# Chapter 2
# Legislative, Institutional and Political Context




Refugee governance has legislative, institutional, political, and discursive dimensions. These components co-constitute each other and reflect the fragments of strategic temporality as a building principal. It is possible to trace signs of strategic temporality in each dimension. This chapter starts with an overview of the legislative landscape marked by the Turkish asylum regime's dual structure. Then, it maps the institutional architecture where relevant actors put these legislations into implementation. Both legislation and institutions play out in a highly political domestic and international context, which is scrutinised in the following section. The discursive dimension will be delved into further in Chap. 3.

## 2.1 Legislative Landscape: The Dual Structure of the Asylum Regime

In Turkey, the existing legal framework on international protection has been developed through primary and secondary law. Primary law refers to international conventions duly put into effect, constitutional principles, laws, referring acts of the Parliament, and the Council of Minister decisions. Secondary legal sources consist of by-laws, directives, circulars, or any legal sources that launch regulations. Secondary sources, in principle, should serve as guidelines for the relevant administrative body to comprehensively designate the procedures of certain duties and obligations assigned to the administration. They must be consistent with the primary sources of law (Constitution, Article 124).

Relying on primary and secondary sources of law, the Turkish state has developed highly complicated immigration and asylum legislation since 1934. The legislation consists of multiple categories treating people seeking protection, causing layers of duality, which is also reflected historically within the immigration and

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asylum regime. The existing duality mainly stems from (1) Turkey's geographical reservation about the definition of international refugees, (2) the creation of alternative protection types of refugee status, and (3) the dominance of temporary protection instruments, side-lining permanent refugee protection.

Historically, Turkey's first regulatory document on migrants was the Law on Settlement (*İskan Kanunu*), Law No. 2510, introduced on 14 June 1934 to respond to the arrival of ethnic Turks in the early years of the Republic. Until the 1990s–2000s, there were no substantial policy changes in immigration legislation and institutions. The Settlement Law was replaced in 2006 with Law No. 5543. Between 1934 and 2006, Turkey's Law on Settlement regulated the formal settlement of foreigners in Turkey, restricting the right of asylum and immigration only to persons of "Turkish descent and culture," which mainly includes the Muslim population living under Ottoman rule in various geographies such as Caucasus, Balkans, Crimea and others. The Law states that "only migrants of Turkish ethnicity and culture, with an objective of settling in Turkey, can obtain the immigrant status" (Article 3), and that those of non-Turkish origin will not be accepted as immigrants in Turkey, as well as "anarchists, spies, nomadic Romas (*göçebe çingeneler)*, and those that had been previously exiled". Article 3(d) of the Settlement Law defines both the refugee and migrant but does not explicitly regulate the right of asylum. When a new Law on Settlement was adopted in 2006, the emphasis on "Turkish descent and culture" was retained, and the channel of formal facilitated settlement, which also leads to citizenship in a short period of time, is still reserved for individuals of such groups.

As a source of primary law, Turkey ratified the 1951 Geneva Convention Relating to the Status of Refugees on 30 March 1962 and accessed its Additional Protocol (1967) (hereafter Refugee Convention) on 31 July 1968 (UNHCR, 2015). However, "Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol" (Ibid., 5). This limitation means that Turkey recognises the Convention's refugee status only for those asylum seekers who meet the Convention criteria due to events happening in Europe. Thereby, it only commits to recognising asylum seekers from European countries as refugees. Individuals who do not fall within the scope of the Convention, mainly those are coming from non-European countries, necessitate the introduction of supplementary statutes, complicating the legislation via multiple categories and pieces of secondary law that regulate their situation.

Turkey's first comprehensive national asylum law, the Law on Foreigners and International Protection Law No. 6458 (LFIP, 2013) was introduced in 2013. It addresses issues of international protection and the statuses and rights of foreigners in the country. When the mass migratory movements originating from Syria towards Turkey emerged in 2011, Turkey was in the process of drafting the LFIP, which was promised to be a significant reform regarding international protection and the asylum system. The LFIP was enacted in 2013 and partially entered into force as a new legal and institutional framework. In 2014, all relevant provisions came into force, including the first legislative designation about temporary protection. The LFIP is the most significant legislative development because it marks the end of a period in which asylum law was regulated by secondary legislations such as the Council of

Ministers Regulation in 1994 (Asylum Regulation, 1994). Despite emerging as a primary law instrument, the LFIP further maintains the complexity and dual structure by maintaining a geographical reservation on the Convention. This reconstructs the European and non-European asylum seeker differences as the main feature of the protection regime. Furthermore, the LFIP signals the codification of the second layer of duality by introducing temporary protection, which would come to dominate the legal landscape, as will be discussed further in Chap. 4 on Protection.

The LFIP introduces three statuses regarding international protection: refugee (LFIP, Art. 61(1)),[1] conditional refugee (LFIP, Art. 62(1))[2] and subsidiarity protection (LFIP, Art. 63(1)).[3] These statuses are granted following an individual Refugee Status Determination (RSD) process under the authority of Turkey's migration agency established with the LFIP, called the General Directorate of Migration Management (DGMM). The LFIP launched temporary protection and elaborated upon it with secondary legislation, the Temporary Protection Regulation (TPR), in 2014 (TPR, 2014). The Article states that "temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection" (LFIP, 2013, 91(1–2)). It is provided on a group basis in mass forced migration situations where high numbers of arrivals make individual assessments unfeasible for the migration authorities.

The following table portrays the complexity of categories and the layers of duality in the system: The first duality is between European and non-European asylum seekers, while the second is between people under international and temporary

[1] Article 61(1): A person who as a result of events occurring in European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process.

[2] Article 62(1): A person who as a result of events occurring outside European countries and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country.

[3] Article 63(1): A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would: (a) be sentenced to death or face the execution of the death penalty; (b) face torture or inhuman or degrading treatment or punishment; (c)face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.

**Table 2.1** Turkey's complex structure of protection

| International protection | | | Temporary protection |
|---|---|---|---|
| Individual-based status determination | | | Group-based status determination |
| European | Non-European | | As of October 2021, only Syrians |
| Refugee | Conditional refugee | Subsidiary protection beneficiary | Temporary protection beneficiary |
| LFIP, article 61(1) | LFIP, article 62(1) | LFIP, article 63(1) | LFIP, article 91(1–2) and the temporary protection regulation |
| Estimated around 70 people[a] | 330,000[b] | No data available[c] | 3,710,497[e] |
| | The top three nationalities are afghans, Iraqis and Iranians[d] | | Only Syrians |

[a]TBMM (2018: 11)
[b]UNHCR (2021)
[c]Estimated around 100 people (NOAS (2018).
[d]DGMM (2021b)
[e]DGMM (2021a)

protection. The table also provides the number of displaced people given these statuses in September 2021 (Table 2.1).

Refugee status is based on Turkey's obligations under the 1951 Convention; however, only persons from European countries are given this status due to Turkey's geographical limitation mentioned above. According to a Turkish National Assembly Report, it is estimated that only 70 persons have been given refugee status in the history of Turkey (TBMM, 2018, 111). On the other hand, persons who fall within the refugee definition specified in Article 1A (2) of the 1951 Convention but come from a non-European country of origin are instead offered conditional refugee status. This is a status that was created "by the LFIP to differentiate treatment between 1951 Convention-type refugees originating from 'non-European' states and those originating from 'European' states" (AIDA, 2019, 99). The most important difference between a refugee and conditional refugee status is that the latter does not offer the prospect of long-term legal integration, and the beneficiaries of this status are excluded from family reunification rights. Conditional refugees are given the right to remain in Turkey until resettled in safe third countries. Resettlement includes the transfer of conditional refugees, who may not be particularly vulnerable in a third country and are not permitted long-term residence rights in Turkey.

The LFIP also creates another status, subsidiary protection status, that provides further differentiation and stratification via legislation. This status is given to persons who do not fulfil the eligibility criteria for either refugee status or conditional refugee status but who would, however, be subject to the death penalty or torture in their country of origin if returned or who would be at the individual risk of indiscriminate violence due to situations of war or internal armed conflict. Unlike

conditional refugees, subsidiary protection beneficiaries are granted family reunification rights.

Both conditional and subsidiary protection mechanisms are outside of the 1951 Convention, thus only providing complementary protection. Although conditional refugee status is Turkey's own designation, subsidiary protection is also present in EU legislation. When subsidiary protection was introduced in EU countries by the Qualification Directive,[4] it was assumed that this status was of a temporary nature (ECRE, 2020). As pointed out by the UNHCR Comment (UNHCR, 2005) regarding subsidiary protection of the Qualification Directive, individuals who fulfil the criteria of the Geneva Convention should be granted refugee status rather than being granted subsidiary protection. However, the number of subsidiary protections vis-a-vis refugees' status granted, particularly for specific nationalities like Afghans, has become higher among many EU member states.

Besides these three statuses – refugee, subsidiary and conditional refugee – that all are for international protection, the second layer of duality in the Turkish asylum regime occurs with the presence of temporary protection, which has dominated the asylum regime since 2014. Temporary protection status is conferred *prima facie*, on a group basis to Syrian nationals and stateless Palestinians originating from Syria. Although, for the first time, temporary protection takes place within the LFIP (Art. 91), the LFIP does not clarify the procedures to be taken during the implementation of temporary protection. To elaborate on the procedures, the Temporary Protection Regulation (TPR) was issued by the Council of Ministers in October 2014. This was designed to be an emergency response to mass-influx situations. According to Article 3(1) of the LFIP and Article 7(1) of the TPR, temporary protection is a legal status for foreigners who were forced to leave their countries and cannot turn back: "arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment." Under TPR, access to certain services is ensured, such as healthcare, education, access to the labour market, social assistance and interpretation services (TPR, Articles 26–31, respectively). Temporary protection status grants beneficiaries the right to legal stay and some level of access to fundamental rights and services.

Temporary protection is only provided for persons who arrive in Turkey directly. Different procedures were in place for Syrians coming from another country to which they had previously fled, such as Egypt, Lebanon, Jordan, Iraq, or Gulf countries. In such cases, these persons "have the right to apply for 'international protection' in Turkey if they fear being persecuted or otherwise coming into harm's way if returned to the country from which they arrived in Turkey or if they fear being deported back to Syria if they return to that country" (Ibid.). Therefore, temporary protection is exclusive for "Syrian nationals, stateless persons and refugees" (TPR, 2014, Article 1) who arrive directly from Syria after 28 April 2011. Thus, those who

[4] EC Council directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of protection granted. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN (Accessed 17 September 2021).

arrive from a third country cannot benefit from temporary protection, but they are allowed to apply for international protection under the LFIP, even if their family members in Turkey already benefit from temporary protection. Moreover, since 8 January 2016, Turkey no longer operates a visa-free regime for Syrians who enter by sea or air; hence it restricts the possibility of Syrians arriving in Turkey from any other country.

Temporary protection is not a novel legislative technique for governing mass migration invented by Turkey; instead, it is inspired by previous widespread implementations. The definition of temporary protection is mainly transferred from the Temporary Protection Directive[5] of the EU. Historically, a temporary protection instrument was present in the Organization for African Unity (OAU)'s Convention on the Specific Aspects of Refugees Problems in Africa, adopted in 1969 (UNHCR, 1974). A similar approach was promoted to respond to the mass migration of asylum seekers and refugees in Southeast Asia during the 1970s and early 1980s (UNHCR, 2000). The United States revisited the approach under the Extended Voluntary Departure (EVD) measure to grant temporary asylum to persons from Cuba in 1960, Chile between 1971 until 1977, and Nicaragua in 1979. EVD status was used from 1960 to 1990 and was given to nationals of Iran, Lebanon, Nicaragua, Poland, and Uganda. Other countries whose nationals have benefitted in the past from a status similar to EVD include Cambodia, Chile, Cuba, Czechoslovakia, Dominican Republic, Hungary, Laos, Romania, and Vietnam (Wilson, 2021, 4).

European states revisited the temporary protection regime during the Balkan refugee crisis in the 1990s after the outbreak of war in the former Yugoslavia, leading to the displacement of over 3.2 million people within and outside its borders, primarily in Europe. To respond to the sudden arrival of thousands of people fleeing prosecution, western European governments introduced temporary protection schemes between April 1992 and December 1994. Bosnian refugees between 1992 and 1995 and Kosovar refugees in 1999 were offered this protection. These practices were later standardised and embedded in the EU's Temporary Protection Directive dated 20 July 2001 mentioned above.[6] These schemes functioned as an emergency response to the situation when individual processing under the 1951

[5] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN. The Directive as prepared to respond the possible mass migration conflicts in the former Yugoslavia, in Kosovo and elsewhere demonstrated the need for special procedures to deal with mass influxes of displaced persons that occurred mainly during the 1990s. However, the provisions within this Directive could not be implemented since then and its repeal is suggested in 2020 by the European Commission's the Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0613&from=EN.

[6] For the Council Directive of European Temporary Protection see https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF accessed on 8 August 2019.

Refugee Convention was not possible due to the number of asylum claims. All asylum seekers were offered temporary protection for the duration of 1 year with the possibility of renewal and were provided with accommodation, access to healthcare, social services and employment. In 1997, Germany lifted the temporary protection status and repatriated 300,000 people to Bosnia. Although the UNHCR announced that conditions were not conducive enough for return, the other countries followed Germany, resulting in the overall return of 700,000 people to Bosnia (Mitrovic, 2015). Repatriation of Kosovar was even faster than the one to Bosnia, and in the summer of 2000, a total of 841,000 of the asylum seekers residing in the region and the EU Member states had been returned to Kosovo (Ibid.). The previous implementations of temporary protection prove that this status eases repatriation as it does not grant refugee status and does not include the commitment of hosting states for permanent stay or integration of asylum seekers.

Turkey has implemented temporary protection for almost four million Syrians for over a decade by only differing slightly from the EU Directive in terms of duration. The EU Directive underlines a one-year time limit and the possibility of extension to six-monthly periods for a maximum of 1 year (Article 4(1)). Turkey did not embrace this approach in its legislation. Neither LFIP (Article 91(2)) nor TPR (Article 10) mentions a time limitation, but they give full authority initially to the Council of Ministers and then to the Presidency since 2018. The Presidency will decide (a) the duration of this type of protection (b) or the conditions for extending and ending temporary protection (c) as well as the termination of temporary protection (TPR, Article 11(1)). The Presidency holds power to order limitations or to suspend temporary protection in the event of a risk to national security, public order or health (TPR, 2014 Article 15).

As a result, the presence of complexity in the system through conditional refugee status and subsidiary protection instead of refugee status signals that the prominent bone of legal architecture is based on temporality. Due to Turkey's geographical limitation, the stratified statuses within the international protection system result in temporality, except for a very limited number of refugees, only 70 people from Europe. Such complex legislative grounds is strategically created and justified by a geographical limitation over Convention. On the other hand, non-European nationalities are given only conditional refugee status or subsidiary protection, and they can stay in Turkey until their resettlement by UHNCR, which take years in practice. In addition, millions of Syrians are under temporary protection, which creates additional strategic temporality since it can last indefinitely or be terminated at any point based on a Presential decision. Therefore, international and temporary protection in Turkey provides a lesser degree of protection than actual refugee status may offer. Both international and temporary protection fail to provide a sufficient degree of predictability or long-term prospects in Turkey (NOAS, 2018). As a reflection of this duality, significant gaps between legislation and actual practices are observable, generating a high level of precarity and fragility for asylum seekers and holders of international/temporary protection statuses (Kaya, 2020a).

### *2.1.1 Registration, Status Determination, Rights and Services Available to Asylum Seekers in Turkey*

Upon their arrival into national territory, the registration of asylum seekers is crucial to regularise their stay. It is also critical in order to be able to access rights and public services. The application and decision-making procedures of all protection types mentioned above are different. Within the framework of the regular procedure, the international protection application starts with registration at the Provincial Directorate of the Migration Management (PDMM) located in almost every province. According to the LFIP, applications for international protection should be registered by the PDMM, and they are expected to register in the PDMM of their assigned "satellite city" within 15 days. The "satellite city" system is for non-European asylum-seekers, upon the completion of registration of their applications, at which time they are assigned to reside in certain cities by the Ministry of Interior (MoI). The number of satellite cities is currently 62 (Kayhan Nizam & Sallan Gül, 2017). Registered asylum seekers are checked regularly with local authorities and are restricted from movement outside of the city without special permission. As a part of the regular procedure, the competent PDMM is required to carry out a personal interview with asylum applicants within 30 days from registration (LFIP 75(1)). Different from other applicants for international protection, persons arriving from Syria have to approach PDMM for registration, but through another department, they are able to benefit from temporary protection. After pre-registration, the applicant should appear before the PDMM in 30 days to obtain their Temporary Protection Identification Card. According to the TPR Article 16(1), they cannot apply for international protection while benefiting from temporary protection.

After registration, access to rights, services and benefits become relevant, known as reception conditions (LFIP Art. 65(88–89)). International protection applicants are entitled to reception conditions from the moment they request international protection and continue to be eligible until the procedures end with a final negative status decision that cannot be appealed. However, reception conditions cannot be accessed before the registration interview, and there are differences among applicants who are subject to various procedures, such as regular or accelerated procedures. The conditions vary in terms of documentation, freedom of movement and accommodation, housing, social assistance and benefits, financial allowance, healthcare, vocational training, schooling and education for minors, and employment. Similarly, persons benefiting from temporary protection are entitled to enjoy rights to healthcare, education, access to the labour market, social assistance, interpretation and similar services (TPR Article 26–32).

In terms of accommodations, the LFIP does not commit itself to provide shelter to international protection applicants. Article 95 (1) of the LFIP states that "applicants and international protection beneficiaries shall provide their own accommodation". Its article 95 (2) authorised the DGMM to set up "Reception and

Accommodation Centres"[7] to meet applicants' and international beneficiaries' accommodation, food, healthcare, social and other needs. Priority is given to persons with special needs (Article 95(3)). Both the LFIP and the TPR have a settlement policy of assigning each applicant to a specific province (satellite cities mentioned above), where they are required to register with the Provincial DGMM Directorate and stay until the end of their international protection. In addition, conditional refugees and subsidiary protection beneficiaries have reporting obligations to authorities in accordance with determined procedures and periods (Article 71(1) and Article 82(1–2)). Although there is no satellite city regulation for temporary protection holders, they are obliged to remain in the province where they first registered to be eligible for accessing public services. Besides the self-settlement option, the holders of temporary protection can access the temporary accommodation centres if they request and if their family status and special needs necessitate this (TPR, Article 23(2)).

Access to healthcare services is regulated with Article 89(3) of the LFIP, which states that applicants who do not have any health insurance coverage and do not have the financial means to pay for healthcare services are to be covered by the General Health Insurance scheme under public social security scheme. Article 27 of the TPR regulates health services for Syrians under temporary protection. For both beneficiaries of international protection and Syrians under temporary protection, access to health care services is only possible in the province where they are registered. International and temporary protection beneficiaries need to cover 20% of medication costs, while the General Health Insurance scheme covers 80%. Turkey has Migrant Health Centres (MHC) and community health centres to serve Syrians primarily. In 2018, Polyclinics for Foreign Nationals (*Yabancı Uyruklular Poliklinikleri*/YUP) that serve international protection beneficiaries were opened. This fragmented structure can be seen as a stratified healthcare system, as temporary protection beneficiaries are separated from international protection beneficiaries and Turkish citizens (Gökalp–Aras et al., 2021). Emergency medical services are also provided to non-registered foreigners as well.

Regarding education, "applicant or international protection beneficiary and family members shall have access to primary and secondary education" (LFIP Art.91). As a part of the temporary protection (TPR Article 28(1)), Syrians under this protection are eligible to attend Turkish schools, including universities. When they first arrived, forced migrants from Syria attended Temporary Education Centres (TEC) that had been initially set up to teach the Syrian school curriculum in Arabic; however, later, the state laid out more clear procedures for enrolling Syrians in Turkish national schools and began closing the TECs.

Upon access to the labour market, LFIP**,** Article 89(4) provides an opportunity for people to apply for a work permit after 6 months following the lodging date of an international protection claim. However, upon being granted the status, a refugee

[7] As of September 2021, 368.000 Syrians reside in the 7 shelter centres in 5 different cities (Adana/1, Hatay/3, Kahramanmaraş/1, Kilis/1 and Osmaniye/1) (DGMM, 2021a).

or the subsidiary protection beneficiary may work independently or be employed without prejudice to the provisions stipulated in other legislation restricting foreigners from engaging in specific jobs and professions. Also, according to the TPR Article 29, Syrians under temporary protection are permitted to work for the first time when the law governing work permits for migrants (Regulation on Work Permits for Foreigners under Temporary Protection, Law no. 4817) was passed in January 2016. The law allowed Syrians to obtain work permits and legally work at least 6 months after they were given temporary protection status and subject to a limit of 10% of a given company's workforce. Syrians may apply to the Ministry of Family, Labour and Social Services (MoFLSS) to receive work permits in the sectors, professions, and geographical areas determined by the Council of Ministers.

Regarding social assistance, food, clothing, and allowances, reception conditions are regulated with Article 89(2) of the LFIP if the applicants are "in need". The LFIP allows international protection applicants to benefit from a state-funded "social assistance scheme" dispensed by residence to seek subsistence assistance. In parallel, the same condition is relevant for temporary protection beneficiaries. According to the TPR Article 30(2) as, "access to social services by foreigners under this Regulation, who are in need, shall be granted according to the procedures and principles determined by the Ministry and the Ministry of Family and Social Policies". Applicants are required to keep the Provincial DGMM Directorate informed of their current employment status, income, and any real estate or other valuables acquired (Article 90).

The LFIP also includes articles addressing the special needs of vulnerable groups. According to Article 3 of LFIP, the "persons with special needs" category includes unaccompanied minors, disabled persons, elderly, pregnant women, single parents with minor children, and victims of torture, rape and other forms of psychological, physical or sexual violence. The LFIP has several special provisions regarding the reception services to be extended to such vulnerable groups. Furthermore, Article 67 of LFIP requires "priority" to be given to "persons with special needs" in all procedures, rights and benefits extended to international protection applicants.

In principle, municipalities in Turkey are authorised to provide social assistance and services by Law No. 5393 on Municipalities. Article 14 indicates that "municipal services are offered at the closest level to citizens and with the most appropriate methods". Here, the use of the word 'citizens' generally seems to be a barrier to providing social assistance and services to foreigners in general and refugees in particular. However, Article 13 clearly states that everyone residing within the boundaries of a municipal district is entitled to equal services.

Finally, access to citizenship is regulated by the Citizenship Law (2009, amended in 2014 and 2018). It includes provisions for acquisition by kinship or place of birth and citizenship through the decision of a competent authority, adoption, or right of choice. In December 2016, the Government of Turkey introduced a new law for Syrians' access to citizenship through "exceptional citizenship acquisition" criteria based on financial investment in Turkey or made available to "those who stay in the country legally and have already contributed and/or have the potential to contribute

to the Turkish society in the fields of science, economy, social life, sports, culture and arts" (Cetin et al., 2018; Rottman, 2020, 63). The DGMM processes all applications for citizenship. In terms of integration, it should be noted that with the collaboration of IOM, Turkey prepared and adopted "The Harmonisation Strategy Document- National Action Plan" for 2018–2023 (DGMM, 2020), which will be further discussed in Chap. 5.

Besides the legislative dimension, refugee governance has an institutional architecture where laws are put into actual practice. The relevant institutional actors will be briefly presented below.

## 2.2 Institutional Dimension: Multilevelness, State Centrism and Local Turn

Turkish institutional structure displays the characteristics of multilevel governance, and central state actors are the most crucial layers of multilevelness. Besides the role of the Presidency in decision making, as discussed above, two ministries take a crucial role in the implementations in migration matters: the Ministry of Interior (MoI) and the Ministry of Foreign Affairs (MoFA). In addition, some other government institutions, councils and commissions also assume specific responsibilities in migration affairs. (Cetin et al., 2018). The LFIP defines the MoFA responsibility as "upon receiving the opinion of relevant public institutions and organisations, may call upon other States and international sharing to ensure the provision of services to the foreigners under this Regulation" (Article 47 (1)).

The MoI serves as the leading ministry dealing with migration issues and has extensive responsibilities. In the early 2000s, Turkey adopted a strategy to establish a civilian border management agency as part of its EU accession process. Following the adoption of the LFIP in 2013 as a civilian migration management institution, the DGMM was established under the MoI. The LFIP transferred authority for receiving and registering applications for international protection (on Turkish territory or at border gates) from the Foreigners Department of the National Police (which was also under the MoI) to the newly established DGMM. DGMM has provincial branches in 81 provinces and 148 districts in Turkey. DGMM carries out activities and implements policies and strategies such as operations and processes regarding foreigners' entry into and stay in Turkey, their exit and being deported from Turkey, international protection, temporary protection and the protection of the victims of human trafficking (DGMM, 2019). Depending on the issue area, other ministries get involved in migration affairs, mainly the MoFLSS, the Ministry for EU Affairs, the Ministry of Labour and Social Security, the Ministry of Culture and Tourism, the Ministry of Finance, the Ministry of National Education, the Ministry of Health, and Ministry of Transport, Maritime and Communications as well as the President of the Presidency of Turks Abroad and Related Communities (LFIP, 2013, Article 105 (1)).

A significant development that further enhanced the role of DGMM in migration affairs is the delegation of RSD. On 10 September 2018, the parallel RSD procedure conducted by UNHCR and DGMM came to an end, and the entire procedure of RSD moved under the authority of DGMM. According to the new procedure, the UNHCR will not be taking any pre-registrations, and the RSD procedure will be conducted solely by the DGMM. Currently, UNHCR's actions are limited to the delivery of counselling services to refugees and asylum-seekers. UNHCR states that it "will continue to have access to international protection applicants and, subject to the consent of the applicant, to the information concerning the international protection application lodged by the individual with PDMM" (UNHCR, 2018). Also, similar to the previous procedures, resettlements will be carried out by UNHCR.

Besides the DGMM, the leading responsible authority for application and RSDs for international protection procedures, judicial state institutions – mainly courts – also participate in the different stages of protection, particularly regarding appeals to negative decisions, and detention and deportation orders. While an International Protection Evaluation Commission (IPEC) Administrative Court tackles initial appeals, the District Administrative Courts take a role in onwards appeals. These processes will be elaborated on in Chap. 4.

Like the DGMM, there are also other new actors in Turkey's institutional architecture governing temporary protection status holders. At the beginning of the mass migration of Syrians to Turkey, the Disaster and Emergency Management Authority (AFAD) was given the mandate to coordinate their reception needs. AFAD was established in 2009 in order to create a single centre for the state's disaster management. It is an amalgamation of the General Directorate of Civil Defence under the MoI, the General Directorate of Disaster Affairs under the Ministry of Public Works and Settlement, and AFAD under the Prime Ministry.[8] AFAD had a particular role in mobilising civil society organisations, which have always been very active in welcoming Syrians since the beginning of mass migration. AFAD acted as the representative of the state in humanitarian assistance. AFAD was also in charge of the camps established at the Syrian border to look after the first incoming groups of Syrians. Until the time AFAD left the field for DGMM in 2018 to coordinate the reception, protection and integration of migrants under temporary protection, it was the main organisation that civil society organisations in the field communicated with when trying to reach the state (Macreath & Gülfer Sağnıç, 2017). In cooperation with the relevant line ministries, public institutions, organisations, and the Turkish Red Crescent (TRC), AFAD provided or contributed to housing, shelter, health, security, social activities, education, worship, interpreting, communication, banking and similar services in container and tent cities.

AFAD's role became limited to managing international humanitarian assistance distributed to foreigners with the amendment to the TPR by Regulation 2018/11208 of 16 March 2018 (AIDA, 2019, 16). Now, responsibility for managing Temporary

[8] For the text of the Law on the establishment of the Disaster and Emergency Management Authority (No. 5902), see http://extwprlegs1.fao.org/docs/pdf/tur151519.pdf accessed on 11 August 2021.

Accommodation Centres and providing services, such as health care, lies with the DGMM, which is also the competent authority for temporary protection (Ibid.). This change is also part of a broader transformation because of Turkey's transition from a parliamentary system to a presidential system in 2018. The change has implications for international and temporary protection (TCBB, 2019). The new system reshaped the public administration structure and the division of labour between ministries and the directorate. According to the newly introduced administrative structure, the role and responsibilities of DGMM and AFAD were changed as well.

Additionally, Turkey's cross-border operations and intervention in Northern Syria created a need for AFAD's support to the camps that were established to accommodate internally displaced Syrians to prevent their crossing into Turkey, particularly camps or prefabricated housing. The role shifting between DGMM and AFAD can also be interpreted as the reflection of strategic temporality at the institutional dimension of refugee governance. These institutions take ad-hoc roles that are subject to change according to the political context, humanitarian needs, and policymakers' priorities at the time. They are strategically deployed in one policy area, then moved to another field according to perceived needs on the ground. Regulations about their authority and the scope of their influence are rarely stable but are rather under the discretionary power of the central state and government, mainly the Presidency and MoI.

The MoFLSS has been included in the institutional structure as a newly emerging actor in terms of protection, reception, and integration. Although it does not have direct authorisation for dealing with refugee protection on paper, the changes in the TPR on 16 March 2018 introduced four new responsibilities and control duties to this Ministry (formerly titled the Family and Social Policies Ministry). These responsibilities and authorisations made MoFLSS intensively involved in the protection field, particularly in regulating and monitoring the activities of national and international organisations.

In addition to MoI, MoFLSS, DGMM and AFAD type state institutions, there is another prominent – in-between – actor in the national institutional architecture. As a semi-state association, the TRC emerges as a migration actor since it is directly involved in several policy fields regarding refugees. It has a particular unit called the Migration and Refugee Services Department. TRC launched the "Syrian Crisis Humanitarian Relief Operation" on 29 April 2011 to contribute to the logistics of the cross-border operations of all humanitarian actors operating inside Turkey to help Syria. Through their community centres, TRCs are also involved in a wide range of activities, including social protection and integration, particularly organizing vocational training courses and "safe spaces" for women and children to socialize. Furthermore, TRC has an observatory role concerning the voluntary returns of Syrian citizens and refugees who want to return to their country voluntarily (GocGov, 2018). With this last role, TRC indirectly contributes to the temporality of Syrians in Turkey.

Not only central state actors but also non-state actors take roles, often subsidiarity roles, in the field of migration. As a characteristic of multilevel governance, the

local level is prominent for migration affairs. Besides ministries and state institutions, a key actor is local municipalities, particularly as service providers.

Within the institutional landscape, the involvement of other countries and international, intergovernmental, and non-governmental organisations should be underlined to better understand refugee governance. The UNHCR plays an essential role, especially in Turkey's former and current asylum policies. During the Cold War period, it was the leading agency overseeing Turkey's asylum policy and ensuring the resettlement of refugees. Moreover, it was responsible for providing basic assistance and accommodation for asylum seekers and refugees. During the 1980s, UNHCR continued this practice with the growing number of asylum seekers arriving from non-European countries, especially from Iran and Iraq. Turkey-UNHCR relations observed some fluctuations and tensions due to geopolitical developments and security concerns, such as were experienced with the massive entry of Kurdish refugees from Iraq into Turkey in 1991 (Kirişçi, 2005). This tension urged Turkey to enhance its legal structure. The 1994 Asylum Regulation was the legal manifestation of the country's growing securitisation approach.

At this time, the Government ceased cooperation with the UNHCR. The implementation of the Regulation created some rights violations at that time. Nevertheless, UNHCR and MoI officials could rebuild their partnership in 1997 and have been working closely since. After this time, UNHCR became more strategically careful about Turkey's sensitivities around ethnic issues exacerbated by the flow of displaced Kurds from Iraq. Unlike many refugee-hosting countries, Turkey has never fully delegated its asylum policies to UNHCR, and instead, it acted selectively in building cooperation by insisting on its sovereign rights (Abdelaaty, 2021). Within this context, UNHCR has been undertaking its assigned roles. Until 10 September 2018, it was responsible for resettlement and the first registration with the implementation support of a national NGO, the Association for Solidarity with Asylum Seekers and Migrants (ASAM). Since 2018, the registration process has continued with the procedures being carried out by the Turkish authorities, mainly the DGMM. UNHCR still has a country office in the capital city, Ankara, and has sub-offices in Gaziantep, a field office in Van and field units in Istanbul, Izmir, Hatay and Şanlıurfa (UNHCR Turkey, 2019).

As the responsible UN agency for international protection, UNHCR has had a limited role in temporary protection. The UN supports Turkey's national response to the Syrian crisis via an annually prepared Regional Refugee and Resilience Plan (3RP) of the UN-led Inter-Agency Standing Committee (IASC). Overall strategic leadership of the inter-agency response is the responsibility of the Syria Response Group, with technical coordination taking place through the Syria Task Force (UNICEF, 2019). The coordination mechanism within the humanitarian and emergency relief field is built upon a cluster system, including education, food, healthcare, shelter, hygiene, protection, and working groups in child protection, gender-based violence, and case management, which are overseen by relevant UN bodies.

As a part of the UN system, the International Organization of Migration (IOM) is also quite involved in international protection and temporary protection. IOM takes subsidiary roles at the border crossing points with its outreach teams. It is the first contact with immigrants following their apprehension by law enforcement actors. It provides information regarding international protection. It also provides interpretation and humanitarian aid support, such as water, food packages, blankets and clothes, while law enforcement officers take immigrants' statements. At the same time, IOM supports law enforcement officers in terms of identifying vulnerabilities and consultancy. It occasionally deals with family unification and support line ministries and municipalities for capacity building, particularly infrastructure. The UNHCR and IOM mainly provide humanitarian aid, interpretation, consultancy for international protection, identification of vulnerabilities, vehicles and transportation, support, and in some cases, infrastructural support at the borders such as providing shelters, tents, mobile containers, mobile toilets and showers, and washing units.

The EU is also one of the important actors regarding international and temporary protection. The EU Delegation to Turkey has a Migration Policy Team, and protection is supported financially by the European Civil Protection and Humanitarian Aid Operations (ECHO). The EU dimension regarding international and temporary protection will be described in detail later in this chapter as a part of a discussion of the broader political context.

UN organisations and I/NGOs support the integration of migrants through the social cohesion programmes that they finance. For some migrants, I/NGO workers are among the only Turks with whom they interact regularly. IOs and NGOs help migrants gain awareness about their legal rights regarding education, health care and employment. They fill the "gaps between official policies and the actual reality that originates from limited and mismatching features of the legal framework" (Sunata & Tosun, 2018, 12). IO and I/NGOs provide translation services and run programmes related to formal integration measures, such as vocational training, language education, and healthcare. Another critical area in which IO and I/NGOs are active through their local implementing partners is "creating spaces where locals and newcomers may meet, spend time together and get to know one another" (Paker, 2019, 13). There are hundreds of national and international NGOs working in protection, reception and integration to support applicants and beneficiaries. Their concrete contributions will be addressed in the relevant chapters that follow.

## 2.3 Political and Discursive Context

As everyone agrees, context matters when it comes to the actual working of institutions and how legislation is put into practice in migration affairs. Strategic temporality inherently assumes that politics shape policy approaches, and they are in design subject to temporality. We recognize that the politics of migration is a critical

constitutive part of refugee governance. Hence, in this section, we briefly delve into Turkey's domestic, regional and international political context when responding to Syrian refugees. We also bring a discursive aspect into the discussion as it is not entirely separable when examining the politics of refugee situations.

### *2.3.1 Geopolitics, Domestic Developments and Changes in Policy Responses*

First of all, it is important to note that for the period under scrutiny 2011–2021, Turkey's political regime is a unitary presidential constitutional republic. It has been ruled by a single party, the Justice and Development Party (known as AKP or AK Party), since 2001. The regime moved from a parliamentary to a presidential regime in 2018. The president of Turkey now acts as both head of state and head of Government. While legislative power is vested in the Turkish Grand National Assembly (Parliament), executive power is exercised by a Council of Ministers, which is appointed and headed by the President. The President, Recep Tayyip Erdoğan, has been the leading figure both in the AKP and in the government before becoming president.

Turkey's policy responses to the mass migration of Syrians can be roughly separated into three distinct phases (Gökalp-Aras & Şahin Mencütek, 2015, 2016). The dominant perspective on mass migration response has revolved first around the notion of humanitarianism and later around the idea of securitisation in line with domestic and foreign policy priorities. Turkey's initial liberal border and reception approach towards Syrian mass migration, known as "open-door", has gradually turned into a reluctant approach, and starting from 2019, it evolved into deterrence and, in particular, return. Strategic temporality, manifested in forms of ad-hoc responses, has always been a presence in each phase regardless of developments.

During the first phase (2011 to mid-2012), Turkey developed an assertive foreign policy that saw the implementation of an unconditional "open door policy" welcoming all Syrian nationals fleeing from conflict. This policy was mainly driven by domestic and foreign geopolitical policy concerns, such as a desire to present itself as a powerful country in the region, to play a regional mediator role, and to contribute to the solution of humanitarian problems through diplomacy. This strategic response mainly rejected international assistance for its humanitarian efforts, as it sought to cast an image of a strong independent state that was self-reliant and presented a credible alternative regarding political and economic matters (Ahmadoun, 2014). On international platforms, Turkish leaders boasted about the cost of sheltering Syrians in Turkey as a constant reminder to the international community that Turkey was a strong and growing regional power and an exemplary model of a democratic, inclusive, benevolent Muslim country (Chemin & Gökalp-Aras, 2017). Turkey's initial welcoming approach towards Syrians still seems to be 'refugee friendly' and a good example of shouldering burdens and responsibility. Its response

to Syrians is more positive, liberal and advanced compared to restrictive worldwide trends in the international refugee regime and compared to Turkey's past responses to similar refugee movements that explicitly involved a securitisation discourse (Kirişçi & Karaca, 2015).

During the second phase (mid-2012 to mid-2015), the first period's assertive foreign policy was replaced with internationalisation through diplomatic channels, particularly seeking intervention from the UN Security Council. However, due to the failure of these attempts, Turkey classified its foreign policies as a form of "precious loneliness"[9] and its insulation increased. Internationalisation failed, and isolationism started. Turkey continued to emphasise the cost of sheltering Syrians (Gökalp-Aras, 2019b). This period also is characterized by a steady emergence of securitisation discourses. After several incidents at border cities, security concerns were raised, and Turkish military authorities panicked about losing control of Turkey's 822-km-long border with Syria. The sheer volume of displaced people crossing the border and Turkey's lack of capacity to respond to the needs of refugees, coupled with uncertainty about the longevity of the crisis, aggravated the securitisation discourse. In this context, the Turkish military launched its first cross-border operation inside Syria on 22 February 2015 and then continued with other operations in 2016, 2018 and 2019. Within this period, it became clear that the Syrian conflict was long-lasting and that there would be no possibility of international military intervention in Syria. It was also clear that Turkey did not have enough diplomatic or military instruments to control the direction of the Syrian civil war. Paradoxically, despite the evident temporary closure of borders, there is no official declaration regarding the closed-door policy. Since mid-2012, the open-door policy turned into ad-hoc practices and Syrians without passports can no longer cross the Turkish border except in cases of urgent humanitarian need. Turkey made the admission of Syrians at official border crossings conditional to the availability of places in camps, but exceptions were granted given specific humanitarian circumstances. However, the official narrative remained a humanitarian one. For instance, on 13 March 2016, President Erdogan stated: "Ankara's open-door policy for Syrian refugees will continue due to our responsibility towards our Islamic civilisation, contrary to Western hypocrisy" (Daily Sabah, 2016).

With the third phase (mid-2015 to 2019), Turkey's response to mass migration can be characterised by an attempt to externalise the burden-sharing to the EU and behave pragmatically by using the exodus of irregular migrants to Europe via the Greek islands (Gökalp-Aras & Şahin Mencütek, 2016, 105). In 2015, at the peak of mass arrivals from Turkish shores to Greece, Turkish policy and the EU objectives to control irregular migration intersected. Following a sharp increase in crossings from Turkey to Greece in 2015, new policy tools and agreements were introduced regarding external border controls, such as the Joint Action Plan (JAP) of 2015 and the EU-Turkey Statement (hereafter Statement) of 2016. One of the most important

[9] President Erdogan's foreign policy adviser, Ibrahim Kalin, has termed this new epoch in Turkish foreign policy as "precious loneliness" because it is a "value-based" policy against "immoral" actors in international relations.

policy characteristics of this period is the increasing bilateral conditionality regarding the EU-Turkey relations in migration and asylum (Gökalp-Aras, 2019a, b). In mid-2015, the EU approached Turkey as an important partner in tackling its refugee crisis, with both sides signing various soft law tools, instruments and bilateral statements to that effect. After that, however, the tables turned. After 60 years in which conditionality was experienced mainly on the Turkish side, through the EU's long-standing demands, Turkey started to act more confident and direct in its demands for financial support from the EU and political support for visa exemption for Turkish citizens (Ibid.). In particular, after the European refugee crisis, Syrian mass migration was used as a part of Turkish statecraft in its relations with the EU. Ultimately, Turkey's diplomacy reflects its own foreign policy identity and is an exercise in political agency vis-a-vis the EU within the distinct parameters set by Ankara's obligations to observe EU conditionality.

Besides the geopolitical context, the domestic context also has some consequences for border management, including securitisation and exit controls. One critical juncture is the coup attempt that occurred in Turkey against state institutions on 15 July 2016. Then, an official state of emergency was declared, which lasted until 18 July 2018. The domestic turmoil made Turkey's policies further restrictive in parallel to moving from a delegative democracy to "attributing extensive power to the political leadership and to the rise of 'competitive authoritarianism'" (Esen & Gümüşçü, 2016, 1581; Tas, 2015, 776). The implementation of the emergency law reinforced the power of the President. Meanwhile, the government further infringed on the content of citizenship rights and justified it with the need to confront security challenges due to turmoil in domestic and regional affairs (Rubin, 2017). The government has become more suspicious of national and international NGOs. It criminalised and securitised some of them by accusing them of being "terrorists", "traitors" or a "threat against national unity", as they engage with opposition political groups or are funded by foreign countries (Aras & Duman, 2019, 481). The Government mobilised several mechanisms to enforce legal restrictions concerning civil society, revoke service permits, and limit access to the field which led to several closures. As a country with highly centralised public policy and security concerns entrenched in the long-lasting armed conflict in Syria since 2011, the question of refugee governance became complex.

The fourth phase began in 2019, marked by the domination of restrictive border politics and repatriation-centric discourses (Gökalp-Aras & Şahin Mencütek, 2019). Turkey tightened its border controls, in particular, to prevent irregular escapees from the country. This appears to be an independent factor affecting the securitisation of borders, in particular, exit controls. In the same period, Turkey started the construction of a 764-km border wall, which is called a "security wall" by policymakers, along its border with Syria. The main motivative was to stop Syrians from entering the country. Both internal and external controls increased. Regarding internal controls, despite the earlier flexible approach to Syrian mobility from one province to another, over time, provincial authorities adopted a range of new restrictive measures. A "travel permit" was introduced and implemented for international and temporary protection beneficiaries who wanted to move from one province to

another. On 24 May 2018, another regulation was adopted to punish Syrians upon their apprehension in irregular border crossings. In 2019, the Governor of Istanbul, operating under the MoI announced that Syrians under temporary protection residing in Istanbul who had initially been registered in other cities at their reception – would be sent back to the cities where they were initially registered or risk losing their protection rights.

A new cross-border operation was conducted in 2019, and official statements linked the operations to the repatriation of Syrian refugees (Gökalp-Aras, 2019a, 7). Following the Peace Spring Operation, the Minister of Interior stated that at least two million Syrians would be returned (CNNTurk Live, 2019). By 2019, more micro strategies were adopted to promote 'voluntary' returns, including municipal campaigns to return migrants home, provision of transportation support and 'go and see visits' (Şahin Mencütek, 2019). Along with voluntary returns, forced returns or unlawful practices increased. These developments created increasing concern about Syrians' involuntary returns and individual cases of administrative detention and deportation of irregular migrants, hampering integration and the development of durable solutions.

During this phase, the importance of securitisation, Europeanization and bilateral bargains continued. Following an incident in Idlib on 27 February 2020, Turkey stopped border controls at its EU borders. This act was a clear attempt to instrumentalise the migrant population to attain foreign policy objectives in communicating with the EU (Kaya, 2020c, 2021; Gökalp-Aras, 2021). At this time, immigrants and refugees from various countries, including Syria, began to accumulate, and thousands gathered at the border areas with Greece. While they were trying to enter Europe, they faced severe humanitarian tragedies, trauma and violations. With the outbreak of the Covid-19 pandemic, as of 27 March 2020, most of these migrants were taken by state actors back from the border and distributed to nine cities. In the meantime, the EU Commission made announcements that it would be supporting Greece with 700 million Euros and Turkey with an additional 500 million Euros (New York Times, 2020). Using mobility for diplomatic leverage, the EU Commission also announced that they would consider restarting the visa-liberalisation and visa-facilitation talks with Turkey (DW, 2020). This crisis was eventually resolved after the Turkish President asked security forces to seal off the European borders following a meeting in Brussels with top EU actors on 17 March 2020 (The Guardian, 2020). By 28 March, Turkish state actors had begun to round up most of the migrants and distribute them to satellite cities inside Turkey. This new development once more showed how vulnerable forced migrants are to domestic and regional politics.

Over the course of time between 2011 and 2021, a mounting discourse about the need for Syrians to return has replaced the initial discourses of guesthood and the Ansar spirit. There has not as yet been mass and forced returns from Turkey to Syria. The returns that have taken place have been primarily on an individual case-by-case basis, which might be called spontaneous returns. Voluntary and forced returns governance is fragmented with regard to institutions and practices (Şahin Mencütek, 2019). There are "several concerns about Turkey's unilateral approach,

its strategy of providing restricted protection while encouraging return, and the principles [voluntariness, safety, and security] that it ignores during returns" (Ibid., 30). The ruling elite has refrained from using a discourse of integration as they strongly believe that it is the discourse of return, which will politically pay off. It is for this reason that the DGMM is reluctant to publicise the Integration Strategy Document.

### *2.3.2 Changes in Political Discourse and Narratives: Temporariness, Permanency and Return*

During its 10 years of hosting massive numbers of Syrian refugees, Turkey has adopted a wide repertoire of political narratives, which constitute the core of policy responses and provide strong mechanisms for legitimising them. They also serve as a means of targeting the international community when framing Turkey's demands. In general, the narratives and the above-mentioned policy responses complement and support each other. Our research displays changes in political discourse from temporariness to permanency and return. The adopted narratives contain strategic ambiguities, which give space for manoeuvring for the speakers in terms of defining the audience, the agenda of the event and supporting the policy changes.

The reception of Syrian refugees in Turkey is mainly based on a discourse of tolerance and benevolence driven from path-dependent ethnocultural and religious premises dating back to the Ottoman Empire of the late nineteenth century and the establishment of the Turkish Republic in the 1920s. The vocabulary, which has been used to identify the Syrian refugees, represents a kind of continuity with regard to the naming of migrants, guests, and foreigners since the early days of the Republic. In the official literature, the term guest had been used to refer to refugees of Muslim origin but without Turkish ethnic origin from outside the European continent. In this regard, supported by the geographical limitation of the 1951 Convention, Kurdish refugees in the 1990s and Syrian refugees in the 2010s were named guests, although they are Muslim and lived with Turks in the Ottoman period.

Political discourses about Syrian refugees were primarily mainstreamed around the category of guesthood, which was later coupled with the Islamic mythology of an Ansar spirit that is elaborated further in Chap. 3. The narratives function not only to construct the nation-state in particular ways in terms of "humanitarianism," "generosity" and "being a great power", but also to mobilise religious identities and resources to show "hospitality," which in turn legitimises the Turkish government's initial open-door policy since mid-2012 (Kaya, 2020a). The narrative is enhanced by the broad political narrative surrounding Turkey's rising power as a "great example of humanitarianism". For instance, at a joint press conference with the High Representative of the EU for Foreign Affairs and Security Policy (Catherine Ashton), the Foreign Minister of the period, Ahmet Davutoğlu criticised countries for "keeping their silence at a time when a large number of Syrian refugees are

crossing into Turkey. They should be ashamed of themselves." He added that "the 'open door' policy is a matter of honour for us" (World Bulletin, 2013).

Framing Syrian refugees within a broader discourse has elevated public and private efforts to accommodate Syrian refugees from a humanitarian responsibility to a religious and charity-based duty (Erdemir, 2016). Official discourses gradually crystallised around the idea of charity for people who were said to be only temporarily staying in the country. Essentializing the Islamist and Ottoman heritage has made it easier to control and discipline the large Turkish population of Sunni-Muslim origin and the Syrian refugees with similar religious credentials (Kaya, 2019). The framing of the refugee reality by state actors as an act of benevolence and tolerance is strategically used to shape public opinion. Therefore, based on the past experiences stored in the collective memory of Turkish citizens, the political discourse of the Turkish government constantly underlines the temporariness of the Syrians. Thus, *Ansar* appears as a complementary narrative to strategic temporality for refugee governing.

Although the Turkish Government's charity and hospitality discourses welcome migrants, they do not imply long-term permanent integration of equal partners, which would represent a fully rights-based integration approach. Dawn Chatty (2017, 178) argues that such discourses of charity and hospitality are unique to Middle Eastern cultures, where we find local and regional "constructions of duty-based obligations to the guest, stranger, and person-in-need, which are not sufficiently appreciated in the West". In the Turkish context, although Turkey is a party to the 1951 Refugee Convention, Syrians' access to international protection is blocked under the temporary protection system. Rather than providing a better system of protection, charity and hospitality discourses associated with the temporary protection legislation inhibit the development of a stable, secure integration programme for migrants and increase their precarity.

Simultaneously, this narrative leads to disorganised responses from the stateside. It appears that officials did not plan for the eventual numbers that would arrive and that the conflict would continue for such a long time. The International Crisis Group (ICG, 2016, 3) summed up the situation in 2015–2016 like this: "The concept of "temporary permanence" (*geçici kalıcılık*), pronounced by then Prime Minister Ahmet Davutoğlu's adviser in December 2015, summarised the convoluted approach and the government's difficulties to define a strategy. The chaotic policy-making, a patchwork of small initiatives with micro effects, left refugees having to find their own way."

Soon it turned out that continuously framing refugees as guests was not sustainable in terms of accommodating their urgent needs and coming to terms with increasing resentment among the local populations vis-à-vis the refugees. Turkey first introduced the TPR (Temporary Protection Regulation) in 2014; it frames the refugees with a state of temporariness, at least on paper. However, some discursive shifts were witnessed in the media concerning the state actors' changing position on the permanent character of at least some Syrian refugees in Turkey. Despite the continuation of temporariness, some policy steps signalled the recognition of permanency. The new policies include the introduction of work permits in early 2016,

incorporating Syrian pupils into public schools, creating of quotas for Syrian students in higher education institutions and granting citizenship to Syrians. However, durable solutions and integration have been used in only limited ways and stop short of long-term legal and practical inclusion. By 2019, instead of integration, a discursive shift in favour of return was widely visible. The Minister of Interior, Süleyman Soylu, started to give a detailed account of Syrian returnees in his monthly organised press conferences in 2018 and 2019 (CNNTürk, 2019; T24, 2019). It also turned into hotly debated topic during local election in 2019 as mentioned in the introduction.

From one point of view, it appears that Turkey skipped from reception to return, bypassing the integration of refugees altogether. Kaya (2020b) argues that the discourse of integration is no longer on the agenda of both government and oppositional parties. On the contrary, both sides promote a return discourse, despite Syria being still far from being stable. The media announcements of the Minister of Interior every month put how many Syrians voluntarily returned very baldly. At the same time, the municipal mayors and oppositional party leaders constantly talk about the need for a massive return of Syrians to their homeland.

### *2.3.3 EU-Turkey Relations and Its Impact on Migration and Asylum Policies*

Besides the domestic and local political context, the broader regional context has an impact on migration affairs. In the case of Turkey, relations with the EU have been of the utmost importance for migration and asylum policies in the last decades. We will now briefly summarize the main issues and developments in terms of relations.

Turkey has had a long and complex relationship with the European Union (EU). EU-Turkey relations have been characterised by a distinct pattern of continuity and change in immigration and asylum. Syrian mass migration appears to have been a critical juncture and a significant 'game changer' in EU-Turkey relations because Ankara was able to 'turn the tables', having gained invaluable bargaining leverage towards the EU, and started to use migration as a foreign-policy tool against Brussels, in particular after the European refugee crisis in 2015 (Gökalp-Aras, 2019a). Against this background, it makes sense to analyse the EU dimension in two periods: from 1999 to 2011 and from 2011 to the present.

During the first period (1999–2011), Turkey lacked a unified legal and institutional framework for immigration and international protection. After granting official candidate status to Turkey at the Helsinki Summit of the European Council in December 1999, Turkey's status as a leading transit country solidified, and the need for reforms became all too pressing. Turkey adopted a set of migration reforms during the 2000s, mainly at the behest of Brussels, and these mainly were part of the latter's long-term policy of externalising the EU's immigration and asylum policy to third countries. Following the Helsinki Summit, the EU adopted an Accession

Partnership (AP) strategy for Turkey in 2000, followed by the National Program for the Adoption of the Acquis (NPAA) accepted by the Turkish Government, which has been updated several times.

While changes in asylum policies in the mid-1990s had some local drivers, the EU was arguably the most critical factor in Turkish immigration and asylum policy reform after the end of the Cold War (see, among others, Lavenex, 2020; İçduygu, 2011a, b; Tolay, 2012). An extensive legal framework[10] and ongoing accession partnership diplomacy between the two sides framed migration management in this context. The EU's main demands on Turkey were as follows: to support the EU's external border control, to adopt the EU's visa policy, to sign the EU-Turkey Readmission Agreement, and to abolish the geographical limitation for the Geneva Convention (1951). In return for compliance with these demands, the EU promised Turkey capacity-building and financial support (which was substantial in the migration management area), visa exemption, and in the end – if all other membership conditions were met – full membership.

The negotiations for full membership began on 3 October 2005, opening a new phase for relations, and Turkey undertook considerable reforms (Açıkmeşe, 2010; İçduygu & Aksel, 2012; Tocci, 2005; Müftüler Baç, 2005). Substantial domestic obstacles to asylum policy adjustments were brought to the fore as the newly promised EU membership was still credible, and Turkey's cost-benefit calculation was based on the clear benefit of prospective EU membership. After negotiations for full membership started in 2005, Turkish actors became increasingly critical of the EU approach, even as they continued to implement many EU reform initiatives. Criticism was centred on the EU's self-oriented and narrow-minded security-based perspective; the framing of Turkey as a buffer or 'dumping zone' in the fight against irregular migration; the EU's ignorance of economic, social and political dynamics in Turkey; and the lack of burden-sharing on the part of the EU (Gökalp-Aras, 2019b). In this regard, Turkey's Europeanisation path was not linear but involved resistance (Tolay, 2012, 42). Turkey's policy was to resist some EU demands, such as retaining the geographical limitation and continuing the liberal visa regime for some countries on the EU's negative list. Thus, as far as EU-Turkey relations are concerned, conditionality characterised the approach of both sides, although this operated more in favour of the EU. For Turkey, the policy offers – such as potentially lifting the geographical reservation or signing readmission agreements – were based on rational calculations, and were not used as mere bargaining chips.

[10] The general framework of EU-Turkey relations (including accession) is embodied in the following documents: the Ankara Agreement (1963) and protocols (the Additional Protocols of 1977 and 2005), the Regular Progress Reports (prepared by the European Commission since 1998), the National Programmes for the Adoption of the Acquis (NPAA), accession partnership documents, association council decisions and the Enlargement Strategy Papers (since 1998). Other important documents include the Turkish National Action Plan for the Adoption of the EU acquis in the field of Asylum and Migration. All documents are available in English at http://www.ab.gov.tr/index.php?p=113&l=2

The second period (2011–present) coincides with the onset of Syrian mass migration in 2011, which provoked significant shifts in immigration and asylum policy for Turkey and the EU and, thus, impacted EU-Turkey relations more broadly. Turkey was still implementing previous EU demands when the migration wave started, and increased pressure to complete them arose. This was partially achieved with the enactment of the LFIP in 2013. The new law is practically the most evident illustration of Europeanization in Turkey. It was created through a process through which the EU actively supported Turkish institutions through capacity building and technical infrastructure in drafting asylum legislation.

Within this period, the most significant driver, Syrian mass migration, caused a shift in EU-Turkey relations regarding the relative advantage of the parties in terms of migration cooperation. One of the significant developments was the EU-Turkey Readmission Agreement was signed on 16 December 2013 in parallel with the commencement of the Visa Liberalisation Dialogue. Both sides committed themselves to international burden sharing, solidarity, joint responsibility and common understanding. The two sides also agreed to remove Turkey's geographical derogation in the 1951 Convention; however, Turkey agreed to remove this restriction upon the completion of the accession negotiations to become a full member. The determination of both sides was to make sure that the Readmission Agreement was successfully operated and that Turkish citizens could have the right to visa-free travel. On 22 July 2019, however, the Turkish Government officially announced the suspension of the EUTRA in response to the EU's sanctioning of Turkey's gas drilling operations in Cypriot waters. Turkish Foreign Minister Mevlüt Çavuşoğlu announced that the Government suspended its readmission agreement "not only due to the EU's recent sanctions. The decision was also taken because the EU still has not introduced the agreed-on visa-free regime for Turkish citizens" (Euractiv, 2019). Çavuşoğlu also stated that "We will not wait at the EU's door. The readmission agreement and visa-free deal will be put into effect at the same time" (Daily Sabah, 2019).

Another turning point within this period was reached in 2015, when a dramatic increase in irregular and mixed flows and migrant deaths at EU external borders occurred, a development that came to be known globally as the European refugee crisis. Despite the EU's longstanding image as a normative power, a lack of EU solidarity undermined the formation of a collective response to the crisis, casting the limitations of common border and migration control and refugee burden-sharing systems within the EU into sharp relief. As the refugee crisis climbed to the top of the European political agenda, Turkey found an opportunity to use migration as a foreign policy tool. Thus, the refugee crisis appeared to be an asset for Turkey to use mass migration as a bargaining chip in its relations with Brussels. The mass migration from Syria was incorporated into the broader EU-Turkey negotiating field, where Turkey gained valuable leverage vis-à-vis Brussels (Gökalp-Aras, 2019a). Due to the sharp increase in crossings from Turkey to Greece, a new policy tool, the Joint Action Plan (JAP, 2015) and the EU-Turkey Statement (Statement, 2016) were introduced.

With the Statement, the European Council and Turkey agreed on three main objectives: preventing loss of lives in the Aegean Sea, breaking migrant smuggling networks, and replacing illegal migration with legal migration. According to Article 1 of the Statement, Turkey agreed to accept the return of all migrants not in need of international protection who crossed into Greece after 20 March 2016 and to take back all irregular migrants intercepted in Turkish waters. It formulates a regulation known as the "one-to-one" formula, which states that for every Syrian returned to Turkey from the Greek islands, another Syrian will be resettled in the EU, up to a maximum of 72,000 people (Article 2). The Statement also mentions upgrading the customs union and "re-energising the accession process" for Turkey to obtain full membership. The existing incentives within the externalisation framework, such as capacity building support and financial aid, are also included, but on more generous terms (Statement, 2016).

From 2016 onwards, Turkey began to hint that it might open its borders if the EU failed to meet its demands. After the European Parliament voted on 24 November 2016 to suspend accession talks with Turkey. The Turkish Government continued this threatening rhetoric targeting EU until 28 February 2020, then acted on it by opening the Turkey-Greece border. The timing of the action is not coincidental, and it is strategic. This came in response to attacks against the Turkish military in Idlib in Syria. However, neither the EU nor Turkey repudiated the EU-Turkey Statement as this new crisis unfolded. The last readmission was completed in March 2020 with 23 readmissions (UNHCR, 2020), a number which was confirmed by representatives from NGOs, IGOs and the EU as part of the second tranche of fieldwork.

After 5 years in operation, the future of the EU-Turkey Statement remains an essential and highly discussed question. Both Turkey and the EU frequently highlight its 'success' in reducing the number of irregular entries and deaths in the Aegean. Regarding the future of the Statement and its renewal, Turkey emphasises the need to reflect Turkey's emerging demands and to revise its financial component as well as to expand it to include other nationalities, not only Syrians. Turkey also stresses the need for collaboration in cross-border operations to expand the number of safe regions in Syria for voluntary returns (TRT Haber, 2021).

## 2.4 Conclusion

The above mentioned legal, institutional, political and discursive frameworks consistently create temporality, precarity and complexity in the form of a variety of stratified legal statuses. This is further enhanced by implementations on the ground. The most explicit outcome in this regard is that Turkey does not provide full refugee status to non-European asylum seekers, who make up the majority of internationally displaced people who made their way to Turkey. This is not accidental or an outcome of lacking experience in law-making; rather, it is a strategic choice. The motivation is to partially to prevent the situation of being a permanent country of asylum that has to oblige in giving all rights, including integration options, because of

granting refugee status to a large number of asylum seekers fleeing from turmoil in the Middle East and Asia. As such, the Turkish state seeks to retain a space to manoeuvre around refugee rights if it perceives a political need, particularly in the case of "crisis-like" situations touching upon domestic security issues and geopolitics, as experienced with the 2011 Syrian flows. As will be discussed in the following chapters, strategic temporality at the governance level confines refugees into the indeterminate situation of liminality. The complexity of legal statutes and ambiguity of everyday state practices worsens this endless liminality situation for many refugees who find themselves reacting to or coping with the situation.

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