

SUMMARY OF BVMN WEBINAR:

Understanding the New Pact: How the EU is abolishing the right to asylum

Introduction:

On November 11th, BVMN hosted a webinar to explain and draw attention to how the EU's New Pact on Migration and Asylum seriously threatens the right to asylum. As EU institutional and technocratic mechanisms and procedures are extremely complex, this webinar aimed at unpacking the proposed changes to EU migration and asylum management, discussing their potential impact, and disrupting the EU's narrative, which presents the New Pact as a necessary and progressive reform. In March, the European Parliament adopted their position on the Pact and tried to uphold some safeguards. However even these have been eroded during further political negotiations, meaning the fundamental rights of people on the move are at grave risk and the right to asylum is speeding towards abolition. The Commission, Council, and Parliament are set to close all political deals on the files before Christmas, and we cannot let them do so in silence.

In September 2020, the European Commission published a proposal for the New Pact consisting of five key files:

- Regulation for Asylum and Migration Management (RAMM)
- Revised EURODAC database
- Screening procedure at the external border
- A new Asylum Procedures Regulation
- Recommendation on an EU mechanism for preparedness and management of crises related to migration

The webinar focused on the Screening Regulation, the Asylum Procedures Regulation, and the Crisis Regulation. To elucidate these, BVMN invited four experts from countries where these new instruments have already been piloted: Greece, Italy, Turkey, and Poland.

Screening Procedures in Greece - Minos Mouzourakis - Refugee Support Aegean

Since 2016, the EU has gradually dismantled its framework for the protection of asylum seekers. One component of the process is a new form of screening procedures, an idea inspired by the Greek 'reception and identification procedure'. In this process, applying for asylum is only possible after a screening procedure determines the necessity for claiming this right. The screening procedure proposed in the New Pact already exists in the EU and has had a severe impact on the fundamental rights of people on the move in Greece. First, it is common practice that different authorities oversee the screening procedure and asylum process. This would require close collaboration, yet there is an apparent lack of cooperation and authorities push their responsibilities on each other, resulting in incomplete and unjust asylum and screening procedures. Second, the screening procedures in Greece do not comply with EU law and human rights standards, particularly when it comes to assessing the vulnerability and medical conditions of asylum seekers. There is a significant shortage of personnel with medical and psychological training, leading to inadequate procedures and long delays during which people on the move are deprived of their right to liberty.

This is closely related to the third issue: the fiction of non-entry. This refers to the practice of creating spaces in EU territory where the EU does not have to comply with its own laws. Thus, authorities can deter asylum seekers in facilities on EU territory without having to respect their right to asylum. Lastly, the independent monitoring mechanism, which has been proposed by the Commission as a response to the mounting criticism, has proven an insufficient instrument for ensuring compliance with fundamental rights during screening procedures in Greece, let alone for stopping pushbacks. With the New Pact, the EU intends to make this screening procedure the new status quo for everyone entering the EU to seek protection.

Asylum Procedures Regulation in Italy - Eleonora Celoria - ASGI

The new Asylum Procedures Regulation intends to turn the exception into the rule. The European Court of Justice clearly stated that conducting asylum procedures at borders is only viable in exceptional circumstances. However, the New Pact would normalise this practice, which was piloted in Italy in September 2023. People on the move are channelled directly from screening facilities into the asylum procedure and are not allowed to move freely or enter official state territory. The most problematic element of the procedure is that applicants from countries with a recognition rate below 20% are subject to a fast-track procedure. The recognition rate is determined by the EU based on the “share of positive decisions in the total number of asylum decisions for each stage of the asylum procedure”, and will be based on Eurostat data. This practice carries a high risk of assessing asylum applications based on group characteristics instead of individual claims. The fast-track procedure extends to applicants deemed a threat to public order and national security, an approach that stimulates the unfounded perception of people on the move as security risks.

The new asylum procedure is not only flawed because it is based on racial profiling and deprives applicants of their right to liberty, legal assistance, or medical care, but also because its execution is not feasible. The Commission envisages that rejected applicants are immediately returned to ‘safe third countries’. However, the necessary cooperation with third countries is yet to be established. Thus, even with the new procedure in place, the number of readmissions and deportations has remained consistently low – in Italy as well as in Greece. In fact, the new procedure is likely to increase irregular migration and secondary movement. Moreover, shortly after the Italian government implemented this asylum procedure and detained people on the move at its border, Italian courts issued a series of rulings proclaiming this practice as unlawful based on fundamental principles of EU law (see J.A. and others v. Italy; A.B. v. Italy; A.M. v. Italy; A.S. v. Italy). These principles – of proportionality and necessity for individual assessment when it comes to detention – are independent of the New Pact as the right to liberty and security is enshrined in the Charter of Fundamental Rights of the EU.

Turkey as a Safe Third Country - Cavidan Soykan - University of Keele

States and organisations such as the EU use the concept of ‘safe third countries’ to deny people on the move the right to asylum on the grounds that they can seek protection in another ‘safe’ country. Turkey has been one of the principal EU partners for this practice, particularly as part of the 2016 ‘Turkey Deal’. The EU determines the criteria for what they deem a safe country. As the case of Turkey clearly demonstrates, these criteria contradict international refugee law, the European Convention on Human Rights, and the UN Convention against Torture. While the protection of refugees in Turkey was already critical in 2016, it has deteriorated since.

In 2016, refugees received conditional (temporary) refugee status and had the right to reside in Turkey, yet they were not protected under the Geneva Convention. By now, the Turkish government has changed both its rhetoric and its practice. Turkey has adopted a similar narrative as the EU, presenting high numbers of deportations and increased border security as successes. Syrian and Afghan nationals are deported and pushed back, unlawfully detained without access to legal aid and forced or manipulated into signing voluntary returns agreements. Turkey's overall economic and political situation has even led to increasing numbers of Turkish nationals seeking protection in the EU. The case of Turkey exemplifies how the EU intends to use the 'safe third country' practice as an instrument to deport asylum seekers to countries that are safe on paper but in reality pose grave risks to the fundamental rights of people on the move.

Instrumentalisation in Poland - Marta Górczyńska - Helsinki Foundation for Human Rights

In 2021, the Belarusian government flew people on the move from the Middle East, Africa and South Asia into Minsk and facilitated their further journey towards the Polish border. Poland and the EU proclaimed this an act of 'instrumentalisation of migration' to create pressure and internal conflict in the EU. Although these people had legitimate asylum claims, the Polish government argued that the right to asylum should be suspended. The reasoning behind this approach is to not give in to this form of 'hybrid warfare' by Belarus (and Russia) and to not let people on the move be 'instrumentalised' as a weapon of war to exert pressure on Poland and the EU at large. These events formed the idea for an Instrumentalisation Regulation, and the inclusion of 'situations of instrumentalisation' into the Crisis Regulation. The EU wants to prevent bordering states from using people on the move as a tool for creating internal conflict or political pressure. However, the EU's reaction does not reflect this logic and instead of seeking a diplomatic or political solution to a foreign affairs issue, the EU resorts to violent pushbacks and intends to suspend the right to asylum in cases where 'instrumentalisation' occurs. As the Commission's definition of 'instrumentalisation' is extremely broad, it can be invoked in a wide range of situations to justify derogations. This could have severe implications for the protection of people on the move as during these supposed states of emergency, they are not guaranteed access to the already limited EU protection standards and their fundamental rights. The terminology employed in the New Pact exacerbates this issue as people on the move are presented as 'hybrid threats' and strategic elements in a military conflict.

Conclusions:

The evidence from Greece, Italy, Turkey, and Poland that was presented by the invited experts demonstrates that the Screening Regulation, the Asylum Procedures Regulation, and the Crisis Regulation constitute significant threats to the fundamental rights of people on the move. These are just three elements of the New Pact that take a further step towards dismantling a framework that for many years granted refuge to those seeking protection. In the new system, individuals will be held at the borders where, legally speaking, they are considered not to have entered EU territory due to the fiction of 'non-entry'. From there, they will be funnelled into accelerated border procedures where many claims will be deemed inadmissible as a result of the strengthening of the 'safe third country' concept. They will then be directly returned to those countries, quite possible even if they appeal the decision, resulting in a lengthy and legalised version of the pushback process. In situations of 'crisis' where people on the move have supposedly been 'instrumentalised', they can even be directly pushed back. In this way, the Pact seeks to legalise ongoing illegal operations and threatens the very core of the right to asylum in doing so.