

Event Report

BÖLL LUNCH DEBATE

The EU-Turkey Refugee Deal: Failure, Success or Betrayal of European Values?¹

The EU-Turkey agreement on how to 'end the irregular migration from Turkey to the EU' entered into force on 20 March. The agreement was immediately called immoral by many critics who emphasised that the European Union had spent several decades preaching its own high asylum standards to other countries whereas now it has come under pressure by an unprecedented high arrival of refugees seems to be all too ready to betray its own principles. In the meantime the 'refugee deal' has been challenged at the European Court of Justice by three refugees and recently Médecins Sans Frontières (MSF) refused further EU funding as a protest against the 'continuing attempts to push people and their suffering away from European shores'. Human rights groups have accused Turkey (that with 3.1 million registered refugees hosts the largest number of refugees in the world) of deporting refugees to unsafe countries like Syria, Iraq and Afghanistan. The EU maintains that the deal is perfectly legal and respects the refugee laws and the principle of non-refoulement. What are the effects of the three months-old agreement on Turkey, on Europe and on the refugees? Will the agreement collapse in case the visa liberalisation for Turkish citizens cannot be achieved? Will the refugees pay the price for the growing tensions between Brussels and Ankara?

While the EU-Turkey 'agreement' (technically a 'statement') had the effect of decreasing the number of new arrivals on the Greek islands, considerable legal and social challenges remain. Since the accession negotiations opened in 2005, the EU has exerted substantial pressure on Turkey to advance its legislation and harmonise it with European laws. Although Turkey is a formal signatory to the 1951 Geneva Convention, there are substantial flaws in the Turkish legislation and practice. Until 2013 Turkey did not have any specific laws how to administer asylum applications and instead worked only with instruction directives. Through the accession process, the EU pushed Turkey to create legislation which guarantees to uphold basic rights and freedoms for refugees. Chapter 24 concerning asylum and migration of the EU acquis resulted in a national action plan for the adaptation of the acquis in 2005. This document served as the foundation for the Turkish reform process in the following years. The best results were achieved mainly in four areas: strengthening the administrative capacity, formulating more advanced laws for the protection of refugees and implementing and financing integration measures. This process also generated the Directorate General Migration Management (DGMM) – a civilian agency, which is responsible for adjudicating all migration matters. Prior to this these matters were dealt with by the Turkish police. It has to be emphasised that the EU accession process was the most influential factor in progressing laws and measures for the protection of refugees in Turkey and the protection of refugees improved substantially during these years. In 2013 Turkey became the country hosting the largest number of refugees in the world with 2.7 million registered and about 3 million unregistered.

The 2016 EU-Turkey deal risks to eradicate the achievements that were made before. The EU seems to have decided to turn a blind eye to Turkey's violations of asylum laws, for example the right to an individual assessment, legal remedy and fair detention conditions. In the 2016 progress report on Turkey, the Commission stated that Turkey has managed to

¹ The event took place on 13 July 2016. Guest speakers were: **Veysel Eşsiz**, Programme Officer Refugee Rights Center Turkey (RRT); **Omar Kadkoy**, Analyst, The Economic Policy Research Foundation of Turkey (TEPAV); **Reem Alsalem**, Consultant in Humanitarian Affairs; formerly UNHCR staff and **Simon Rau**, Mercator Fellow and former personal consultant to the General secretary of the European Centre for Constitutional and Human Rights. The debate was moderated by **Klaus Linsenmeier**, Director Heinrich-Böll-Stiftung European Union. The opinions expressed do not necessarily represent the views of the Heinrich-Böll-Stiftung.

deal with almost all asylum requests coming from a backlog of about 140.000 in February 'thanks to the new proactive approach by the DGMM'. However, if we consider that in order to reduce the backlog, the DGMM managed to decide about 31.000 applications in 24 working days, which makes 1.291 decisions per day, it is hard to imagine that they are based on a fair and individual assessment. The missing quality of such an amount of decisions in such a short period is ignored and the procedure is cited as a good example. Furthermore, it is claimed that the appeal system is 'effectively running'. This claim is based on the fact that out of 28 cases following appeals from refugees since 2014, in '27 the DGMM won'. Apart from using the odd rhetoric of 'winning' relating to appeal cases, this is far from being an appropriate indicator for a running system. The pure fact of only having had 28 appeal cases since 2014 in a country with 3 million refugees should cause suspicion. Furthermore the access to legal representation is complicated for refugees, because a process is foreseen to last no longer than 15 days. On a similar note, detainees have no legal remedy to challenge detention conditions. It is unfortunate that the EU accepts the lip-service Turkey is showing although it is aware of the underlying violations of asylum law. In this way the EU-Turkey deal contributes to the erosion of the progress that was made before. What the deal will not do is keep people from migrating in the long run.

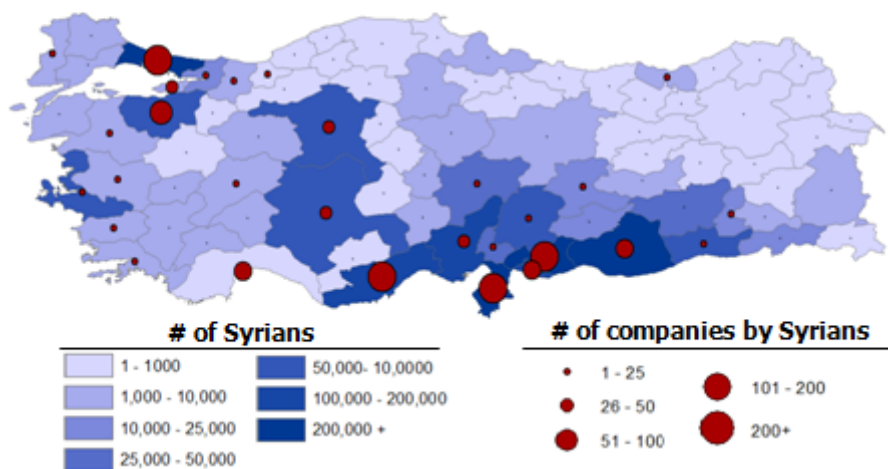
Syrians in Turkey

In order to further understand the implications of the deal, the economic situation of Syrian refugees in Turkey needs to be analysed in detail. Syrians in Turkey are mostly young and their presence is concentrated in a few regions. Most are located in the south-east region and the urban centres. This unbalanced concentration of refugees in certain areas is stretching public services severely. This is a dangerous situation, because the struggle of so many people for relatively scarce public services can lead to tensions between local and migrant communities



Integration through interaction

Creating not only demand, but also supply



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Migrants and locals also compete for informal jobs, which is another problem as the unemployment rates are high, especially in the south-east. Here Syrians are located in areas where the unemployment rate is higher than in the rest of Turkey. In the city of Kilis, the

influx of migrants has been so high that there are now more Syrians than locals. In such a situation all depends on the acceptance of the Turkish community.

When Turkish citizens were asked in a recent opinion poll what they expect from the immigrants, the answer was that they should be skilled, an added value to society and speak Turkish. This result came as no surprise: anybody with these three qualities will be able to survive. Another finding was that Turks would generally accept Syrians in their city but are more reluctant to accept Syrians to live in close proximity to their own family.

In economic terms, the integration of Syrians is beneficial for the national economy of Turkey. Most Syrians are sustaining a living without depending on state support. By now there is a high number of Syrian entrepreneurs. At the time 3% of Turkey's population is of Syrian descent; interestingly 3% of the newly established companies have been founded by Syrians. The Syrians in Turkey bring about a connection of Turkish and Syrian economies and the volume of exports for Turkish companies to Syria is rising to pre-war levels again, while some provinces' exports even quadrupled. Turkey experienced a recent 4.8% GDP growth in the first quarter of 2016, which can mainly be traced back to the increase through Syrian consumption and the raise of national wages. While integration up until now has proceeded in a rather 'laissez-faire' sort of way, Turkey now foresees to integrate Syrians in a more structured way. It remains to be seen how this will work out and whether it will add to the benefit of both communities.

The impact of the EU-Turkey deal on migration flows

After having analysed the effects of the EU-Turkey deal on the Turkish refugee situation, it is just as important to assess the impact on the migration flows, especially in Greece. Here it must be noted that the decline of arrivals is a direct consequence of the introduction of the deal. Simultaneously, the EU has stepped up the support for Greece in financial terms. This had been a problem before, but recently the funds have been increased and with it the number and quality of the camps. Although the Greek system is working better now, the overall situation for refugees remains precarious. The overwhelming majority of refugees residing in Turkey at the moment originate from refugee producing countries. As of June 2016, the top three nationalities among arrivals to Greece are Syrian Arab Republic (48%), Afghanistan (25%), and Iraq (15%). This shows that there are serious push factors at play forcing them to flee persecution, violence and human rights violations in search of safety. They are and will continue to find other ways to move further to Europe, including through and routes and other sea routes. Smugglers will adapt; persons in need of international protection will find other routes that are most likely to be more dangerous and more expensive. Therefore seen as part of the bigger picture, this deal and the efforts made in Greece will not succeed in the overall goal of terminating the arrival of refugees; neither do they live up to the requirements of the EU acquis on asylum. Europe will need a more effective responsibility sharing – with or without the deal. But this is not happening on the necessary level and the relocation mechanisms, which are at the heart of any common solution, are not working.

The deal theoretically allows Greece to declare asylum applications of Syrians from Turkey inadmissible because they had been granted asylum status in Turkey. This would mean that Turkey has recognised this person as asylum seeker and gives sufficient protection. But it is difficult to argue on that note because there is no clear definition of sufficient protection and the rights of Syrians in Turkey are known to be very limited in practice. This is officially recognised and therefore Greece barely denies applications on this argument.

The legal possibility to deny asylum applications in Greece on the argument of declaring Turkey a safe third country is clearly defined. This refers to the situation where a refugee, who applied for asylum in Turkey and whose life is not in danger, can be readmitted to

Turkey, because s/he will receive the asylum status there. Most applications are now declared inadmissible on this argument. However, there have been no forced returns of Syrians to Turkey, but there have been returns of a few Syrians that have chosen to do so voluntarily or that have refused to apply for asylum.

Under the EU acquis every person has the right to individual appeal: If Greece makes the assessment that an asylum seeker can go back because Turkey is a safe third country or a safe first country of asylum, the asylum seeker can challenge that assessment. Also, such an assessment has to be an **individual assessment**. Otherwise, it would constitute a collective expulsion² of people who may be in need of international protection, which is prohibited under the 1951 Refugee Convention as well as the European Convention on Human Rights (Article 4 of Protocol 4). For other refugees e.g. from Iraq & Afghanistan, the safe third country concept would not apply because the Greek system is not confident that Turkey is a safe third country for these applicants. Hence, although the deal as such has a massive scope, it is difficult to apply returns on a massive scale as the EU may be hoping

In order to demonstrate to which conditions the deal and its consequences lead, shows the example of two Afghani siblings, Javid and Nahid Raoufi, and their friend Abdul Majid Rahimi. They arrived in Greece after having fled Afghanistan via Turkey on the same day the EU-Turkey statement came into force and were detained in one of the so-called 'Hotspots', the EU-initiated registration facilities for asylum seekers which, in fact, have been converted into detention centres. The detention conditions were unbearable: there was no access to medical care, the food was insufficient and the sanitary conditions were appalling. One of Afghans attempted suicide. These mass detentions and the detention conditions are very problematic in regard to EU law, the EU Charter of Fundamental Rights and the EU Reception Conditions directive which foresees an individual assessment. The story of the Afghans is not only one about personal suffering, but about the EU abandoning its commitment to human rights and international protection in the name of migration control.

The three Afghans claimed asylum and on 19 April they filed a complaint with the European Court of Human Rights. They claim that they had not been informed of the reasons for their detention, that their detention was arbitrary and that they did not have access to legal aid or representation. Greek law allows for the detention of asylum seekers of up to 25 days with a possible extension of up to 3 months. The current policy appears to be to detain anybody arriving irregularly on the Greek Aegean islands for 25 days and then to release them with a restriction order, limiting freedom of movement to the island concerned. The complaint also alleges that the detention conditions amounted to inhuman and degrading treatment, which has been confirmed by NGOs such as Human Rights Watch: in both the open and the detention sections of the 'Hotspots', extreme overcrowding forces people to sleep on the floor and in small tents. The hygienic conditions are poor, and medical care is either absent or insufficient and asylum seekers report frequent violent clashes and high levels of sexual violence and harassment.

The deal and its impact on EU asylum law and the European Convention on Human Rights

This practice violates EU asylum law and the European Convention on Human Rights in multiple ways. Under the EU Reception Conditions Directive, detention of asylum seekers must be based on an individualised assessment. Detention may be applied only if no less coercive measure seems adequate and if it is absolutely necessary. The policy to automatically detain all asylum seekers violates these requirements. Furthermore, both the

² Any arrangement that involves the blanket return of irregular migrants and people who maybe in need of international protection from one country to another, without key refugee protection safeguards in place (Hirsi case)

EU Reception Conditions Directive and the European Convention on Human Rights require that detainees must be informed about the reasons of their detention and be granted the possibility to challenge its legality before a judge – these legal requirements are largely ignored at the moment. Furthermore, the European Court of Human Rights has repeatedly held that detention conditions in Greek detention facilities for asylum seekers amounted to inhuman and degrading treatment.

Also the intention to return asylum seekers whose application is declared inadmissible to Turkey raises serious legal issues and is being pursued very hesitantly by the Greek administration. The EU's decision to declare Turkey a safe third country was not based on a thorough legal analysis; it came about because of political pressure.

The EU's refugee policy is increasingly outsourced with agencies such as Frontex and the European Asylum Support Office (EASO) taking up more and more central roles. Frontex is legally only assisting the Greek state; however as the Greek capacities are weak on the islands, EASO is allowed to conduct interviews by themselves. There is no possibility to appeal against these agencies. This has to be seen against the background that, as mentioned before, the Greek appeal committees have contested that Turkey is a safe third country in 70 out of 72 cases. These decisions were influenced by NGO reports about mass expulsions of asylum seeking Iraqis and Syrians to their countries of origin by the Turkish authorities as well as about violent rejections of asylum seekers at the Turkish borders. The same committees doubt that the temporary protection status which Syrian refugees are granted in Turkey amounts to protection in accordance with the Geneva Refugee Convention.

Against this backdrop, returns to Turkey cannot be considered safe, although the Turkish government has provided assurances that deported Syrians will be granted temporary protection and that other returned persons will be protected from deportation to a situation where their life or liberty would be at risk. The appeals decisions demonstrate that the Greek institutions are capable until now of providing an independent scrutiny for asylum seekers from some countries. But as they call into question the entire scheme, there was a recent reform which changes the composition of the Greek appeal committees and scraps a second hearing before the appeal decision. These changes haven't given rise to the fear that they will undermine the committees' independence. Also, changing the composition of these committees under political pressure amounts to a clear breach of EU law. Hence, the implementation of the EU-Turkey deal violates EU asylum law and the European Convention on Human Rights in multiple ways.

It should also be stressed that whether Turkey is determined as a safe third country or a first country of asylum, Greece still has to determine which Member State is responsible for examining the asylum application. In this regard, the right to family unity and best interest of the child are paramount³. By June 2016, 20% of all arrivals were children – many of them unaccompanied. According to EASO In 2015, there were 96,000 estimated unaccompanied children that had lodged asylum applications in Europe.

³ Therefore, where the applicant has a family member residing as a beneficiary of international protection in a member state or where that family member is awaiting a first decision on their asylum application, the member state where the family member resides is responsible.⁴⁷ Also, where the applicant is an unaccompanied child, the member state responsible shall be that where a family member, sibling or relative is legally present, provided it is in the child's best interests.