU as a Regional Rule Maker (Ott, 2021, p. 207).

The EU's normative power not only covers military dimension, but also entails economic and social problems (Sjursen, 2006, p. 237-238). Manners stated: "The more militarization of the EU, the less normative power of the EU" (Manners, 2006, p.194). This explanation highlighted the outcome of externalizing actions. While Buzan was arguing about securitization in the 90s through centre and periphery (Buzan, 1991, p. 439) he looked at securitization from either side of political and military dimensions of society. The gap emerging from these dimensions would create the clash of civilizations (Buzan, 1991, p. 449-450). Weaver carried securitization to political area (Wæver, 2011, p. 446) in conformity with Schmitt's perspective that reads: "Dominant one is a pioneer to determine securitization on behalf of a nation" (Wæver, 2011, p. 478). As a result, the EU will have made decisions without participation, transparency and accountability. Although Article 21(1) TEU mentions about "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, and the principles of equality and solidarity" (TEU 21(1) Article, "Consolidated version of the Treaty on European Union") the Visegrad Group (Czech Republic, Hungary, Poland and Slovakia) and Framework Participation Agreement (EU-Türkiye) could be exemplary for the dilemma between human rights and securitization (Wessel, 2021, p. 196).

As the objectives of the Common Foreign and Security Policy (CFSP) stated in Article 21 of the Treaty on European Union have been damaged, Common Security and Defence Policy (CSDP) need more regulations accordingly (Wessel, 2021, p. 178). After the EU migration crisis, some member states including Italy, Greece, and Hungary in particular

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<sup>1</sup>'Research Group'. It is recommended to use specific comments instead of generalizations within the group (Neuman, 2014, p. 250).

objected to the EU's decisions about asylum seekers. In other words, as the Charter of Fundamental Rights of the European Union (CFR) and EU Secondary Legislation and the Jurisprudence of the Court of Justice of the European Union (CJEU) have not worked properly, the EU's normative power has weakened.

With the EU making decisions to satisfy its members (Schmidt, 2013, p.12) it could be necessary to discuss the policies concerning asylum seekers through Schmitt's critical approach. Processes determining migration, border management and readmission agreements with third countries such as the "EU Global Approach to Migration and Mobility" and the "Partnership Framework" and the "Migration Pact" emerged (Lavenex and Nicola, 2022, p. 2848-2849) as liberal democracy-specific texts that Schmitt objected to. After September 11, 2001, the Euro-Mediterranean Partnership (EMP) changed to the European Neighbourhood Policy (ENP), and since then, the partnership agreements for Mediterranean countries have been seen only in the status of "partner in the Mediterranean" (Bilgin, 2022, p. 54). This understanding reflects Schmitt's claim of a homogeneous structure for democracy (Mouffe, 1997, p. 22). The European Security Strategy (ESS) could be seen as an example of a controversial liberal policy, as outlined by Schmitt.

The European Council adopted the ESS in December 2003 to design principles and set clear objectives so as to please the EU members' security interests. On the contrary, this period interrupted relations with the Mediterranean countries (Biscop, 2004, p. 25). When the terrorist incidents affected the European Migration and Refugee Pact of 2008, the Treaty of Lisbon in 2009 reorganized the temporary protection system, common procedures for admission and withdrawal or secondary asylum (Official Journal of the European Communities, "Treaty of Lisbon, (2007/OJ/C, 306/1). Thus, the EU handled the "Integrated Border Management" and the "Twinning Projects" for the question of sovereignty of states (Katharine and Matt, 2006, p. 270). In brief, a novel approach has commenced between EU members and non-members, such as the Global Approach for Migration and Mobility (GAMM). With the GAMM, dated 18 November 2011, the EU explained migration and mobility with a focus on security, linking them with development. In this connection, a 'Contribution-Based' process was initiated after the "EU's Dialogue on Migration, Mobility and Security with the Southern Mediterranean Countries", dated 24 May 2011, which was shaped with the idea of solving the problem from its source. Frontex, the European Asylum Support Office (EASO), and the European Return Office strengthened non-member countries financially and cooperated with them.

Despite the security measures taken due to the perceived threat, mass migration from the Middle East never stopped. As a result, the European Security Agenda of 2015 saw debates on securitization and human rights (Fontana, 2022, p. 92). During these negotiations, Italy and Greece proposed Türkiye as a stop station for asylum seekers, under the 'safe third country' and 'first country of asylum' policies. In 1999, when Türkiye started an adjustment process with the EU, as a candidate country, migration policies began to develop. However, through some policies such as the Readmission Agreement in 2013 and the Protocol on the Initiation of the Visa Liberalisation Dialogue, Türkiye conducted negotiations conditionally (Okuy, Lavenex, Križić and Düzgüt, 2020, p. 8). For instance, the EU developed ways to keep away refugees from Europe with



third countries (Fontana, 2022, p. 97-98) as though they worked in search and rescue activities. Actions through Frontex created a victim-saviour dichotomy (Innes, 2021, p. 971). Subsequently, radical parties which addressed the problem of belonging increased in effectiveness in countries such as Austria, Germany, Hungary, Italy and Greece (Swen and Kriesi, 2021, p. 10). This dilemma is based on declining public well-being (Shutes and Ishkanian, 2021, p. 3-4). Moreover, the EU-Türkiye Statement of March 2016 was signed for 6 billion Euros to keep away refugees (Spijkerboer, 2021, p. 1).

However, just like the case in the cooperation between Italy and Libya, strategies with third countries have unfortunately failed (Vara and Matellán, 2021, p. 317-318). Not only Libya, but also Italy was held responsible for that unsuccessful outcome. As a result, The Parliamentary Assembly of Europe highlighted: "Libya violated the right to asylum, freedom of navigation, humanitarian discrimination and non-refoulement principles" (Vara and Matellán, 2021, p. 321). According to Article 16 of the Responsibility of States for Internationally Wrongful Acts (Responsibility of States for International Wrongful Acts), however, Italy was held mainly responsible (Vara and Matellán, 2021, p. 327). In the trial 'HIRSI'(ECtHR - Hirsi Jamaa and Others v Italy [GC] Application No. 27765/09), Italy was also held responsible for the violation of the common procedures for granting and withdrawing international protection provided by directive 2013/32/EU of the European Parliament and Council (Directive 2013/32/EU, 26 June 2013 Common Procedures for Granting and Withdrawing International Protection). In another incident, Greece has been found to have violated the right to life of Syrian refugees by firing on their vessel; resulting in the European Court of Human Rights ordering Athens to pay €80,000 to the family of Belal Tello, who died after the 2014 incident (Kassam, 2024, 17 January).

The EU-Türkiye negotiations, on the other hand, pointed to strong structured deals like the Association Agreement in 1963 and its subsequent protocol and association council decisions, after which deals were made like the Readmission Agreement in 2013. The deals were applied in line with the 'third country principle' such as the EU- Türkiye Statement of 2016 (Carrera, Vara and Strik, 2019, p.16-17). In brief, no more traditional border security policies were used like the 'Sophia Operation' (AB'den Akdeniz'de insan kaçakçılarına karşı yeni operasyon [New operation from the EU against human traffickers in the Mediterranean], *BBC News Türkçe*). The important point is that these initiatives were defined by the Court of Justice of the EU as 'not attributable' (Carrera, Vara and Strik, 2019, p. 9). For example, agreements like "the March 2016, Facility for Refugees in Türkiye" were made in return for development assistance. Türkiye gave asylum seekers temporary protected status, called them guesst rather than refugees, and they were provided with necessary public services (Abdelaaty, 2019, p. 2831).

Türkiye, on the other hand, was left alone in the global problems, due to the agreements based on mutual interests, and on May 3, 2022, President Erdoğan stated: "...Now, we are in the preparation of a project that will ensure the return of 1 million of our Syrian brothers" (Asylum Seeker Statement by Erdogan, We are in the Preparation of a Project for the Return of 1 Million Syrians). However, turning to domestic policy, he said in a speech on May 9, 2022: "...They can return to their homeland whenever they wish, but we have never expelled them from these lands..." (President Erdoğan: We will never

expel Syrians who take refuge in our country). Moreover, Greece and Italy asserted that Muslim refugees on their islands were manipulated by President Erdoğan to change the demographic structure (Fouskas, Gökay & Vankovska, 2020, p. 299). In contrast, Türkiye likened the island of Lesbos to the ‘Guantanamo of Europe’ (Alexandra, 2020, p.432).

As a result, this conditional process began with an open door policy based on humanitarian assistance, followed by wants about financial and social burden sharing due to capacity issues. For this reason, it could be meaningful to consider the legal and actual consequences in Türkiye.

### De Facto and De Jure Results of the Türkiye’s Asylum-Seeker Policies

Turkish citizens were dissatisfied owing to free education, health care, and social benefits provided for asylum seekers (Üzelakçıl, 2021, p. 404). Moreover, in 2013, the breakdown of Türkiye-EU relations created an “implementation gap” between domestic politics and foreign policy (Düvell, 2018, p. 183). This gap can be summarized as in the table below.

Table 1  
*Background of EU and Türkiye negotiations in terms of Policy Headings*

De jure Background	De facto Background
a) Open Door Policy from a Humane Perspective	→ <b>Hospitality</b> By pass Genova convention
b) The burden-sharing request and benefit-based agreements process	→ <b>Communitarian understanding</b> Due to complaints from citizens
c) Exclusion (EU) and Visa Free Europe (Türkiye)	→ <b>Conflicts of interest</b> Violation of non-refoulment Principle
d) Mutual waiting strategy on the basis of distrust and a politicized refugee policy	→ <b>Instrumentalized refugees</b> Failure to Prevent Illegal Immigration and Human Trafficking

*Source: Corresponding author*

### Open Door Policy from a Humane Perspective

Türkiye welcomed nearly 3,5 million Syrian refugees in April 2018 through open door policy, and defined them with temporary protection status so as to avoid human rights criticism (Akçapar, 2017, p. 3). Refugees have been assessed over religious and moral values and managed with harmonization instead of integration (Düvell, 2018: 190). Article 96 of Law on Foreigners and International Protection No. 6458 of 2013 (LFIP) used the concept of harmony instead of integration (Akçapar, 2017, p. 10). Since non-European arrivals were treated as guests on the “Temporary Asylum Seeker Status” of 1994, the “Temporary Protected Status” was issued in April 2012 and the legal and humanitarian deficit was closed, asylum seekers were not forced to return.

However, MFAO outlined what the limits of the rights granted may be: “*The rights given to asylum seekers cannot go beyond the rights afforded to citizens. This is out of the question for any state. But help can be done*”. When we look at the de facto situation, Syrians under temporary protection have fewer rights than refugees, but more rights than



conditional refugees (Heinrich Böll Stiftung/Türkiye, 2019, p.16). A different view on service delivery was given by then Prime Minister Erdoğan, who said: “...helping our religious brothers and sisters is the priority task...” (Lazarev and Sharma, 2015, p. 202). To this emphasis, the reaction of the Alevi section as a minority group emerged (Lazarev and Sharma, 2015, p. 207). In parallel with these explanations, a survey was conducted among Turkish citizens to gauge their views on the necessity of the refugee policy. The survey revealed that a significant number of respondents disagreed with the statements ‘Accepting Syrians is a requirement of religious brotherhood’ and ‘Türkiye’s Syria policy serves the Middle East Peace’<sup>5</sup> (Üzelakçil, 2020, p. 202). PMMO, on the other hand, drew general pictures about that: “*The issue of harmonization in 6458, the mutual harmony of local society and foreigners, is also reflected in migration policies. One society is not driven to assimilate into another... It is more about making a policy with a mutual effort...*”. Overall, political decisions and actions about asylum seekers have opened up criticisms against foreign and domestic policy. Schmitt (2008) argued that a pluralistic understanding cannot be achieved if laws are based solely on general politics rather than universal principles. As mentioned above, there are differences between the perceptions of the citizens and the authorities.

### **The Burden-Sharing Request and Benefit-Based Agreements Process**

Although the UN New York Declaration of 19 September 2016 envisages burden sharing and further contributions to the UNHCR in aid to refugees and the states that accept them, (Lambert, 2017, p. 732) de facto, there has been a capacity gap in education, health care and working life for asylum seekers.

Firstly, looking at working life, the 10% rate of work for asylum seekers in a workplace has led them to insecure, low-paid and long-hours jobs (İçduygu and Şimşek, 2016, p. 64). It has also entailed forced labour, child labour, and human trafficking. In addition to this process, we can see citizens’ consent about working life with survey results. The results show that a high number of respondents answered negatively to the following questions: ‘Syrians had no impact on the increase in unemployment’, ‘Syrians enjoy working with citizens’, ‘Syrians should be given work permits’, and ‘Syrians have enabled the revival of commercial life’ (Üzelakçil, 2020, p. 194-198). Contrary to these results, when we look at the point reached in working life, we should emphasise that different results are encountered. First of all, Syrians contribute to the economy by closing the gap in unqualified jobs (Üzelakçil, 2021, p. 395), yet, unregistered asylum seekers, compared to citizens, have been alleged to create unfair competition from the direction of tax-free work and cheap labour supply (Toğral, 2016, p. 69). While the cheap and flexible labour power of Syrians contributed to employers, native workers have been negatively affected due to low pay. Therefore, the difference between legal and actual situation increased (Düvell, 2018, p. 182). As of 2021, 91,500 Syrian asylum seekers have received work permits (Yabancıların Çalışma İzinleri, [Work Permits for Foreigners] 2021). Schmitt (1998) argues that minorities whose places in society are questioned may face conflicts. That is why the responses above indicate that citizens do not want refugees in their work life.

5 The survey data and results were obtained from the author’s doctoral study.

On the other hand, approximately 684,728 children started school in 2019/20 academic year, but attendance rates tend to fall with age (Erdoğan, 2020, p. 35-36). In an effort to solve problems, 1.6 million asylum seekers have been assisted by the Emergency Social Safety Net and about 494 thousand children have been transferred to schools through the EU (Conditional Cash Transfer for Education) programme. At university level, public schools accepted refugees without tuition (European Commission, 29 May 2019). The point is that Türkiye has spent about 873m euros, compared to the 300m the EU projected to support education (Erdoğan, 2020, p. 37). Although education expenditures are generally welcomed, our survey results show negative responses to the statement ‘Ensuring equal opportunities in education increases positive contribution to the economy’ at a high rate (Üzelakçil, 2020, p. 194).

In the field of health, as of 2019, due to nearly 4 million health care services and 500,000 vaccinations (European Commission, 29 May 2019), a financial and human burden is clearly observed. As a consequence, the Turkish public’s criticisms concerning the cost of effective and rapid access to healthcare has increased. Addressing these criticisms, the PMMO said: *“Economically, there is a negative perception within the society... We are already making videos themed around false facts. For instance, videos are being released saying that the view that Syrians receive government salaries is not true...”*. Despite negative perceptions in society, our survey results show positive responses to the question ‘I want to participate in aid activities for Syrians’ at a high rate (Üzelakçil, 2020, p. 182). Actually, negative opinions not only exist in domestic policy, but also in foreign policy. For instance, the EU has requested the need to prepare the acquis to ensure compliance with legal regulations and ECHR decisions (European Commission, 29 May 2019) to shift humanitarian aid to development assistance, as well as to improve working environments for NGOs (European Court of Auditors, 2018, p.6).

To sum up, TRCO summarized the situation of Türkiye, which stands alone in sharing global responsibility and financial burden, as follows: *“Immigration policy is used as a tool to share the financial burden.”* An asylum seeker policy that has become instrumental in foreign policy will be inevitable, given that the state capacity is not unlimited. The citizens largely did not support refugee policies related to education, health, and working life, apart from humanitarian aid. Consequently, the government was forced to change its policy. This conclusion is supported by our survey results. 390 people expressed highly negative opinions on the statements at a high rate ‘I am against the idea of sending’, and ‘Aid is more important than economic growth’ (Üzelakçil, 2020, p. 182-202). Although governments may choose to exclude refugees to please their citizens, a mutual concession in the interests of citizens can remove the exclusion. For example, detaining asylum seekers in exchange for visa liberalization.

### **Exclusion basis on the Securitization and Visa Free Europe**

The principles involved in the Dublin agreements of 2003 and 2013 turned out place a heavy burden on Greece. Then the Common Asylum System collapsed, triggering Hungary and Slovakia’s criticisms. The solution was found through Türkiye, Lebanon and Jordan (Lavenex, 2020, p. 357-358). On 3 September 2015, with the death of a Syrian child, ‘Alan Kurdi’, in the Aegean, the Council of Europe agreed to establish hotspots

in Greece and Italy in cooperation with Angela Merkel and François Hollande, to stop human trafficking and ensure international protection (Lavenex, 2020, p. 364; Vara and Matellán, 2019, p. 317).

Despite all the above efforts, the US withdrew from the Global Compact for Migration (Pauline, 2021, p. 296-297). Hungary followed it in March 2018. Then Bulgaria, Poland, Latvia and Slovakia withdrew, and also Italy violated the rules (Pauline, 2021, p. 301). However, the Treaty on the Functioning of the European Union (TFEU) had confirmed that (Treaty on the Functioning of the European Union) the member states are to respect the decisions taken and are to be compatible in cooperation with international organizations. In the 2015 migration crisis, the EU-Türkiye Statement in 2016 was planned to halt mass migration to Türkiye within the framework of 6 billion euros in total support and visa restrictions. After all, migration flows through Türkiye and Greece stalled. In that time, Türkiye spent 30 billion Euros and no promise of removal of visa restrictions had been kept by the end of June 2016 (Akçapar, 2017, p. 12). There were still prejudices on security among the member states. In connection to this, Slovakia's Prime Minister Robert Fiko stated: 'Migrants are all terrorists' and Hungarian Prime Minister Viktor Orban said: 'Migrants are poison' (Lang, 2018, p. 512). Such parsing rhetoric violated principle 2 of the EU deal, emphasizing "human dignity, freedom, equality and human rights". On the other hand, the PMMO stated Türkiye's stance in this process as follows: "*Human rights are fundamental for refugees... But mass movements pose a security challenge. This is the breaking of a policy. But in general, the refugee issue is a human rights issue...*". However, the results of our survey indicate that a high percentage of 390 people responded negatively to the question 'I support our soldiers fighting in Syria', 'Türkiye's Syria policy serves peace in the Middle East' (Üzelakçil, 2020, p. 201-202).

While the EU sees readmission agreements as a tool that can be used outside membership, Türkiye has taken a service-based, not rights-based approach to asylum seekers (Yıldız and Uzgören, 2016, 199). When it comes to conditionality, Türkiye demanded visa-free entry into the Schengen area many times until October 2017, but the EU often stated that Türkiye had not met the terms of the agreement.

In conclusion, Türkiye has evidently been impacted in the economic and social dimensions to avoid vulnerability in the international arena. Regarding this concern, TRCO said: "*...for opposition parties, the question of immigration is generating the mainstream with populist rhetoric... If we manage it well, it will not be an economic and social burden anymore...*". In contrast to TRCO's comment, the survey responses revealed the citizens' sensitivities towards this issue. The survey results indicate that a high percentage of 390 people answered negatively to the question 'Our increasing population with Syrians will strengthen our state' (Üzelakçil, 2020, p. 195). This supports Schmitt's (2008) argument that social equality should be understood as a fundamental concept, rather than just a material, legal, or moral one.

### **A politicized refugee policy**

Türkiye has organised social power with the AKP government over the past decade, established good relations with the EU, and expanded political networks. However; "from 2007 onwards, the government has been dealing mostly with the fight against terrorism,

the state of war in the surrounding countries, and work on a civilian constitution, while the lack of negotiations with the society has increased” Mann said (Mann and Hall, 2011, p.12).

As mentioned above, states do not only control their infrastructural power in their migration policies, but also show it with an exclusion policy based on the identity dimension (Soifer and Vom Hau, 2008, p. 226). For example; firstly, President Erdoğan said in 2016 that “*nearly 2 million 733 thousand Syrian asylum seekers could be granted citizenship gradually*” (Akçapar, 2017, p. 9). This view has, however, harmed social consent. Then, he changed his opinion and stated that “*citizenship would be granted to those with higher education and talented people*” (Akçapar, Şimşek, 2018, p. 177). Then, the President said at the Global Refugee Forum on December 17, 2019: “*...There is a need for formulas to keep refugees on their own homeland and return them there*.” (Türkiye Cumhuriyeti Cumhurbaşkanlığı [Presidency of the Republic of Türkiye], 17 December 2019). When the two conversations were compared, the discourse on citizenship and repatriation was not overarching. We can also see this result in our survey study. For example; a high percentage of 390 people answered negatively to the questions: ‘Citizenship is given to Syrians who are in a good financial situation’, ‘Citizenship of babies is a good practice for future generations’, and ‘Citizenship should be granted to Syrians’ (Üzelakçıl, 2020, p. 191-197).

There has been a domestic policy that has failed to satisfy citizens, while a condition-based foreign policy process has also been in place. The decisions of both the EU and Türkiye have been influenced by their mutual distrust, which has eased domestic political tensions, resulting in a ‘Strategy of Insecurity’. Therefore, the lack of sound policies both for asylum seekers and citizens is apparent. When we look at these criticisms from a different dimension, MFAO said: “*... Parameters changed widely from 2011 to 2018. We saw tightening of open-door policy... there is no confusion in terms of permanence or transience. The borders are closing due to security, which is why there is not a clarity problem*”. For example, in 2018, Türkiye constructed a 764-kilometer-long wall along its border with Syria to prevent irregular crossings. As a result, Syrians who fled from Idlib through the Türkiye-Syria border gates, which were closed in May 2019, were unable to enter Türkiye (Heinrich Böll Stiftung Derneği / Türkiye, 2019, p.14). Turkish President Recep Tayyip Erdoğan made a statement in September 2019 that Türkiye intends to create a safe zone in Syria and repatriate approximately one million Syrians. If this plan is in place, the problem of international law and especially the principle of repatriation will be discussed (Heinrich Böll Stiftung Derneği / Türkiye, 2019, p.20).

To sum up, as MFAO outlined: “*The Turkish Republic is not a country that was founded yesterday, but these factors have had their effect....We do not make this policy based on the EU, but on international agreements and conventions...*”. Even though MFAO’s comments are justified, since the 2015 EU migration crisis, all conditions have changed. The EU has drawn Türkiye into negotiations of conditionality and has used migration policy as a tool (İçduygu, 2011, 4). Although refugee problems are considered a human rights issue in some documents, such as the 1951 Geneva Convention and the 1967 Protocol relating to migration, the EU’s goal of protecting its borders has had a negative impact on Türkiye’s asylum seeker policy and EU accession process.

## Conclusion

This study analysed Türkiye's asylum seeker policy in relation to Carl Schmitt's critique of liberal democracy and the normative power of the EU through a combination of semi-structured interviews with officials and a survey of Turkish citizens. The analysis revealed that PMMO dealt with asylum seeker policies in the context of human rights and security issues. In contrast, TRCO emphasized opposition to the discussion based on economic and social burden, while MFAO stated that the focus should be on asylum seeker policy with a cosmopolitan philosophy. On the other hand, asylum seeker policies related to work, education, and health were presented as reasonable by officials while citizens were critical of them.

In line with Schmitt's thoughts that states may face a legitimacy crisis due to the lack of political consensus, we examined society's consent to the asylum policy, the belief in the necessity of the policy, and the legality of the policy as elements of legitimacy. In this context, the lack of public participation in legal decisions has undermined their legality. However, authorities have argued that the lack of participation on the issue of asylum seekers is as a matter of sovereignty. Citizens, on the other hand, while recognising the humanitarian necessity of the decisions taken, expressed reservations about the necessity of decisions taken beyond the rights of citizens. Finally, society's desire not to engage with asylum seekers in family and the work force was seen as an obstacle to integration. Authorities however argued that the opposition exaggerated criticism by using populist rhetoric.

As a result of all these developments, while the EU tried to use Türkiye as a buffer country in foreign policy, Türkiye, attached the issue of visa liberalisation as a condition to the refugee problem. In terms of domestic policy, it has tried to gain social consent by producing a discourse of naturalising only qualified asylum seekers and settling others in safe areas. In summary, despite implementing an open-door policy with a humanitarian discourse in its refugee policy, Türkiye faced a crisis due to its financial capacity and lack of social consent. To manage this process, it emphasized burden-sharing and compelled the EU and its members to make some bilateral agreements. These agreements demonstrate how the refugee crisis, which is a humanitarian issue, has transformed into a political negotiation. This situation had a significant impact on asylum seekers who could not identify with the country they lived in. This study's implications suggest that Schmitt's idea that 'true pluralism cannot ensure equality in heterogeneous societies and that liberal laws will prioritize national interests over universal rights' could hold true.

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