

Safe Third Country Concept and Joint Action Plan

The current JAP (Joint-Action Plan) pertaining to the readmission of irregular migrants to Turkey has raised several debates among experts. Many of them claimed that the plan is a “*dead duck*” and it is futile to take further steps. However, both the EU and Turkish delegations have maintained the negotiations and bargaining.

Turkey has been demanding €3bn+€3bn fundings to spend for the refugee’s expenditures. In addition, it is predicted that EU countries will implement a visa exemption for Turkish citizens in the summer. In response to these, Turkey has pledged to cooperate with the EU to struggle against people-smugglers for preventing the irregular migration waves.

The Merkel Plan (mentioned also the Samsom Plan) aimed the legitimization of Turkey as *a safe third country* to allow for the readmission of migrants in the Greek islands. After a series of negotiations, EU and Turkish delegations have come to an agreement on the plan that is simply based on the exchange of 1 Syrian refugee (in Greece) and a Syrian asylum seeker (in Turkey). It was planned that Syrian refugees chosen from Turkish detention camps will be resettled in European countries.

In doing so, the EU has recognized Turkey as a *safe third country* as ESI proposed.

“the assumption that Turkey is a safe third country for asylum-seekers from Syria, Iraq, Afghanistan and other countries so that Greece could return them to Turkey

without jeopardizing their rights and safety. This would quickly reduce the number of boats crossing the Aegean as the dangerous passage would become pointless – everybody reaching Greece would be returned back to Turkey.”

According to the Asylum Procedures Directive, a migrant/refugee could solely be sent back to *a safe third country* that has a guaranty for their protection-in legal basis-.

(a) “in which the applicant was previously recognized as a refugee and that he or she can still avail himself or herself of that protection” (b) “or where he or she can still enjoy sufficient and effective protection including protection against refoulement.”

It could not be argued that a country which has low crime rates would be defined automatically as a safe country. It is just about its legal structure that how it affiliates with the international agreements on the migration statuses. In a Statewatch report, it is explained clearly:

A ‘safe third country’ is a state through which a person fleeing from his or her country of origin has passed and where he or she could have found protection, but has not done so. If this person applies for asylum in another state, the latter might consider his or her claim inadmissible and could decide to return the applicant to the ‘safe third country’ he or she had previously passed through. Therefore, the ‘safe third country’ concept implies that asylum seekers should claim asylum in the first ‘safe country’ they are able to reach.



Kilis Oncupinar Accommodation Facility, southern Turkey

Remembering Safe Third Country Concept

The Asylum Procedures Directive, as it was referred, mentions a *first country of asylum* in which the applicant is recognized as either refugee or a person “*enjoys sufficient protection.*” Turkey retained a *geographic limitation* for the ratification of 1951 Geneva Convention for the Status of Refugees. So it pledged giving refugee status when only an event occurs in Europe. Therefore, Syrian and Iraqi migrants could not be recognized as a refugee within the Turkish legislation.

A Comparative Approach to Non-Refoulement:
Europe and Turkey

Instead, the government takes some steps to adapt the changing conditions. Firstly, the Law on Foreigners and International Protection (entered into force in April 2014) that is originated from the EU asylum regimes was implemented. This move was seen a hopeful act so it was celebrated by UNHCR as in a press briefing:

“The High Commissioner for Refugees welcomes new legislation, recently adopted as a reflection of Turkey’s strong commitment to humanitarian values and principles. UNHCR, which has supported the drafting process, considers this an important advancement for international protection, and for Turkey itself, which has a long history of offering protection for people in need. The new law incorporates key elements of international humanitarian and human rights law. It provides for the establishment, under the Ministry of the Interior, of a specialized institution to manage international protection. This institution will also prepare the implementing regulations over the next year.”

However, this prediction had not come into reality. In the second place, on October 2014, TPR (Temporary Protection Regulation) was implemented. It involves a guarantee of temporary protection for migrants who have TPR identity document. However, numerous Syrian refugees have yet another type of document -FID (Foreigner Identity Document)- So it is leading a great confusion.

Refugee Rights Turkey (an organization that provides legal information and assistance services to asylum seekers)

states:

“both the “foreigner identity document” and the “temporary protection identity document” are indisputably documents as they are issued by competent authorities, and bear the sign and stamp of these authorities. us, there should be no reluctance on the part of public notaries to rely on the nature of these documents. However, it is observed and reported that in many cases, persons under temporary protection are requested to present their passports or identity documents issued in Syria, and those who fail to do so, are denied to give power of attorney to their legal representatives.”

After the new legislative arrangements, a new institution which focused on taking responsibility of the asylum regime. DGMM (Directorate General of Migration Management) manages the procedures of asylum operations. the RRT report gives further information on the procedures and rights of refugees:

“Persons who were forced or compelled to flee their home countries because of war or persecution and are therefore unable to go back have the right to seek asylum in Turkey. In order to seek asylum in Turkey, you have to approach the Directorate General for Migration Management (DGMM) and make a request for asylum. even if you are unable to find another country agreeing to admit you for a long-term settlement, you shall be allowed to stay in Turkey indefinitely on the basis of your “international protection status”.

The temporary protection regime is just in use for Syrians and stateless (heimatlose) Palestinians came from Syria.

Others have to apply to a status for international protection whose procedure is managed by DGMM. However, only a small part of this application was accepted. So it is even problematic that how these “limbo” statuses will be reached a solution.

Unfortunately, neither Syrian refugees who are settled in the camps not all of the others have not been well-informed about their legal rights. There are many cases have been reported on even the fundamental human rights abuses in the Turkish camps. One of them was announced in January of 2016 by 11 NGOs Amnesty. It reveals the lockdowns to a number of refugees, criminalizing people kept in the camp and violation of the human rights in Erzurum/Askale camp for the asylum seekers. These examples can prove that legislative arrangements would not apply in practice.

Don't Need to be so Optimistic

Until quite recently, Turkey has not an adequate legal structure to cover all aspects of the asylum regime and refugee crises. The current laws that have been implemented a couple years ago could not be applied entirely now. Actually, this is an outcome of the inadequate human capital to conduct the procedures. Besides, the new legislative arrangements caused a bicephalous structure which makes an efficient plan difficult to manage.

The current political chaos, serious threats of ISIL and PKK terrorism, and several concerns about the press freedom are other factors to be pessimistic for Turkey. In these gathering darkness in the politics and the legal structure, it is an exaggerated optimism to think Turkey as a safe third



Everyone Asks Now: Is Turkey a Safe-Third Country?

country. After the failure of deal with Ankara, EU has been already looking for new alternatives to cooperate for combating with the rising irregular migration.