

EU AND NORTH MACEDONIA:
ESTABLISHING NEW BORDERING PRACTICES IN ASYLUM AND MIGRATION

ANA NIKODINOVSKA KRSTEVSKA⁴
OLGA KOSHEVALISKA⁵

1. Introduction

The Refugee crisis in 2015 - known also as the solidarity crisis of the EU, that followed the massive influx of migrants and refugees coming to Europe, deeply impacted upon the European Union, creating almost a collapse in EU's asylum and migration system, and leaving great division among EU Member states. It was under these circumstances that the structural problems of the Common European Asylum System were brought to the surface, highlighting both its shortcomings, and questioning solidarity and distribution of responsibility among EU Member States, but moreover, creating new borderlands in the neighborhood, in particular in the Western Balkans.

The division that was created was among on one side, Member States that were against the EU asylum and migration system, like the Visegrad countries meaning Poland, Czech Republic, Slovakia and Hungary, plus the Baltic states and Spain, and on the other side, the Western European countries among which Greece and Italy that were the most exposed EU's frontline countries during the refugee crisis. In fact, the unproportionate influx of irregular migrants majorly affected the frontline states, which literally overstretched their capacities to coop with the great number of asylum applications that were presented in their national systems. In all this, also Western Balkan countries being on the crossroads of the Balkan route suffered unproportionate pressure upon their national systems, creating difficulties to their borders and imposing great burdens to their asylum and migration systems in general.

The the division comes as a result because of the so much disputed article 13 par. 1 of EU Regulation (EU) N. 604/2013 related to the criteria and mechanisms for determining the Member State responsible for examining a claim for international protection, which prescribes, (previous fulfilment of the other circumstances foreseen by the Regulation), that actually frontline countries being 'states of first arrival' where irregular migrants crossed borders coming from a third country, are responsible for examination of their asylum claims. With the Dublin IV regulation proposed on behalf of the Commission in 2016, there was an attempt to fill in the gap by introducing a corrective mechanism for allocation of asylum seekers. Nevertheless, it did not see the light of the day. Instead, in September 2020 the Commission came up with a second proposal – the New Pact on Asylum and Migration, whose outcome is yet to be discovered.

⁴ Ana Nikodinovska is Associate professor at the Faculty of Law, University Goce Delcev – Stip, email: ana.nikodinovska@ugd.edu.mk.

⁵ Olga Koshevaliska is Associate professor at the Faculty of Law, University Goce Delcev – Stip, email: olga.koshevaliska@ugd.edu.mk.

2. Responding to migration pressure in the EU

As soon as migration pressure was registered at the borders in Greece, Germany suspended the transfers of Syrian asylum seekers that under the Dublin system were supposed to be returned to Greece. This, in order to bypass the Dublin procedures and proceed with examining Syrian asylum claims. This policy gave rise to massive secondary movements of irregular migrants and refugees, putting in place a long human corridor of people headed from Greece through the Western Balkans to Germany. However, shortly after the enthusiastic German open-door policy, Europe evidenced a domino effect of securitizing policies which were applied independently by countries along the route, whether EU or non-EU, interdicting the passage of migrants and refugees and bringing into question the respect of the principle of non-refoulement, as guaranteed by the Geneva Convention for the status of refugees, which imposes to countries the non-returning of migrants and refugees to countries where they can be persecuted. As a matter of fact, some Member states introduced intra - border controls within the Schengen system and imposed restrictive rules on borders. For example, Hungary erected hard borders and electric fences on the border with Serbia and Croatia and it imposed daily limit of examination of asylum claims, Austria imposed daily ceiling of entries into the country, North Macedonia, and Serbia restricted entry for migrants in base of nationality (permitting only Syrian, Iraqi and Afghan nationals to pass through borders). Aside from this, also illegal pushback between borders became daily practices and violent clashes between migrants and the police often occurred.

On the EU level efforts were made to assure solidarity and to ensure equal sharing of responsibility for asylum seekers among EU member states. On the grounds of art. 80 (TFEU) the Council adopted two decisions 2015/1523 and 2015/1601 for resettlement of asylum seekers from Greece and Italy, in the attempt to alleviate the burden of high number of asylum seekers from these two countries and to redistribute them according to fair quotas among Member states. However, despite initial agreement, the countries from the Visegrad Group, refused to accept any relocation quota for asylum seekers on their territory and challenged the Council's decision in front of the Court of Justice of the EU. Independent of the Court's decision which ruled in favor of the Council basically, the activities that were undertaken by the EU to tackle the migration crisis did not produce concrete results.

3. Establishing EU's internal-external security nexus in asylum and migration policy

In parallel with these events, in 2015 the European Union was hit by a series of terrorist attacks that happened in different cities, having killed hundreds of people throughout the EU. Some of the authors of the attacks were identified by the French minister of interior as irregular migrants that have entered European borders with the migrant influx in 2015. This situation was a turnover in EU's security policy, and it was used as additional pretext to raise security concerns in EU's asylum and migration policy. Therefore, tackling terrorism was not treated anymore as a purely security and defense matter, but in a multidimensional way, referring to a variety of issues that fall within the scope of asylum and migration policy. Hence, asylum and migration were conceived as a strong nexus between internal and external security of the EU, bonding into what we know as EU's external dimension in asylum and migration policies. What practically happened is that against the impossibility of reaching internal solidarity, Member states through the EU sought alternative methods to assure their internal stability and security

and at the same time protect their asylum systems from massive influxes and security related threats.

To do so, the EU aside from enhancing the mandate of the European Border and Coast Guard Agency (known as Frontex) in 2016, reinforced other instruments to tackle asylum and migration in the external dimension in particular through cooperation with third countries. Such activities included establishing cooperation for border control and management for prevention of illegal migration and fight against smuggling of migrants, reinvigorating implementation of readmission agreements and visa requirements, border management support, establishing operations at high seas, introducing containment measures (or non-entrée measures) that aim at controlling or 'containing' future migrants at the States of origin or transit prior to arriving in Europe, concluding partnerships agreements with third countries like the EU-Turkey deal, introducing safe third country clauses in international agreements or informal arrangements, fostering return, giving financial contributions (as in the case of North Macedonia through the IPA funds), accelerating the removal processing, impeding legal arrival, and other. All this in a model of 'cooperative deterrence' (Papastavrdis, 2021), whereby countries at different points of the displacement line align their policies, more or less formally and directly, to repeal unwanted flows (in exchange for different benefits from the EU). Basically, the EU together with Member states is establishing a form 'of contactless control', through which they can control migration and asylum before it even reaches EU territory.

4. The new EU bordering practices in North Macedonia

When speaking of North Macedonia and its position in these new bordering practices of the EU and EU Member states, the bordering realities can be deconstructed through three forms of agency: 1. The process of European integration, 2. Bilateral cooperation with EU Member States, and 3. Cooperation with Frontex.

Through the process of European integration which is the most powerful and most influential normative instrument of the EU when it comes to spreading norms and shaping realities, the EU basically imposes EU norms upon North Macedonia through the process of harmonization of national law with EU law. On these grounds, national authorities transpose EU law into national law and implement EU rules, standards, and procedures. To this end the country undergoes thorough examinations and visits by EU officials at least once a year, in order to determine the level of adaptation to the EU acquis, but also to determine the level of implementation. This is regulated in Chapter 24 regarding Justice, Freedom and Security in the part of Legal and Irregular migration, Asylum, Visa policy, and Schengen and external borders, and as of the Refugee crisis, it specifically puts accent on the implementation of the Readmission agreement between EU and North Macedonia, particularly in the part of readmission of third country nationals (art. 3 Readmission agreement), what was individualized by the Commission as a priority in the New Pact on Asylum and Migration; furthermore, on the establishment of a biometric registration system that follows the Eurodac model in order to introduce a proper system for managing irregular movements; and of course alignment with EU visa policy for short stays in the EU, which is an important benchmark in European Integrations. Judging from the last Progress Report of the Commission for North Macedonia, the country is moderately aligned with this Chapter, but it is fully aligned with the Schengen rules and external borders.

Through bilateral cooperation, this proved to be the most efficient tool for remote control of migrant influx and from prevention of migration and combat smuggling of migrants. Owing to the EU solidarity crisis Member states that were majorly exposed to the migrant influx, strengthened their cooperation on a bilateral level with the countries of the Balkan route. As a matter of fact, during the crisis North Macedonia established cooperation with 8 regional and EU countries (Serbia, Croatia, Slovenia, Hungary, Austria, Czech Republic, Slovakia, and Poland), which provided the country with technical assistance and donations like field vehicles, thermal cameras, wired fences, equipment and computers for registration of migrants, for the purpose of controlling the border with Greece, but also trainings to police officials for border management and sharing good practice; and furthermore, established the deployment of 'guest police officers' on the Greek-Macedonian border that jointly with the police and army patrolled and surveilled the border in tight coordination with FRONTEX officials. This was proven to be the most effective tool for border management, from which benefitted both North Macedonia and the partner countries, preventing a big number of illegal entries of migrants on the borders. This type of cooperation is still ongoing.

Lastly, through the cooperation with Frontex this has been another important initiative that mirrors the Union's effort to enhance the external dimension of asylum and migration, in particular in front of the new operative mandate of Frontex and the central role that it has been given in border management and return policy from the EU. Until now, within the framework of a Working arrangement with Frontex, North Macedonia has been cooperating through information exchange and risk analysis also on daily level, training and research and development projects, and joint operations conducted on the Greek-Macedonian border for the purpose of countering illegal migration and cross-border crime issues. However, following the developments of Frontex under its new operative mandate, the EU initiated a new type of concept of integrated European border management based on an international Status agreement between Frontex and a third country, with the purpose to support border controls, management of irregular migration, fight against cross-border crime, fight and prevention of human trafficking, migrants, and terrorism, and to identify possible risks and dangers related to security. The Status agreement will provide Frontex border guards with executive powers to conduct different types of operations like joint operations, rapid border interventions and return operations, which in essence, will allow Frontex to duplicate what it is doing inside the EU also outside the EU that is in the Western Balkan region. Despite initializing negotiations for signing the Status agreement in 2018, the signing of the agreement has been blocked in September 2020, by Bulgaria due to the language dispute with North Macedonia. Frontex role in EU's asylum and migration policy has been deemed crucial by the Commission in the New Pact on Asylum and Migration in particular in reference to the return policy of the EU. Despite this believe, Frontex purpose has been questioned by different NGO's concerning matters of human rights violation on borders and has also been two times subject to revision of the EU Court of Auditors. Therefore, while waiting for the Status agreement, Frontex and North Macedonia are already establishing operative plans for action.