

EU-Turkey agreement and refugees: who may live or who must die?

Allana de Freitas Lacerda¹

Abstract: The creation of physical borders and exclusionary policies for refugees and migrants, such as the recent EU-Turkey agreement in which migrants and refugees who enter the Greek territory without applying for asylum, or if rejected, will be taken back to Turkish territory, directly opposes the foundations of international protection for refugees, the right of non-refoulement, but also the right to leave/arrive/migrate. This essay seeks to analyze the issue of human rights for refugees and the relationship with international treaties and agreements, specifically the EU-Turkey Agreement. The methodological approach of this essay is presented and organized as a qualitative study that includes gathering information through bibliography research, coupled with international law on refugees and human rights, data and statistics of international organizations and international media matters.

Keywords: Human Rights. Refugees. EU-Turkey Agreement. Asylum.

Introduction

This essay is part of the discussions in the Doctoral Programme in Human Rights in Contemporary Societies of the Center for Social Studies of the University of Coimbra, whose approach is related to the practice of human rights at local, national and international scale, especially considering the impact of the flow of refugees in European society.

The execution of an intolerance policy in situations of crisis and the creation of physical borders and exclusionary policies for refugees and migrants, such as the EU bilateral agreements, directly oppose the human rights principles and values, as the right of non-refoulement, but also the right to leave/arrive/migrate. Controlling, allowing and forbidding who enters their territory ends up being a matter of life and death for individuals (Mbembe,

¹ PhD student in the Doctoral Programme in Human Rights in Contemporary Societies. Email: allana_lacerda@yahoo.com.br.

2003), as can see by the 68.5 million people forcibly displaced worldwide, according to UNHCR (2017).

The adoption of restriction and exclusion policies have been denounced by organizations and social movements of national and international human rights defenders, as was recently reported in the case of the ban on receiving refugees by NGOs:

The European Commission responds to Turkey's threats by stating that there is no alternative to the Migration Agreement signed with Ankara to end the refugee crisis. But a year after the agreement comes into force, several non-governmental organizations such as Oxfam denounce a "dangerous example" in humanitarian terms and respect for the right to asylum. [...] If the agreement allowed to retain the refugee wave through the so-called Balkan route, measures such as immediate deportation to Turkey continue to violate the rules of asylum, according to NGOs (Euronews, 2017, my translation).

The socio-judiciary criticism of the practice of human rights between the global and the local framework are marked by the struggle for rights claims between different actors and subaltern subjects of rights, by the interpretation of "the definition, legalization and implementation of human rights ideals, values, principles and norms" (Santos, 2012).

In this line of thinking, the case of the EU-Turkey agreement in which migrants and refugees who enter the Greek territory without applying for asylum, or if rejected, will be taken back to Turkish territory, directly oppose the foundations of international protection for refugees (UNHCR, 2016). As Mbembe (2003) points out, exercising sovereignty is exercising control over mortality and defining life as the implantation and manifestation of power when he declares "But under what practical conditions is the right to kill, to allow to live, or to expose to death exercised? Who is the subject of this right? [...] What place is given to life, death, and the human body" (p. 12).

Considering all of these aspects, this essay seeks to analyze the issue of human rights for refugees and the relationship with international treaties and agreements, specifically the Turkey-EU Agreement. It is intended to promote critical thinking about human rights, according to the global discourses of human emancipation and universal hospitality (Kant, 2008). Methodologically, this essay is presented and organized as a qualitative study that includes gathering information through bibliography research, coupled with international law on refugees and human rights, data and statistics of international organizations and

international media reports. In the following two sections the issue of the refugee crisis and the impact of the EU-Turkey agreement on both refugees and Europe will be discussed.

Refugees and International Protection: legislation and the work of UNHCR

With the United Nations Convention on the Status of Refugees, the refugee is defined as a person who, as a consequence of events occurring before 1 January 1951 and fearing persecution on grounds of race, religion, nationality, social group or political opinion, is outside the country of his nationality and who cannot, or because of such fear, does not wish to avail himself of the protection of that country, or that, if he is not a national of the country in which he habitually resides as a result of such not want to return to it (UNHCR, 1951).

In this way, by having their life and freedom threatened by political, social, or because of armed conflicts, refugees may require shelter in other countries. The United Nations High Commissioner for Refugees (UNHCR) is responsible for the management and organization of all international activities to protect and assist displaced individuals throughout the world and to seek definitive responses to their case².

The refugees find themselves in need of physical, psychological and legal protection (ACNUR, 1992; 2005). With the view to contribute and ensure the protection of human beings in any and all circumstances, the absence of national laws guaranteeing and addressing the issue of refugees cannot be used as a justification for not accepting them, leading to the total lack of protection of so many innocent victims, or even to use arguments such as the lack of human and material resources to avoid refugees (Cançado Trindade, 1997; 2005).

In order to protect individuals in a position of vulnerability, a number of humanitarian documents have been signed and implemented, including the UN Convention on the Status of Refugees of 1951 and the Universal Declaration of Human Rights (UDHR).

Some of their devices provide for the right to seek refuge saying that in the article 14 of the Universal Declaration of Human Rights 1948, which “recognizes the right of persons to seek asylum from persecution in other countries” and that “the United Nations Convention

² More information about UNHCR can be found at: <<http://www.unhcr.org/history-of-unhcr.html>>.

relating to the Status of Refugees, adopted in 1951, is the centre piece of international refugee protection today” (UNHCR, 2010, p. 2), or even in the Article 33.1 of the UN Convention on the Status of Refugees of 1951:

Article 33 prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member-ship of a particular social group or political opinion.

Protection against “refoulement” is a basic right of refugees and should be something to be always defended and strengthened by nations, considering even more the state of vulnerability that refugees already are.

The idea of a universality discourse that points to the defense of a minimum of dignity for every human being, contrasts with the (re) production of a reality, marked by serious social injustices, discrimination and subalternization between individuals and societies, marginalized by the power structures and dominant groups (Moura; Martins, 2016).

Thus, as Rajagopal (2009) highlighted, instead of perceiving human rights as something that holds truth, justice and resistance, we must acknowledge its fragility and contradiction. It must be recognized today that the international language of human rights is both a tool of resistance and a tool of power.

Protection of refugees and the provision of a minimum dignity of life and basic needs are the main objectives of the UNHCR, which is why the EU-Turkey agreement was viewed in a concerning manner by the UNHCR (2016), because of its inconsistency with the values and principles set out in international human rights treaties.

The impact of the EU-Turkey agreement

The refugee crisis is a constant discussion in the international media. Political, social and economic issues such as security, lack of resources and inclusion are often used as arguments for and against receiving refugees (Costello, 2016).

This limited application of human rights is criticized by Costello (2016), when affirming that if on the one hand there is a vision of universal human rights, therefore inherent to all

human beings; on the other hand, there is a perception that these rights are weakened before a State that has "a sovereign right to control admissions" (p.10).

The refugee would be outside this line, as Rajagopal (2009, p. 61) highlighted as a "point to judge the effectiveness or the legitimacy of policies in a range of fields, such as development, security, humanitarianism, and social policy".

It is in this context that the EU-Turkey Agreement is inserted, since it is a way to prevent refugees and unchecked arrivals into the European Union (Collett, 2016). Several issues are raised like if is this agreement a way to control and organize the arrivals of refugees in the European Union and reduce accidents and deaths? Or it is just an instrument to divert the focus that the exclusion and non-integration of refugees as Simmons (2012) highlights:

But to what end? Did this development really herald an age of rights with real improvements that individuals and groups could realize, or did it signal the development of legal structures that served only to distract from the problems of humankind? Was this another instance in which international law had simply over-promised, raised hopes, but failed to deliver? Did it allow states to carry on as they always had – trampling rights wherever necessary to retain their power and prerogative? (Simmons, 2012, p. 730)

These questions are important when considering the refugee-EU relationship and the real interest in welcoming refugees and ensuring that human rights principles and values are effectively applied within the EU.

Whereas the countries of the European Union are signatories to both the 1951 Convention and the 1967 Protocol and are therefore committed to the rights and obligations provided for in those conventions, including non-refoulement.

Thus, theoretically and legally, it is ensured that any person, if necessary, can exercise the right to seek and enjoy refuge in another country (ACNUR, 2016). However, the EU-Turkey Agreement does not effectively allow this right, since it controls and limits the entry of refugees.

The EU-Turkey Agreement was established on 18 March 2016 with the aim of ending the flow of illegal immigrants from Turkey to the European Union and reorganizing in a safe and legal way the route to Europe in the face of the refugee crisis and the quantity of migrants

and refugees arriving daily in Greece (European Commission, 2017). The terms of the agreement are³:

- 1) All new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey;
- 2) For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU;
- 3) Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU;
- 4) Once irregular crossings between Turkey and the EU are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated;
- 5) The fulfillment of the visa liberalization road map will be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016. Turkey will take all the necessary steps to fulfill the remaining requirements;
- 6) The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilize additional funding for the Facility up to an additional €3 billion to the end of 2018;
- 7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.
- 8) The accession process will be re-energized, with Chapter 33 to be opened during the Dutch Presidency of the Council of the European Union and preparatory work on the opening of other chapters to continue at an accelerated pace;
- 9) The EU and Turkey will work to improve humanitarian conditions inside Syria. (European Commission, 2016).

The entire legal process involving the recognition of refugee status and the consequent granting of asylum in Greece is dealt with individually, and in line with EU and international law requirements and the principle of non-refoulement (European Commission, 2016).

Under the terms of the agreement, there is a "humanitarian" concern with the presence of illegal migrants, and also there is a need for control of who enters the European territory, via Greece, as can be perceived in the first three terms. However, the scheme of voluntary admission (the fourth term of the agreement) will only occur when the illegal crossing of migrants has been completed or reduced.

³ More information available at: <http://europa.eu/rapid/press-release_MEMO-16-963_en.htm>.

Nevertheless, this will be difficult to achieve because the demand/supply relationship is not balanced. The number of migrants entering European territory is much higher compared to the offer of visas and legalization of migration.

The other terms of the agreement are more related to the visa for Turkish citizens (fifth term) and government cooperation in achieving the agreement and control/organization of migrants in the EU.

Notwithstanding, it should be noted that this whole relationship between Turkey and the EU and the position of power given to the Turkish government by the European government in the control and defense of European borders is odd. Turkey has been trying to join the EU since 1987, but its entry is seen with some resistance, if not accepted by some European countries (TSF, 2017).

It is contradictory for a country that is not accepted in the EU to be responsible for "defending" the borders of that region and to practice the principles and values of human rights, when in the current Turkish government there is no respect either for the rule of rights or for human rights (Schuster, 2017).

Returning to the analysis of the EU-Turkey agreement, according to the European Commission (2017), the effects of the agreement in partnership with the Turkish authorities were immediate and there was a reduction of "dramatic arrivals", proving the possibility of ending the illegal business involving smugglers and migrants and refugees exploited by them:

From 10,000 in a single day in October 2015, daily crossings have gone down to an average of around 43 today, while the number of deaths in the Aegean decreased from 1,145 in the year before the statement to 80 in the year which followed. One year later, that's about one million people who have not taken dangerous routes to get to the European Union, and more than 1,000 who have not lost their lives trying. (European Commission, 2017).

The idea of reducing the steady flow of refugees and ending illegal routes to EU access, especially in Greece, are key points in the agreement. Moreover, the positive side of this agreement, for the European Commission, would be that for each Syrian who is returned to Turkish territory, another Syrian would be admitted and resettled in the EU directly from Turkey, following EU international rules and human rights principles and values.

According to data from the European Commission (2017), about 916 irregular migrants have been returned from Greece to Turkey and more than 4,000 Syrian refugees resettled from Turkey to EU Member States.

Thus, in accordance with this data presented by the European Commission, the EU-Turkey agreement has only brought good points and advantages, such as a reduction in the number of illegal people and loss of life on the way to the EU. Another point to highlight is the offer of legal and safe routes for migrants and refugees to arrive in the EU.

However, there is another view of the agreement. By controlling the number of people entering and/or returning and keeping them in another territory, in the case of Turkey, it explicitly violates the guarantees of refugee protection under international law, such as the right of non-refoulement, but also the right to leave/arrive/migrate, in addition to contradicting the principles and values of human rights.

As Mbembe (2003) points out the relation between politics, sovereignty and death, is like "Having presented a reading of politics as the work of death, I turn now to sovereignty, expressed predominantly as the right to kill" (Mbembe, 2003, p. 16). The power to choose who lives and who dies.

Besides that, considering that the agreement in just three years or so of operation would manage to control the illegal routes of access and end the illegal exploration of these routes seems a little naive. In addition to the fact that the reported numbers of reduction in the number of arrivals and losses of lives do not seem consistent, considering the huge flow of refugees and the still existing conflicts, for example in Syria.

The impacts of the agreement are greater from the humanitarian point of view. Arguments of better legalization and control of the flow do not accompany the demand and the need for the migrants' reception. The fact that there is a specific place to relocate, in the case of Turkish territory, does not mean that it is the best option or that it has the best conditions and reception facilities.

The agreement seems to be a way of camouflaging political decisions of non-acceptance, non-integration and non-inclusion under justifications of "control" and "legalization".

For Turkey, the agreement would be a means of gaining access to the EU, as it is responsible for welcoming migrants and refugees into its territory. Despite financial and political support for the implementation of the EU-Turkey Agreement by the European Union, it is as if responsibility for migrants is transferred from European countries to Turkey, a country outside the European Union.

Refugees are already in a situation of vulnerability and adding to it, not knowing where to go, where to stay and being forced to stay in an unknown place, only worsens their conditions. As Gogou (2017) sadly pointed out, "On the Greek islands the harrowing human cost of the deal is laid".

Conclusion

There is in the international order a variety of laws and conventions, such as the 1951 Refugee Convention and the UDHR, which protect and ensure the rights of refugee individuals to leave/arrive/migrate and the right of non-refoulement. However, what is perceived are constant government policies, such as the creation of physical and legal barriers that limit the manifestation and access to those rights. This is the case with the EU-Turkey agreement.

There is in this context an exclusionary relationship involving sovereignty, security and power of the EU on the one hand, and on the other, the issue of dignity, empathy and protection of refugee individuals who are in such a vulnerable position.

The power to control who enters and leaves, who remains and who returns, who lives and who dies contradicts the principles, values and foundations of international law and human rights protection for refugees.

The construction of physical barriers or exclusionary laws that limit the manifestation of a right, under arguments such as security of its citizens or lack of financial resources, only ratify Rajagopal's position that human rights are a double tool: they can be used as an instrument of resistance or as an instrument of manifestation of power.

It is very dangerous that political laws and decisions have the power to decide on people's lives. By acting as "gods of life and death" is where the values and principles of human rights

are not applied or not considered relevant. It is as if life has a value and the “rulers” (with their laws and policies) are the ones who decide the value of a life and who should live.

There is a crisis in the international order, in which the flow of refugees demand a position of States that are not prepared and do not recognize as important in their agenda. Adding to this, there is the perception that expectations and practices of human rights and international law are obscured or short of the real need.

References

- ACNUR (1992), “Manual de Procedimientos y Criterios para Determinar La Condición de Refugiado em virtud de la Convención de 1951 y el Protocolo de 1967 sobre el Estatuto de los Refugiados”. Available at: <<http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2011/7575>>. Accessed on: February 27, 2018.
- ACNUR (2005), “Introducción a la Protección Internacional: Protección de las personas de la competencia del ACNUR”. Available at: <http://www.acnur.es/PDF/3665_20120515171932.pdf>. Accessed on: February 27, 2018.
- Cançado Trindade, Antônio Augusto (1997), “Dilemas e desafios da Proteção Internacional dos Direitos Humanos no limiar do séc. XXI”. In: *Revista Brasileira de Política Internacional* (em italiano), 40(1), 167-177. Available at: <<http://www.scielo.br/pdf/rbpi/v40n1/v40n1a07.pdf>>. Accessed on: February 27, 2018.
- Cançado Trindade, Antônio Augusto (2005), “Aproximaciones y convergencias revisitadas - diez años de interacción entre el Derecho Internacional de los Derechos Humanos, el Derecho Internacional de los Refugiados, y el Derecho Internacional Humanitario”. In: ACNUR. Memoria de Vigésimo Aniversario de la Declaración de Cartagena sobre los Refugiados. San José: Editorama, 2005, 139-191.
- Collett, Elizabeth (2016), “The Paradox of the EU-Turkey Refugee Deal”. Migration Police Institute, March, 2016. Available at: <<https://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal>>. Accessed on: February 27, 2018.
- Costello, Cathryn (2016), *The Human Rights of Migrants and Refugees in European Law*. United Kingdom: Oxford University Press.
- European Commission (2016), “EU-Turkey Statement: Questions and answers”. Available at: <http://europa.eu/rapid/press-release_MEMO-16-963_en.htm>. Accessed on: February 28, 2018.
- European Commission (2017), “EU-Turkey Statement – One year on”. Available at: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf>. Accessed on: February 28, 2018.

Gogou, Kondylia (2017), "The EU-Turkey deal: Europe's year of shame". Amnesty International, March 20, 2017. Available at: <<https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>>. Accessed on: February 28, 2018.

Kant, Immanuel (2008), *A paz perpétua. Um projecto filosófico (1795)*. Trad. Artur Morão. Covilhã, 2008.

Mbembe, Achille (2003), "Necropolitics", *Public Culture*, 15 (1): 11-40.

"MERKEL quer travar adesão da Turquia à União Europeia" (2017). TSF, September 4, 2017. Available at: <<https://www.tsf.pt/internacional/interior/merkel-quer-travar-adesao-da-turquia-a-uniao-europeia-8747197.html>>. Accessed on: March 11, 2018.

Moura, Adriano; Martins, Bruno Sena (2016), "Os Direitos Humanos nas encruzilhadas da emancipação: as lutas sociais e as escalas da contra-hegemonia". In: *Revista Videre*. Available at: <<http://ojs.ufgd.edu.br/index.php/videre/article/view/4921/3138>>. Accessed on: February 27, 2018.

Rajagopal, Balakrishnan (2009), "The International Human Rights Movement Today", *Maryland Journal of International Law*, 24(1): 56-62.

Santos, Cecília Macdowell dos (2012), "A Mobilização Transnacional do Direitos e a Reconstrução dos Direitos Humanos". In: *A Mobilização Transnacional do Direito – Portugal e o Tribunal Europeu dos Direitos Humanos*. Available at: <https://www.academia.edu/4143126/A_Mobiliza%C3%A7%C3%A3o_Transnacional_do_Direito_e_a_Reconstru%C3%A7%C3%A3o_dos_Direitos_Humanos>. Accessed on: February 27, 2018.

Simmons, Beth (2012), "Reflections on Mobilizing Human Rights," *International Law and Politics*, 44: 729-750.

Schuster, Kathleen, "Turkey-EU relations: Which countries are for or against Turkish accession?" (2017), DW, September 6, 2017. Available at: <<http://www.dw.com/en/turkey-eu-relations-which-countries-are-for-or-against-turkish-accession/a-40381533>>. Accessed on: March 11, 2018.

United Nations High Commissioner for Refugees – UNHCR, "About us". Available at: <<http://www.unhcr.org/about-us.html>>. Accessed on: February 27, 2018.

United Nations High Commissioner for Refugees – UNHCR (2010), "Convention and Protocol relating to the Status of Refugees". Available at: <<http://www.unhcr.org/3b66c2aa10>>. Accessed on: February 27, 2018.

United Nations High Commissioner for Refugees – UNHCR, "Protection". Available at: <<http://www.unhcr.org/protection.html>>. Accessed on: February 27, 2018.

UNHCR (2016), "UNHCR expresses concern over EU-Turkey plan". Available at: <<http://www.unhcr.org/news/latest/2016/3/56dee1546/unhcr-expresses-concern-eu-turkey-plan.html>>. Accessed on: February 27, 2018.

United Nations High Commissioner for Refugees – UNHCR (2017), "Global Trends – forced displacement in 2017". Accessed on July 7, 2018, at <http://www.unhcr.org/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>.

“‘VIOLAÇÃO do direito de asilo’: ONGs denunciam acordo migratório UE-Turquia” (2017). Euronews, March 17, 2017. Available at: <<http://pt.euronews.com/2017/03/17/violacao-do-direito-de-asilo-ongs-denunciam-acordo-migratorio-ue-turquia>>. Accessed on: February 27, 2018.