



# BOFAXE

## PUBLIC HEALTH AS A STRATEGIC INSTRUMENT (PART 1)

### Refugee Sex Workers in Turkey as an Illustration of International Law's Neglect

Public health as a policy pursuit and a legally prescribed goal has consistently served as a veneer for the implementation of discriminatory policies. Migration laws and policies have also played a notable role in discriminating against refugees under the pretext of public health considerations. Kraut [explains](#) that the connection between public health and migration is the 'double helix of health and apprehension towards the foreign-born'. In the context of refugee sex workers, the 'apprehension' enables efforts to enforce heightened public health measures. The [Turkish Law on Foreigners and International Protection \(LFIP\)](#) incorporates 'public health' as a prerequisite for refugees to not face removal decisions (Art. 54). Sex workers employed in Turkey are perceived as potential risks to public health due to their engagement in precarious and unmonitored work environments, which may have a risk on their [safety and well-being](#). According to Article 24 of the [Refugee Convention](#), contracting states are obligated to provide refugees lawfully staying in their territory with the same treatment as that accorded to nationals in respect of social security including occupational diseases. While international law mandates equal treatment for refugees in accessing medical care, the distinct and marginalized status of refugee sex workers necessitates a reconsideration and critique of both international law and Turkey's responsibilities as a state.

#### Legal Background

Building upon [Charlesworth et al.](#)'s argumentation that the international legal order often neglects the voices of women, international jurisprudence assumes the universal and neutral applicability of norms directed at individuals within states. Yet, there is insufficient recognition that these principles may impact men and women differently, resulting in the silencing or discounting of women's experiences with the operation of these laws ([Charlesworth et al.](#), 621-625). This reality becomes more severe and challenging when we talk about an even further marginalized group like sex workers. When reconsidering the mandate of equal treatment for refugees in obtaining medical care as stipulated by the [Refugee Convention Art. 24](#), the incorporation of sex worker refugees' rights as workers [was not encompassed](#) within the discussion. Similar to the [Refugee Convention](#), there is no international law that adequately addresses the fundamental rights and necessities of sex workers, including those who are refugees.

In addition to the lack of necessary measures for refugee sex workers, there is also an absence of provisions safeguarding them from heightened marginalization. An example of this can be given from the lack of a standardized definition for the term 'public health' within international law, leading to ambiguity and varied interpretations. While the concept of public health is integral to domestic law, establishing its standards and boundaries on the international level could serve to prevent rights violations and marginalization. The projection of this failure at the national level can be given through the example of refugee sex workers in Turkey, who are subjected to a series of rights violations on the pretext of public health.

In the context of refugee sex workers in Turkey, the term "public health" presents various challenges and complexities, primarily rooted in the domestic legal framework. According to [Ördek \(2017\)](#) while the legislation regarding sex work in Turkey has a regulatory feature on the one hand, it has prohibitive, preventive, and punitive features on the other hand. Under Turkish laws, sex work is not illegal (see [Penal Code](#)), paving the way for the establishment and operation of state-run brothels. However, for a sex worker to engage in lawful employment, they must operate within a state-run brothel, hold the necessary licenses (see [Prostitution Law](#)), and be citizens of Turkey (see [Passport Law](#)). Not satisfying any of these criteria results in the illegality of engaging in sex work in Turkey.

Refugee sex workers, as foreigners in Turkey, are forced to operate illegally in the country's context. This illegality especially gains significance considering the fact that it can be a basis for a removal decision under [Article 54 of LFIP](#): 'A removal decision shall be issued in respect of those foreigners [who] (1) made their living from illegitimate means during their stay in Turkey; (2) pose a [...] public health threat'. The findings from field research [indicate](#) that the public administration interprets the aforementioned article to imply that individuals involved in sex work earn income through 'illegitimate' means or pose a threat to 'public health'. This threat usually results in the arrest of refugee sex workers. After being arrested, sex workers undergo medical examinations at hospitals specializing in sexually transmitted infections (STIs). If they test positive for any STIs, they are deported, and their STI status is documented. If there is no sign of infection, they are still deported and noted as participating in illegal prostitution (see [here](#) and [here](#)).

[Kivilcim](#) argues that there exists an active legal inaction in terms of the protection that is needed by the refugees. Legal inaction, a potent form of legal violence, manifests when sovereign authorities deliberately abstain from enacting legislation to regulate activities impacting refugees' lives and safeguard their rights. While relevant legislation may exist, the lack of implementation by legal authorities contributes to this legal violence. Instances include prosecutors refraining from investigating crimes against refugees or public authorities failing to address discrimination. In addition to international law's neglect of sex workers as a marginalized group, the state's legal inaction against the subjects leaves refugee sex workers without a legal remedy.



# BOFAXE

## PUBLIC HEALTH AS A STRATEGIC INSTRUMENT (PART 2)

### Refugee Sex Workers in Turkey as an Illustration of International Law's Neglect

#### Where Does this Leave Refugee Sex Workers?

The Women's Refugee Commission (WRC), an advocate and policy developer for the rights and well-being of displaced women, children, and youth, in its 2016 report on refugee sex workers reveals that involvement in sex work amplifies the vulnerability of refugees to gender-based violence (GBV), especially in the areas where sex work is criminalized. Refugee sex workers have noted heightened risks of violence and increased exposure to HIV or other STIs, stemming from interactions with both clients and police. The participants in the report state that they engage in sex work due to limited employment opportunities and find it more financially rewarding, reliable, and with more flexible hours compared to other available jobs. Despite its inherent risks, sex work is perceived as sometimes safer than other informal sector jobs where sexual assault and harassment are prevalent. Refugees note that wage theft is often less common, and sex work provides greater autonomy over work hours, particularly advantageous for working mothers. Working conditions vary, and those on the streets face higher risks of violence compared to those in nightclubs or hotels.

WRC's report highlights the employment experiences of refugee sex workers in Turkey as well. In addition to the heightened risk of gender-based violence (GBV), these workers are compelled to rely on intermediaries due to the impossibility of obtaining official licenses and registration. The existing regulations in Turkey, designed to uphold general health and public order, inadvertently hinder the unregistered sex work sector, creating additional challenges for sex workers and subjecting them to the control of intermediaries. This not only damages the health of sex workers but also poses risks to public health. Furthermore, it is reported that refugee sex workers struggle to access crucial health services. Limited information on sexual health, healthcare facilities, and HIV testing centres, combined with the informal nature of sex work involving intermediaries, poses significant challenges.

#### Instrumentalization of the Notion of 'Public Health'

Refugees engaged in sex work are prohibited from registering as licensed sex workers under the existing law in Turkey. Consequently, they are compelled to seek clients through alternative means or operate under intermediaries. The unmonitored working environments resulting from this situation create unsafe conditions for sex workers, exposing them to risks like HIV or other STIs. Paradoxically, the state, which contributes to these unhealthy working conditions, then labels the sex worker as a threat to 'public health', empowering state organs to potentially deport or detain them. This term grants authorities the discretionary use of power without emphasizing the state's responsibility to provide necessary health protections to refugees in the first place.

Refugee sex workers in Turkey find themselves entangled in a complex web of legal challenges and discriminatory practices. While Article 24 of the Refugee Convention aims to ensure equal treatment for refugees in terms of legal provisions related to sickness, employment injury, and occupational diseases, it falls short in addressing the specific needs of sex workers among refugees. The absence of a dedicated provision leaves refugee sex workers without a legal remedy tailored to their situation. Despite the legal landscape allowing Turkish nationals engaged in sex work to access necessary protections, the interpretation of the notion of 'public health' by the public administration hampers the rightful access of refugee sex workers to these protections. The system, by framing sex workers as a perceived threat to public health, not only denies them the essential safeguards but also perpetuates discrimination, a violation of international conventions and laws. This underscores the urgent need for legal frameworks that account for the unique challenges faced by refugee sex workers, ensuring that their rights are not overlooked in the broader discourse on refugee protection.

Remembering Kraut's explanation of the connection between public health and migration, the involvement of sex work in the paradigm makes a triple helix of health, an apprehension towards the foreign-born, and a neglect towards the sex worker. We can only get out of this helix through the removal or detailed explanation of the term 'public health'. Although the removal of the term might be too big of a stretch while bearing the risk of creating legal loopholes, the reimagination, and reexplanation of the term in the case of sex workers can help end the term's arbitrary usage.