



AB- TÜRKİYE MUTABAKATINDAN YENİ GÖÇ VE SİĞİNMA PAKTINA: 21. YÜZYIL İNSANİ KRİZİNE AB'NİN CEVABI

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FROM EU- TURKEY STATEMENT TO NEW PACT ON MIGRATION AND ASYLUM: EU'S RESPONSE TO 21. CENTURY'S HUMANITARIAN CRISIS

ÖZ Moria Kampı'nın yanmasından günler sonra Avrupa Komisyonu Yeni Göç ve Sığınma Paktı'nı yayınladı. Pakt, tüm Avrupa Birliği'nde sorumluluk ve dayanışmada denge sözü veriyor. Yine de Plan, Türkiye gibi ülkelerle, hali hazırda AB- Türkiye Mutabakatı ile zaten yürürlükte olan uluslararası işbirliğinin derinleştirilmesini gerektiriyor. Diğer taraftan, beşinci yıldönümüne yaklaştığı şu günlerde, AB- Türkiye Mutabakatı, hem insan hakları hem de uygulaması bakımından ciddi eleştirilerle karşı karşıya.

Bu makale AB'nin 21. yüzyılın insani krizine resmi karşılıklarına odaklanmaktadır. Çalışma öncelikle 2016 tarihli AB- Türkiye Mutabakatı'nın hem Türkiye hem de AB bakımından düzenlenmesi ve uygulanması üzerinde duracaktır. Daha sonra tartışma AB'nin Yeni Göç ve Sığınma Paktı ve bunun AB- Türkiye Mutabakatı açısından anlamı ile devam edecektir.

Anahtar Kelimeler: göç, sığınma, insan hakları, Avrupa Birliği, Türkiye

ABSTRACT

Days after the burning of Moria Camp to the ground, the European Commission released its "New Pact on Asylum and Migration". The Pact promises a balance between responsibility and solidarity in the whole European Union. Yet, the plan still requires deepening international partnership with states like Turkey which seems like an action already prevails considering the EU- Turkey Statement. On the other hand, nearly in its fifth anniversary, the EU- Turkey Statement faces serious criticisms regarding human rights and including its implementation.

This article focuses on the EU's official response(s) to 21st century's humanitarian crisis. The study will first focus on the regulation and implementation of the EU- Turkey Statement of 2016 both regarding Turkey and EU. Then the discussion will continue with the EU's New Pact on Migration and Asylum and its meaning for the EU- Turkey Statement.

Keywords: migration, asylum, human rights, European Union, Turkey



INTRODUCTION

When the EU and Turkey concluded the EU- Turkey Statement (The Statement or The Deal) as a solution for mass migration, criticisms and concerns were revealed immediately from several different parties. The main concern with the Statement is that it is in conflict with the basic principles of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Besides not being compatible with international law's fundamental document on refugees' rights, the EU- Turkey Statement's planned "returning process" violates several provisions of the European Convention on Human Rights, especially article 4 of Additional Protocol 4 "prohibition of collective expulsion of aliens", which all members of the European Union and Turkey are subject to as High Contracting Parties.

1951 Refugee Convention has been a profound accomplishment and commitment after the violence and sufferings people had been through during World War II. After more than 60 years, regrettably, Europe is engaging in careless agreements, taking several steps back from that success, turning its back to displaced people urging for international protection. Besides, the EU- Turkey Statement mainly focuses on Syrian refugees (European Council, 2016), which means that all the parties are breaching the European Convention on Human Rights' prohibition of discrimination along with other violations. Numbers so far shows the EU's slow progress of relocating refugees (Marin, 2016: 8- 9).

Members of the Union have also been condemning the Deal as it is pushing EU- Turkey relations to an agitated situation. The promise of visa-free travel for Turkish citizens inevitably turns the agreement, the refugees in particular, into leverage. As of the last months of 2020, the promise of visa-free travel seems to stay on hold. Turkey is now home to an official number of 3.6 million Syrians (UNHCR, 2020). The situation has financial and societal consequences for this country. Regarding legal statuses of Syrians in Turkey, Turkey retains a geographic limitation to 1951 Convention; it limits refugee status to those fleeing from events occurred in Europe. Consequently, the status of Syrians in Turkey is framed with "temporary protection" and they cannot make any asylum claims in this country. Considering this, the EU- Turkey Statement is also a temporary solution itself and European states at the first place should start to share the burden of this humanitarian crisis permanently and urgently.

To reflect the shortcomings of the EU- Turkey Statement in special and its asylum system in general, the EU launched a New Pact on Migration and Asylum. Contrary to expectations, the New Pact is far from reflecting the crisis' global dimension and offers repetitive solutions from similar previous documents. In this respect, it would be so optimistic to expect from this document new groundbreaking solutions to 21st century's humanitarian crises. To evaluate the capacity of the New Pact, this study will first examine the EU- Turkey Statement as an outsourcing regulation for the Union's migration "problem" and then focus on the new Proposal and evaluate if it offers feasible "solutions".

PROVISIONS of the EU- TURKEY STATEMENT and its IMPLEMENTATION POSSIBILITIES The Syrian humanitarian crisis started in the early 2011 and left 13.1 people in need (UNHCR, 2020). Within this number the internally displaced (in Syria) is close to 7 million. The rest is dispersed mostly to regional states with the hope, at least at the beginning, to reach European welfare states like Sweden and



Germany. Turkey has been one of the hot spots since the beginning, mostly attributed as a transit country due to being on the Eastern Mediterranean Route, relatively most secure route to Europe. The movements towards Europe via Turkey dramatically increased in the last four months of 2015. These developments triggered the conclusion of the EU- Turkey Statement in the early 2016. The Statement aims to prevent irregular migration towards the European Union with the help of Turkey. In this respect, Turkey is expected to stop migration from its borders, especially via Aegean Sea, to Greek islands and mainland Europe (European Council, 2016). Turkey also undertakes the duty to accept “irregular migrants” from EU Member States. In return, the EU is supposed to share the financial burden with an aid of 3+3 billion Euros and a voluntary resettlement scheme is launched among the Member States (European Council, 2016). For every “irregular migrant” deported from European jurisdiction, one displaced person waiting in Turkey will be settled to a European country. This aspect of the Statement has made it called “one-to-one deal” or “one-in-one-out deal” in the media (See BBC, 2016; Vanstreels, 2016; New Statesman, 2016).

While Turkey becomes home to 65 % displaced Syrians, the EU is still insisting on using a voluntary scheme to resettle refugees, or “irregular migrants” according to the official terminology, which means the major crisis of 21st century is expected to be solved between only a few actors. The EU’s refugee resettlement programme is based on voluntary participation, and this allows some of the member states staying out of the responsibility circle. According to the Turkish Directorate General of Migration Management, as of November 2020, only 27.225 Syrians are resettled in line with one- to- one scheme (Göç İdaresi, 2020). In an early press release on the 15th of June 2016 regarding EU- Turkey Statement, the European Commission reviewed the implementation of the Statement giving positive signs yet stating “progress is still so slow” (European Commission, 2016 b). Reflected immediately in early numbers, the decrease in numbers of people trying to reach Europe via the Eastern Mediterranean route can be evaluated as an accomplishment. Yet the statistics show migration flows only changed pathways (Idemudia and Boehnke, 2020: 34- 41). The Commission also designated the next implementation phase to support Greece through processing asylum applications which is vital for people waiting hopefully to resettle in Europe (European Commission, 2016 a). On the other hand, the EU- Turkey Statement’s second article highlights that the EU as a whole is planning to end “irregular migration” by resettling a limited number of people; the exact number assigned in the Statement was 72.000. Given that the number of Syrians fled their homes and crossed the border is close to 5.6 million (UNHCR, 2020) and the fact that this number inevitably increases with new crises in Mosul and elsewhere, the plan is not anywhere near to being a solution.

Compared to other documents of this importance, the EU- Turkey Statement is critically abstract and non- detailed. Obvious deficiencies were planned to be covered step by step with the help of the Commission’s regular reports and factsheets. By the end of November 2020, regretfully, loopholes of regulation are countless. For example; 1951 Convention on Refugees rules wage-earning employment as a fundamental right to refugees and orders Contracting States to accord them (refugees) the most favourable treatment accorded to nationals of a foreign country in the same circumstances (UNHCR, 1951: Article 17). Accordingly, the EU- Turkey Statement cites Turkey’s opening of its labour market to Syrians under temporary protection as progress. In reality, Turkey’s labour market is already full even for



the country's citizens with high unemployment rates. A recent study shows that almost 1 million Syrians are active in working life (Erdoğan, 2020: 8). Considering only around 50000 work permits are issued, a majority of Syrians still either works undocumented or as seasonal workers (Mülteciler Derneği, 2020; Arslantürk and Tunç, 2018: 163- 165). If Turkey's labour market is open to Syrians it is either so restricted or, what is worse, there is a severe number of unregistered employees. Syrians, mostly living in urban areas (UNHCR, 2020) are struggling with economic abuse and their unregistered employment is bringing on severe societal problems. The same situation applies to non- Syrians as well. Labour market accession according to profession and talent will accelerate and expedite refugees' integration to society. The increasing movement of refugees puts pressure on the international community, as UNHCR declares "climate of xenophobia has taken hold of Europe" (UNHCR, 2016). The best possible way to overcome the struggle is to facilitate and accelerate integration process.

Looking through Turkey's economic parameters, the labour market issue is a real challenge. Turkey has a population of 82 million, composed of mostly young people looking for a job, which means that labour market in Turkey is also overcapacity and very competitive. Only after the Syrian civil war, 6.6 million people fled their homes. If we consider the ones from Iraq, Afghanistan and other countries of departure, the number is beyond comprehension. In this respect, integration to the labour market and consequently to society is a real struggle, even with the unprecedented financial help of EU states.

While Turkey is hosting a significant number of people crowded than some European countries, the numbers the EU member states proposed to resettle are compromising less than %2 of individuals waiting to be relocated. In this respect, accommodation is another controversial aspect of the current situation emerging from the EU- Turkey Statement. People fleeing from war zones are forcibly staying in reception facilities, especially in the Greek Islands. This "compulsory stay" is obviously against the 1951 Refugee Convention's Article 21 titled "Housing" which reads; "... public authorities shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances" (UNHCR, 1951: Article 21). European Commission itself refers to detention as a last resort and that it should stay in the limits of proportionality (European Commission, 2016 a). After four and a half years of implementation, it seems detention has become a "normal and regular" procedure especially in Greek islands.

Accommodation/ detention process is more problematic regarding the international obligations to protect minors. The Commission asked Greece to pay particular attention to the needs of vulnerable people and unaccompanied children, who in principle should not be detained (European Commission, 2016 c). To start with, the definition of vulnerability or which groups are designated as vulnerable is not clear in any legal document; there is no official and legal description for "vulnerable people", which leads to inevitable subjectivity. The EU- Turkey Statement's second action point reads "For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from to the EU taking into account the UN vulnerability criteria" (European Council, 2016). Even though the criteria cannot be followed from formal UN documents, UNHCR lists some conditions for guidance in its website. According to the Refugee Agency's Vulnerability Screening Tool, survivors of violence and torture, people in medical need, women



at risk, people seeking to reunite with their families, children and adolescents, older people and people with lack of integration prospect should be assessed as vulnerable groups (UNHCR, 2016 b).

Non-refoulement is another gap for the implementation of the Statement. Even though the European Commission emphasises the importance of continuing protection and respect to the principle of non-refoulement and it is highlighted in the Statement that the safety of refugees will be regulated in parallel with non-refoulement principle (European Council, 2016), human rights organisations report otherwise. NGOs criticise and focus on so-called forcibly return process of some groups to Syria (Amnesty International, 2016; Human Rights Watch, 2019). On the other hand, in line with the implementation of the EU- Turkey Statement, by returning asylum seekers, the EU is also violating its own Dublin Regulation which requires persons with families in European states to be transferred to those states for further asylum procedure or residency.

NEW PACT on MIGRATION and ASYLUM

Only days after Moria Camp disaster, the EU issued their “New Pact on Migration and Asylum”. Though its official language is structured to eliminate the former criticisms on the EU- Turkey Statement and Dublin System, the EU still seems to hover. Early reactions to the New Pact are at least distancing. “Three-floored” action plan is condemned with trying to keep people out of the EU zone (Nielsen, 2020). Indeed, European Commission draws a plan that primarily targets external dimension of the “problem”. As Nielsen summarizes, the plan consists of three circles or “floors” as Margaritis Schinas, European Commission’s Vice President addresses it (Nielsen 2020). The first and the outer circle of the plan is “external dimension with countries of origin” (Nielsen, 2020). This part is also reflected under the title “deepening international partnerships” (European Commission, 2020 b) which focuses on five key areas; “supporting other countries”, “creating economic opportunities”, “fighting migrant smuggling”, “improving return and readmission” and “developing orderly channels for legal migration”. Second circle is built on strengthening Frontex with more staff and tools which is detailed under “well-managed Schengen and external borders” (Nielsen, 2020; European Commission, 2020 c). Third phase is based on the notion of solidarity and distribution of asylum-seeking arrivals throughout the EU (Nielsen, 2020). This phase is detailed under the title “Effective Solidarity” and requires assessment of difficulty for recipient member states and accordingly other member states’ contribution towards their fair share (European Commission, 2020 d). With the lessons learned from the 2015 crisis, the document aims to address disproportionate responsibility among Member States (European Commission, 2020 e). The action plan as a whole proposes a new document to replace highly criticized Dublin Regulation (Protect, 2020). The new document, “The Asylum and Migration Management Regulation”, is expected to be effective by the end of 2020 (European Commission, 2020 e). The action plan and proposed New Regulation stresses solidarity and with reference to European Court of Justice, underlines the importance of all Member States’ contribution in the field of migration and asylum (European Commission, 2020 e).

The New Pact on Migration and Asylum is evaluated as a “fresh start” to eliminate shortcomings of the former system. The New Pact proposes a plan to exclude possibilities of disproportionate responsibility for some states and strengthen the idea of solidarity. The main task of the document is framed as “managing and normalizing migration for the long term in line with European values and international



law” (European Commission, 2020 e). In line with these promises, the New Pact offers “a new, durable European framework” (European Commission, 2020 e). The positive view is shadowed with realities. As Jan Fridthjof Bernt points out in an early assessment of the Pact, the EU, once again, aims to outsource the problem (Protect Project, 2020). Bernt also stresses EU members’ reluctance in acting in line with the 1951 Convention since it would mean granting more protection and safety to the displaced people. The atmosphere after the Moria disaster also creates tensions and disagreement among member states and it sure will affect the implementation process of the Pact (Protect Project, 2020). The New Pact seeks to ease the tension created by Dublin System in 2015, accordingly offers a shift from the Dublin system in relocation, which was focusing on the country of first arrival, “to an emphasis on the well-being of children, family ties, and academic ties” (Ruy and Yayboke, 2020). The proposal gives choice to member states; either to relocate or finance (Ruy and Yayboke, 2020). While promising for more solidarity, certainty and clarity (European Commission, 2020 e), disagreements between the member states seems to persist. For example, while frontline states like Greece, Italy and Spain find the proposal “not far enough” (EURACTIVE, 2020), Poland, Hungary and Czech Republic are asking for more radical remedies. These members see the solution on stopping migration (Ruy and Yayboke, 2020) which is almost an impossible task.

Instead of facing the humanitarian aspect of the 21st century’s reality, to include all member states, the New Pact puts more stress on “return sponsorship” which is highly criticized by human rights organizations. Apart from its effects on individuals, the return sponsorship is strictly dependent on third countries (Chadwick and Monella, 2020) which should result with displaced people becoming leverages. In addition, the promise of speeding up border procedures also raises other red flags. Faster asylum determination procedures most probably will have a degrading effect on procedural guarantees and rule of law (Chadwick and Monella, 2020).

CONCLUSION

It is no big secret that the European Union has its struggles on the refugee issue amongst others. The climate brought to the EU- Turkey Statement, and the Statement itself, in particular, reveals domestic political concerns of leaders and how the level of concern can force 27 states with daily changing interest to find consensus (Collett, 2016). Yet the agreement is aiming to protect the borders not “the vulnerable ones”. Before the parties conclude, the European Council’s then President Donald Tusk was defining their plan to structure “a large scale mechanism to ship back irregular migrants” (Collett, 2016). The final document has moved away from furious political statements, promised a more reliable and sustainable asylum assessment process in cooperation with UNHCR. Given the undetailed structure of the Statement, the credibility of the asylum process and right to appeal is still in question.

It seems New Migration and Asylum Pact aims to strengthen the implementation of the EU- Turkey Statement and other similar documents (Sinclair, 2020). Here the primary aim is to prevent people from knocking the doors of EU and if somehow they do, the goal is to accelerate and ease the return process. Contrary to its title, the Pact’s priority is to secure the borders, not to regulate or ease asylum procedures (Kirişçi et al., 2020). The “new” document does not state anything in terms of human rights and refugee rights. While creating its own critics the New Pact still has some road to go; needs the approval of the



European Council and Parliament. While proposing a plan to rewind Dublin’s failure, the Pact still has various similarities with the Dublin system. Yet it has some positive aspects like setting common principles for granting international protection and improvement of reception conditions across member states (Chadwick and Monella, 2020).

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