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Report of the fact-finding mission to Turkey by Ambassador Tomáš **Boček**,  
Special Representative of the Secretary General on migration and refugees,  
30 May – 4 June 2016

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## I. THE MISSION

From 30 May to 4 June 2016 I carried out a fact-finding mission to Turkey. The purpose was to identify how the Council of Europe can offer assistance to the country's authorities in meeting the challenges posed by the presence of a very high number of refugees and migrants, while ensuring full respect for all international obligations related to membership of the Council of Europe.<sup>1</sup>

The need to visit Turkey became apparent following my fact-finding mission to Greece and the important developments brought about by the recent conclusion of the EU-Turkey agreement. Turkey is also host to the world's largest refugee population: 3.1 million people with some form of protection status, of whom around 2.75 million are Syrian. The Turkish authorities are to be commended for the significant efforts that they have made so far to deal with a unique state of affairs created by the continuing conflict in neighbouring countries. At the same time, there is clear room for concrete Council of Europe support to enable them to continue managing the refugee situation (on their own or when co-operating with other member States and regional actors) in compliance with the human rights standards in our Organisation's various instruments.<sup>2</sup>

## II. INTRODUCTION

### 1. Meetings

In Ankara I met with high-level representatives of the Directorate General for Migration Management (DGMM), the Ministry of EU Affairs, the Ministry of Foreign Affairs, the Disaster and Emergency Management Authority (AFAD), the Ministry of Family and Social Policies and the Ministry of Education. I also discussed the refugee and migrant situation with the competent authorities in Istanbul, Edirne, Kırklareli, Adana, Osmaniye, Gaziantep and Izmir. I exchanged views with representatives of the UNHCR, UNICEF, the EU Delegation to Turkey, the World Food Programme, Turkish Red Crescent and the International Organisation for Migration. Finally, I met a number of NGOs and lawyers active in providing assistance and advice to refugees and migrants: ABA Rule of Law Initiative, Amnesty International, the Association for Solidarity with Asylum-seekers and Migrants (ASAM), the Association of Bridging Peoples, Caritas, Concern, GOAL, the Human Resource Development Foundation, Human Rights Association, IMPR Humanitarian, the International Rescue Committee, International Refugee Rights Association, members of the Istanbul Bar Association, members of the Izmir Bar Association, Mazlumder, Médecins du Monde, Médecins Sans Frontières, Mercy Corps, Mülteci Der, Refugee Rights Turkey, SAMS Foundation, Solidarity with Refugees, SPoD, Support To Life, the Urban Institute and the Yuva Association.<sup>3</sup>

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<sup>1</sup> On this mission, I was supported by my legal advisers, Mr Stephanos Stavros and Ms Michelle Lafferty; Ms Livia Stoica Becht, from the Children's Rights Policy-Coordination Division of the Council of Europe; and Mr Hasan Mutaf, from the Registry of the European Court of Human Rights.

<sup>2</sup> Following my visit, and in the wake of the failed coup in Turkey, the Turkish Government announced on 22 July 2016 its intention to lodge a derogation to the European Convention on Human Rights (Article 15). It was not clear at the time of publication of this report whether the specific measures envisaged will concern any of the areas covered by this report. Any measures adopted which impinge on the rights and freedoms in the Convention can be challenged before the European Court of Human Rights. It will then be for the Court to decide whether the conditions of Article 15 are satisfied, especially whether the measures taken were "strictly required by the exigencies of the situation". Certain Convention rights (including the prohibition on torture or inhuman or degrading treatment) do not allow of any derogation.

<sup>3</sup> The programme appears in Appendix I.

## 2. Visits *in situ*

In Istanbul, I visited Kumkapı Removal Centre, the facilities for inadmissible passengers and those who have applied for a protection status at Atatürk Airport and a multi-service centre for Syrian refugees run by ASAM in Tarlabası. In addition, two members of my delegation visited Yeldeğirmeni Minors Shelter. I also visited Edirne Removal Centre (Edirne Province) and Pehlivanköy Removal Centre (Kırklareli Province), near the border with Bulgaria and Greece. In the south-east, I visited Sarıçam Temporary Protection Centre (Adana Province), Düziçi Temporary Protection Centre (Osmaniye Province) and İslahiye 2 Temporary Protection Centre (Gaziantep Province). I also visited a registration centre, a child care facility and an ASAM multi-service centre for Syrian refugees in Gaziantep, near the Syrian border. Finally, in Izmir I visited Harmandalı Removal Centre, an ASAM multi-service centre for Syrian refugees and a centre run by a Syrian refugee solidarity organisation (with funding from WAHA).

## 3. Co-operation with the authorities and the UNHCR

I thank the Turkish authorities for their co-operation with this mission. I appreciated their willingness to facilitate my access to many sensitive places, including places of deprivation of liberty where I could discuss freely with the detainees. I also thank the UNHCR (United Nations High Commissioner for Refugees) in Ankara, Istanbul, Gaziantep and Izmir for their invaluable assistance in organising parts of my mission and for providing interpretation support.

# III. THE DIFFERENT PROTECTION REGIMES

## 1. The different regimes

The 2013 Law on Foreigners and International Protection (LFIP) and the 2014 Temporary Protection Regulation (TPR) govern the treatment of foreigners in Turkey. Together, they put in place a protection system with a complex structure: “temporary protection” is available to those forced to leave their country who have arrived in Turkey *en masse*; and “international protection” (Geneva Convention refugee status, conditional refugee status or subsidiary protection status) may be granted to all other nationalities following an individual assessment.<sup>4</sup> “Humanitarian” residence permits are also sometimes granted to those in need of protection.

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<sup>4</sup> In this report “international protection” is used exclusively to refer to these three protection statuses, which are described as “international protection” statuses in the LFIP. It is not intended to mean the more general concept of international protection as it is understood in international discourse on asylum, since – as stated here below – Turkey has maintained its geographical limitation to the 1951 Refugee Convention.

## 2. Temporary protection

The temporary protection regime currently applies to Syrians and stateless people crossing into Turkey from Syria. Because they are subject to this special regime, Syrians are precluded from lodging applications for “international protection”. Once Syrian origin has been verified, temporary protection is granted without any individual assessment. Some Syrians are excluded therefrom, including those involved in crime or terrorism.

The TPR gives beneficiaries the legal right to stay in Turkey, express protection from refoulement and access to basic services, including education and healthcare, on the basis of a temporary protection identification card issued by the DGMM. The applicable rules expressly exclude the prospect of long-term integration: time spent in Turkey under temporary protection does not count towards the fulfilment of residence requirements for a long-term residence permit or for the acquisition of Turkish citizenship.<sup>5</sup> However, beneficiaries of temporary protection are eligible for resettlement to a third country.<sup>6</sup>

Concerns have been raised as to the lack of clarity about how the temporary protection regime may be terminated. There also seems to be no guarantee that those currently under temporary protection will be able to access “international protection”, if temporary protection is terminated.

## 3. “International protection”

Everyone else seeking protection must make an application for “international protection” to the DGMM. There are three types of “international protection”: Geneva Convention refugee status, conditional refugee status and subsidiary protection. Geneva Convention refugee status is available only to those fleeing persecution as a result of events in a Council of Europe member State.<sup>7</sup> In practice, therefore, asylum-seekers arriving in Turkey are generally eligible only for conditional refugee status or subsidiary protection.<sup>8</sup>

Once the registration and interview processes have been completed, “international protection” applicants receive a foreigner identification number. They have various rights set out in the LFIP, including free healthcare and education, pending the determination of their applications. Under the “satellite city” system, which applies to those under the “international protection” regime, they are allocated to one of 62 designated provinces<sup>9</sup> and are required to reside there. This residence requirement persists even if they are granted conditional refugee or subsidiary protection status. The rationale for the satellite city system is not clear, especially since the far larger number of Syrian refugees under temporary protection can, in principle, choose where to register, and the choice includes all the Turkish provinces.<sup>10</sup> “International protection” applicants from Sub-Saharan Africa have complained that the satellite cities to which they have been assigned are not equipped to integrate foreigners; they have also claimed that

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<sup>5</sup> It has been recently announced that the Turkish authorities will start work on facilitating the acquisition of Turkish citizenship by Syrians.

<sup>6</sup> The submission of resettlement cases from Turkey to other countries is undertaken by the UNHCR.

<sup>7</sup> Turkey has maintained its geographical limitation to the 1951 Refugee Convention.

<sup>8</sup> Conditional status is granted to those who would have qualified as refugees had Turkey not maintained its geographical limitation to the 1951 Convention. Subsidiary protection is available to those who do not qualify for refugee or conditional refugee status but who would, if returned to their country of origin, face death, torture or inhuman or degrading treatment or a serious threat resulting from indiscriminate violence in the context of armed conflict.

<sup>9</sup> Big cities like Istanbul, Ankara and Izmir are excluded from the scheme.

<sup>10</sup> Syrians are, nevertheless, under an obligation to reside in the province where they have registered.

racism and discrimination based on skin colour are significant barriers to integration and employment in rural provinces. Those granted conditional refugee status can resettle outside Turkey. However, they have no prospect of obtaining a long-term residence permit in Turkey itself; as with temporary protection beneficiaries, the amount of time spent there as a conditional refugee does not count towards the time someone is required to reside in the country before being able to apply for such a permit. Moreover, conditional refugees are not entitled to family reunification. Those granted subsidiary protection do benefit from family reunification rights in Turkey. Otherwise, their prospects of long-term integration are limited.

In most respects, the LFIP seems to have put in place a clear legal framework for ensuring respect for the basic rights of “international protection” applicants. Time will tell how well these rights are secured in practice. There is, nevertheless, one aspect of the LFIP that has been the subject of criticism: the absence of long-term integration prospects for those granted conditional refugee or subsidiary protection status. One must add that the lack of comprehensive data on “international protection” applicants and beneficiaries is an obstacle to assessing the effectiveness of the applicable regime.

#### 4. “Humanitarian” residence permits

A number of Iraqis have been given the right to stay in Turkey on the basis of a “humanitarian” residence permit. This is not a protection status but one of six kinds of residence permits granted to foreigners. Such a permit bestows the legal right to stay in Turkey but gives limited rights and access to services. For example, although permit-holders are entitled to some free healthcare, medication costs are excluded. However, unlike applicants for “international protection”, humanitarian residence permit holders may choose where in Turkey they wish to reside. Formerly, Iraqis were systematically provided with “humanitarian” residence permits instead of “international protection”. I understand that they are now given an option between such a permit and making an application for “international protection”. In practice, lack of information on the benefits and disadvantages of each is likely to prevent them from making an informed choice.

### IV. ACCESS TO A PROTECTION STATUS

#### 1. Issues concerning Syrians’ registration

As already stated, all foreigners – including Syrians – must register with the DGMM and obtain a foreigner number in order to access rights and services in Turkey.

Each province is supposed to cater for a fixed number of Syrians. It has not been made clear to me how the quotas for Syrians are set and whether there is a centralised system for distributing them among

provinces. What became evident during the visit is that, once this number is reached in some provinces, the local branches of the DGMM (PDMM) stop registering those who wish to apply for protection (or slow the registration process down considerably). When speaking with the authorities, it also became clear that the delays in the registration procedure were not to be attributed to lack of capacity.

In Gaziantep I met a lot of Syrians who claimed to have been waiting for a registration-related appointment for several months. Some of them claimed that they had not been able to access the building where the documents with the appointment dates were being handed out. I was also shown documents from which it transpired that those who had obtained an appointment would have to wait for several months, sometimes until next year. My attention was drawn to the fact that the system for fixing appointments lends itself to abusive practices, encouraging the involvement of middlemen.

In March 2016 the authorities introduced a pre-registration phase, to allow them to conduct security checks before registering applications and providing a foreigner number. This new phase was introduced through unpublished circulars and has been criticised as opaque. Although pre-registration is apparently intended to be completed within a month, I was shown documents from which it transpired that it takes far longer. This compounds the already-existing delays in obtaining registration.

One additional cause for concern is that the registration system, including the pre-registration phase, does not appear to contain any safeguards to ensure that vulnerable groups are identified and dealt with on a priority basis. The special needs of unaccompanied children, in terms of information for example, are not catered for either.

The efforts of the Turkish authorities in registering over 2.5 million Syrian refugees should, of course, be recognised. Moreover, it is clear that the system cannot function without some geographical distribution of refugees that also takes into account their wishes. But it is equally clear that failure to register refugees in particular provinces is not a solution. It is very important to stress that the situation of unregistered refugees – from the point of view of enjoyment of social rights – is alarming. This is something that I was able to witness myself. The system needs to be fixed urgently.

## 2. Making an application for ‘international protection’ while in detention

The detention facilities I visited all had registration rooms where detainees could make applications for “international protection” and be interviewed. Some had a room reserved for UNHCR representatives. The authorities assured me that all new arrivals were given a document in a language that they understood, explaining their right to apply for “international protection”. I was not able to obtain a copy of any such document: the papers I was shown served a different purpose; they were provided once an application for “international protection” had been made or a removal decision handed down. The detainees I interviewed stated that they had not received any information on their rights upon arrival at the removal centre.



Prior to my mission, I notified the Turkish authorities of my wish to speak with 13 detainees in Pehlivanköy Removal Centre (Kırklareli) who, according to UNHCR reports, had been readmitted from Greece on 4 April despite having expressed a desire to seek asylum there. I am grateful to the authorities for facilitating my access to these detainees whom I interviewed in private. A group of Congolese nationals confirmed that they had been readmitted to Turkey, although they had notified the UNHCR in Chios, Greece, of their intention to make asylum claims in the latter country. They claimed that, upon arrival in Pehlivanköy, they had asked for access to the UNHCR; however, the authorities ignored their request for “international protection” for several weeks. They were only able to apply on 24 May, shortly before my visit. When I spoke to them on 31 May, they had not yet received written confirmation of the registration of their requests.<sup>11</sup>

I also interviewed an Afghan family whose names I had not provided to the authorities in advance. They had informed the Turkish authorities that they wished to make applications for “international protection” as well. The authorities assured me that they would be interviewed in the afternoon of my visit, although the family did not seem to be aware of this.

Access to the UNHCR, NGOs and a lawyer is often crucial for detainees’ effective access to “international protection” procedures. For the moment, each removal centre seems to have its own practice concerning co-operation with these actors, although the UNHCR is currently negotiating a global agreement with the DGMM on this matter. When the UNHCR and NGOs are given access, they are only permitted to contact individuals who have requested their assistance in advance; they are, therefore, required to furnish the interested person’s name. This system presents a further, apparently unnecessary, barrier to access: a system of “open clinics” would ensure regular access for any interested person to the advice that the UNHCR and selected NGOs can offer.

There are allegations that detainees have difficulties contacting the UNHCR, NGOs and lawyers. In some removal centres there is allegedly no opportunity for telephone contact. In the detention centres I visited, there were posters with the telephone number of the UNHCR or ASAM. But since detainees are not allowed to keep their mobile telephones, their only opportunity to make calls is during the short periods when they are allowed out of their rooms and can use public telephones.<sup>12</sup> There are also allegations that detainees are not permitted to see lawyers even where lawyers request access to them by name, or that artificial obstacles are created.

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<sup>11</sup> These and an Afghan man were the only persons present in Pehlivanköy Removal Centre on the day of my visit who had lodged an “international protection” application in Turkey. The Afghan man was not one of those who had allegedly indicated that they had wished to make an asylum application in Greece before their readmission to Turkey.

<sup>12</sup> There are complaints about telephone cards, the low value of which makes it hard to have long conversations.

In any event, it appears that there is a lot of discretion for the removal centre management to determine the conditions under which lawyer consultations can take place. In one removal centre, the authorities explained that some lawyers sought to exploit detainees. This is why the authorities took “necessary measures”. It was far from clear whether these were prescribed by any rules.

Moreover, detainees encounter practical difficulties in providing their lawyers with powers of attorney because of the form of identification required<sup>13</sup> and the cost of translating documents.

It became clear during my visit that there were concerns about access to “international protection” for detainees. Although the latter are dependent on the assistance of the authorities, they are provided with no information and are often denied access to UNHCR representatives and NGOs who could advise them of their rights. The issue acquires an additional dimension in the case of those who are returned from Greece under the EU-Turkey agreement, given the Turkish Government’s commitment to the European Commission that they will ensure that all those in need of “international protection” who are returned from the Greek islands will have access to the relevant procedures in Turkey.

### 3. Backlog of pending “international protection” requests

There is a backlog of pending “international protection” requests. By the end of February 2016, this had reached 140,000. The DGMM subsequently mobilised additional personnel and by the end of April, the backlog stood at around 100,000. It seems the reduction was largely achieved by terminating all applications which had implicitly been withdrawn (i.e. where the applicant had left the place where s/he was supposed to live or had not fulfilled the reporting obligation).<sup>14</sup> I understand the DGMM is working to clear the remaining backlog before the end of 2016. They need to be supported so that all applications are given a proper examination.

### 4. Lack of information on the different regimes and associated rights

Those seeking protection in Turkey seem to encounter difficulties in obtaining relevant, accurate and up-to-date information on the different regimes, each of which involves different procedures and gives rise to rights and obligations that are not always the same. In Istanbul, ASAM has worked hard to publicise the availability of temporary protection for Syrians. As a result, Syrians there appear to be fully aware of their right to seek temporary protection. However, the same may not be true in all areas of Turkey; nor are non-Syrians similarly aware of their right to apply for “international protection”.

It would also appear that many public-sector employees involved in the provision of services are unaware of their legal obligations vis-à-vis refugees and asylum-seekers.<sup>15</sup>

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<sup>13</sup> The temporary protection card does not constitute a valid form of identification.

<sup>14</sup> See parts III.3 and IV.5.

<sup>15</sup> Recently, foreigner numbers commencing with “98” were changed to numbers commencing with “99”. It seems that many service providers do not recognise the old “98” numbers; as a result, some people are wrongly denied access to rights.

#### 5. Travel restrictions

Applicants for “international protection” and those holding conditional refugee or subsidiary protection status, who have to reside in a specific place, are under an obligation regularly to report to the authorities. The applications of “international protection” applicants who fail to comply with their reporting obligations on three consecutive occasions without good reason, or who leave the place where they are required to reside, are considered withdrawn. The assessment of their claim is terminated.

Syrians under the temporary protection regime also need permission to travel outside the province where they have registered. Until recently, the authorities did not try to enforce Syrians’ obligation to reside in a particular province. But, according to my interlocutors, upon the conclusion of the EU-Turkey agreement the situation changed drastically. It is now difficult for them to obtain permission to travel outside the province. Moreover, there are frequent checks to find out whether those travelling (or those who might have travelled) between provinces have complied with the relevant regulations. Several people claimed that these checks were conducted on the basis of the appearance of those concerned. This could raise issues under the European Commission against Racism and Intolerance’s General Policy Recommendation No. 11 on combating racism and racial discrimination in policing,<sup>16</sup> and Articles 8 and 14 of the European Convention on Human Rights.<sup>17</sup>

### V. EFFECTIVE LEGAL PROTECTION OF REFUGEES AND MIGRANTS

Restricting detainees’ access to counsel, in addition to limiting their prospects of obtaining “international protection”,<sup>18</sup> raises a general question concerning their legal protection, as they are effectively prevented from making other complaints as well.

So does the unavailability of legal aid in several places. Under national law, “international protection” applicants and beneficiaries have the right to legal aid if they are unable to afford to pay a lawyer’s fees. This is an important guarantee and the Turkish authorities are to be commended for having put it in place. However, my attention has been drawn to the fact that many bar associations do not provide such assistance, claiming not to have the necessary resources. This is an issue that should be addressed at government level so that this ambitious and forward-looking legislation does not remain a dead letter.

Translation and interpretation services are often needed to ensure effective access for those not fluent in Turkish to the courts and the police (should they have criminal complaints to make). Improvements in this area are clearly required.

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<sup>16</sup> See § 1.

<sup>17</sup> Turkey has not ratified Protocol No. 4, which guarantees in its Article 2 the right to liberty of movement and freedom of residence for those lawfully residing within a State’s territory.

<sup>18</sup> See part IV 2.

Finally, administrative courts lack expertise in applying the legislation on foreigners. This is a cause for concern, especially given the many issues that are bound to arise under the European Convention on Human Rights in the application of the law.

## VI. SOCIAL INCLUSION OF REFUGEES AND ASYLUM-SEEKERS

### 1. Accommodation

#### *a) Capacity*

The number of refugees and asylum-seekers<sup>19</sup> in Turkey has created a huge burden in terms of accommodation. The Turkish authorities have received almost universal praise for their speedy construction of a number of camps in the Syrian border region which offer decent, albeit basic, living conditions for residents. Around 290,000, largely Syrian, refugees, of Turkey's total 3.1 million refugees, reside in 26 such camps (known as "temporary accommodation centres"), being provided with accommodation free of charge.

Aside from the camps, there is one reception centre in Yozgat which has a capacity of 100 people and provides free accommodation for the most vulnerable. Although six new reception centres were built with EU funds, capable of accommodating up to 4,500 people, the Turkish authorities subsequently obtained approval temporarily to convert five of them into removal centres to cope with the increasing need for suitable detention facilities. Only one, in Erzurum with capacity to house up to 750 people, will be used for its original intended purpose. I also understand that two new reception facilities are now planned for Ankara and Konya, the latter for asylum-seeking children who are unaccompanied.

This will no doubt improve reception capacity but the overall number of places will still be relatively small. On the other hand, it may be that Syrians, whose presence in Turkey has been and is likely to continue to be of some duration, prefer to reside in urban areas in an effort to pursue what could become normal life.

#### *b) Conditions in the camps I visited*

I visited three camps in Turkey near the Syrian border: Sarıçam, Düziçi and Islahiye 2.

Sarıçam camp opened in 2013 and is run by AFAD. At the time of my visit (1 June 2016), it hosted around 10,300 Syrians, approximately 60% of whom were children, mainly in 2,141 family tents.<sup>20</sup> Aside from the residential tents, there are 166 larger public tents for communal use as classrooms, administrative and medical facilities and prayer rooms. The infrastructure is good: there are some paved roads, electricity and a sewage system; water is also freely available. Electrical heaters are provided in winter and fans in summer.

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<sup>19</sup> The terms cover those who have applied for protection under one of the different regimes described in part III and those who have obtained it.

<sup>20</sup> Some people have to share larger tents.

The camp was at full capacity and there was practically no turnover; the only exception was to enable family reunification. There were complaints about lack of space, especially since 100 new tents with capacity for around 3-500 people were expected to be added. The tents were functional and in good condition. However, it would appear appropriate to begin to replace them with containers, since the camp can no longer be considered a short-term solution to the Syrian refugee crisis.

Islahiye 2 is also an AFAD-run tent camp. It is similar to Sariçam. It is one of only two camps hosting non-Syrians: it has around 9,000 Syrians and 7,000 Iraqis. Again, I was able to see during my visit (on 1 June 2016) that conditions were generally good in the Syrian part. The Iraqi part was more rundown and tents were shabby. Residents complained of long queues to re-enter the camp at the end of the working day. Although the camp had spare capacity, there were a number of people sleeping outside it in the hope of being permitted to enter and reunite with their families. It was not clear why these people had not been admitted, although it may be that some had been unable to obtain registration.

Unlike Islahiye 2, Sariçam and 23 other camps, which are run by AFAD, Düziçi camp is managed by the DGMM. The authorities informed me that its residents had been brought there from different parts of Turkey for their own good: some were homeless and needed shelter, others had engaged in begging or criminal activity. Syrians apprehended while trying to cross the border or returned to Turkey from Greece are also often sent to Düziçi. A large number of the camp's residents were Roma.<sup>21</sup>

Düziçi is a container camp with a capacity of 5,000. On the day of my visit (1 June 2016), it was less than half full. Each family has a container with two rooms. Basic needs are catered for: hot meals are provided three times a day and there is electricity. However, the general conditions were not good. On the day I visited it, it was very hot; the containers, which were on a hillside, were exposed to the sun, with the result that it was very warm inside. Many of the young children I saw were barefoot and dirty. Aside from my concerns about the legality of detention of the camp's residents,<sup>22</sup> it was clear to me that improvements were required to the material living conditions there.

Although all of the camps had facilities to provide basic medical services, there was a limited number of doctors, which gave rise to concerns. A high number of children seem to be born in the camps; the sanitary conditions of giving birth in tents or containers put both mothers and children at risk. Finally, it does not appear that there are professionals available to provide adequate psycho-social support for a population likely to have been victims of traumatic events.

I was pleased to see the establishment of women's committees in Islahiye 2 camp. These are instrumental in ensuring that women's needs and concerns are brought to the authorities' attention.

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<sup>21</sup> Syrian Roma are called Dom.

<sup>22</sup> A matter to which I will return in part IX.2.f).

Given the large number of women and girls living in the camps, as well as their specific protection needs,<sup>23</sup> I would encourage further such initiatives.

*c) Accommodation outside the camps*

As indicated above, the vast majority of Syrian refugees, “international protection” applicants and beneficiaries and holders of “humanitarian” residence permits reside outside the camps. Those outside the camps are not provided with accommodation or assistance with accommodation costs; they must survive by their own means. This has led to the impoverishment of thousands of refugees, exacerbated by the rapid rise in rents because of the number of new arrivals. This makes it difficult for those on low incomes to access adequate housing.

2. Welfare support

Some welfare support is provided to refugees and asylum-seekers in the community by international organisations (IGOs) and NGOs. ASAM has opened a number of multi-service centres for registered Syrian refugees across Turkey; unregistered Syrian refugees have to rely on informal support networks.<sup>24</sup> I was impressed with the services being offered to refugees in the centres I visited in Istanbul, Gaziantep and Izmir. Although ASAM appears to concentrate on providing legal advice, social counselling and basic healthcare services, they also offer some material assistance to those in need. In Istanbul, for example, ASAM distributes donated school uniforms to families who cannot afford to buy their own. It also provides financial assistance for school books.

Several NGOs have set up cash assistance projects to assist refugees and asylum-seekers. Families are often expected to do something in return. Under one scheme, for example, they receive cash on condition that their children attend school. A similar project is underway in Istanbul, coordinated by the Ministry of Family and Social Policy. The authorities also informed me about other small amounts of financial help being provided for those with children, with support from the EU. It is clear that there is no systematic welfare provision for refugees and asylum-seekers: the cash assistance offered by NGOs and the Turkish authorities is sporadic and uncertain. I understand that governors<sup>25</sup> and mayors have significant autonomy in handling the Syrian refugee response and receive money from the national budget to use as they see fit. But I was also informed that refugees are not taken into account when the population of cities is calculated for the purpose of determining the level of financial support they receive. This makes it more challenging for them to allocate funds to refugee and migrant issues.

Aside from cash assistance schemes, the World Food Programme and Turkish Red Crescent have launched an e-Food card programme with financial support from the EU’s Humanitarian Aid Department. The e-cards are used in 11 camps by over 156,000 people. The cards are charged with around 85 Turkish lira (25 euros) per person each month and can be used to purchase food. Families complained that the funds were insufficient because of the high cost of nappies and baby milk.

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<sup>23</sup> See part VIII of the report.

<sup>24</sup> ASAM also provides advice on registration to unregistered refugees.

<sup>25</sup> Governors are in charge of provinces.

Since 2015, the e-Food card has also begun to be distributed outside camps (charged with 62 Turkish lira per month). Around 90,000 people have received assistance so far. In March 2016 the EU announced that it will contribute € 40 million and it is hoped that the scheme will be extended to cover around 735,000 people inside and outside the camps in the coming months. The e-Food card scheme is a praiseworthy initiative of great significance. However, for many refugees and asylum-seekers outside the camps, it is a struggle to survive. Harsh living conditions may be a very important push factor for those who decide to leave for other Council of Europe member States.

### 3. Health care

Registered refugees and asylum-seekers are entitled to access free healthcare in public facilities. No regular contributions are paid for Syrians into the health system; instead, AFAD pays separately. Delays in such payments lead to problems, especially concerning access to medicines.

Unregistered refugees and asylum-seekers are given access only to emergency healthcare. This seems to be very narrowly defined: for example, it does not include maternity healthcare or giving birth in hospital.<sup>26</sup> This is a significant concern given the high number of children being born to refugees and asylum-seekers in Turkey. Moreover, as noted elsewhere, delays in registration seriously limit access to healthcare in practice.

Quite often, refugees and asylum-seekers require interpretation to be able to enjoy the rights that have been guaranteed for them. Despite the laudable efforts made in this connection by several NGOs, everyone I met agreed that refugees' and asylum-seekers' needs for interpretation services in the health sector are far from being fully met.

### 4. Access to the labour market

#### a) *Work permits*

Since the start of 2016, Syrians who have been in Turkey for more than six months may obtain a work permit in the province where they have registered.<sup>27</sup> A quota applies: they must not constitute more than 10% of a company's staff. The work permit is also tied to a particular employment: it can only be requested once an employment contract has been obtained; moreover, it must be requested by the prospective employer. Seasonal work in the agriculture and livestock sectors is exempt from the work permit requirement and the quota rule. "International protection" applicants may also apply for work permits six months after they have lodged their applications. Geneva Convention refugee and subsidiary protection status beneficiaries may work without a permit; a permit is required for conditional refugee status beneficiaries.

I did not obtain any figures on the numbers of work permits requested or granted. According to reports, some 2,000 applications had been made under the new procedure by Syrians by late March.

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<sup>26</sup> Except in cases of premature labour.

<sup>27</sup> Although the right was included in the TPR, the modalities required implementing legislation.

This represents a very small percentage of the working-age Syrian population in Turkey. There does not seem to be any information available on the number of decisions made to date. The absence of data makes any attempt to evaluate the effectiveness of the system very difficult.

In any event, the practice on work permits seems to vary significantly from province to province. Governors and mayors play a key role in deciding how the relevant rules are applied. In a city I visited, the authorities informed me that they did not enforce the six-month waiting period. Moreover, while the quota applied in theory, no checks were undertaken in practice.

It would seem that employers have little motivation to apply for work permits. They prefer to pay low rates to illegal workers. Moreover, the bureaucracy involved in making an application is cumbersome, particularly when it comes to low-skilled work.

I am persuaded that further work needs to be done to ensure effective access to the labour market. Reports of abuse and exploitation of Syrian refugees working the textile industry, including allegations of discrimination and low wages, remain widespread. The quota rule is particularly problematic in the border areas, where Syrians may make up over 50% of the population (although the more extensive opportunities for seasonal work in some of these areas may help to reduce these difficulties). The failure, for the time being, of the work permit regulations to give refugees and asylum-seekers real access to the labour market makes it difficult for families to survive outside camps. These same families are more likely to send their children to work.<sup>28</sup>

#### *b) Recognition of qualifications*

There does not seem to be a system in Turkey for the recognition of the academic or professional qualifications of those enjoying protection under one of the regimes described in part III.<sup>29</sup> As a result, they do not appear to be able to rely on their studies to find appropriate employment. Teachers from Syria who work in the Syrian-curriculum schools seem to be one of the rare exceptions.

#### 5. LGBTI individuals

I was told that intolerance of LGBTI individuals affects their access to accommodation, employment and health. Although this is also a problem that affects Turkish nationals who are part of the LGBTI community, it is compounded in the case of refugees and asylum-seekers who are already struggling with other problems related to integration. Because of the lack of privacy in camps especially, LGBTI individuals may be dissuaded from seeking help from civil society organisations, such as SPoD, which could assist them. Better access to information relevant to their situation is also needed.

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<sup>28</sup> See part VII.3 of this report.

<sup>29</sup> Although Turkey has ratified the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS 165), which provides in Article 7 that “Each Party shall take all feasible and reasonable steps within the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence”.



#### 6. Co-operation with civil society and lawyers

Although the LFIP guarantees those in removal centres access to the UNHCR and lawyers, it is silent on the modalities. As already explained, UNHCR officials and lawyers do not currently have access to all removal centres; their attendance depends on the authorities' discretion.<sup>30</sup> Similarly, there are few reports of NGOs being granted permission to access removal centres. Moreover, although according to the LFIP services at accommodation centres may be outsourced, there are no instructions as to how this general provision is to be implemented.

Following my mission, an agreement was signed between DGMM and Turkish Red Crescent with the aim of providing better services to those in removal centres and camps. More clarity around access and delivery of services by the UNHCR and NGOs, through similar agreements, would likely improve conditions in camps and removal centres. It would also enable EU funding to be channelled via them in a focused way. The Turkish authorities could be provided with expertise in drafting co-operation agreements and with examples of good practice in this field.

There were also complaints by IGOs about the need to obtain authorisation before commissioning studies and surveys on the situation of refugees and asylum-seekers. Collecting data on the large and evolving refugee and asylum-seeking population can be a challenging task. The Turkish authorities could, therefore, benefit from empowering IGOs to carry out such activities. Up-to-date and accurate data is needed for the proper allocation of available resources.

#### 7. Need for social inclusion policies with a strong anti-discrimination component

Turkey is to be commended for the fact that the influx of refugees has not become a national political issue. Nevertheless, there have been incidents of hate speech at a local level and on the Internet; instances of hate crime were also reported to me.

Several ministries are developing projects on social services and integration policies. The Bank of Provinces also finances relevant programmes. Nonetheless, the way that Turkey has responded to many of the truly enormous challenges related to the presence of 3.1 million refugees on its territory appears to be based on the assumption that most of them will eventually return to their countries of origin.<sup>31</sup> This might well be the wish of many of the persons in question. But most objective observers seem to share the view that policies are needed for the proper inclusion of these people in Turkish society. It goes without saying that the fight against intolerance and discrimination should be an essential part of the social-inclusion policies that will be put in place.

It also seems that, while some NGOs offer Turkish language courses, there are insufficient language-learning opportunities for adults. Those in employment need evening courses to pursue formal language-learning; it appears that these are rarely available. The situation is even worse for those who do not work and have, as a result, no exposure to the Turkish language. Lack of a standardised approach to language teaching also creates difficulties for those who move around within Turkey.

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<sup>30</sup> Although, as explained, the UNHCR is in the process of negotiating an agreement with the DGMM.

<sup>31</sup> The Syrian-curriculum schools, which I discuss in part VII.2 below, are but one example.

## VII. CHILDREN

### 1. Unaccompanied children

There is no specific law on unaccompanied migrant children (UAMs). They are considered “children in need of protection” under the relevant general legislation.

I received complaints that there are numerous such children living alone in the streets in Turkey. Yet, the official number of UAMs present in the country is surprisingly low, especially when compared to other Council of Europe member States on the migration route. The Turkish authorities attribute this to the sincere efforts they are making to reunite UAMs with their families. Moreover, it seems that the authorities in question look to a wide range of relatives (for example, cousins) when attributing responsibility for migrant children. But there are doubts as to whether these informal arrangements are effectively supervised.

For those children who are identified as “unaccompanied”, the Turkish Civil Code requires the appointment of a legal guardian. This does not appear to happen in practice and must be addressed immediately.

The system also needs to be improved by clarifying and publicising the procedure for referring UAMs to the appropriate authority. Many of those I interviewed were not very clear on the channels that have to be followed before unaccompanied children are placed in one of the care facilities under the authority of the Ministry for Family and Social Policies. However, everyone seemed to agree that such children are not usually kept in police custody, which is a positive aspect.

Another issue that has to be looked into is age assessment. It would appear that the psycho-social aspects are left out of the procedure.

My team visited two child care facilities under the management of the Ministry of Family and Social Policies. Yeldeğirmeni Minors Shelter, in Istanbul, specialises in UAM boys. It has a total capacity of 60 and hosted 56 such boys at the time of our visit. The child care facility we visited in Gaziantep catered for Turkish children as well. It hosted 18 unaccompanied migrant girls and boys, some of whom were very young. The UAMs we saw were primarily Afghans, Iraqis, Nigerians and Syrians. Not all had identification documents or protection status. I was assured that children in care facilities who wish to apply for asylum receive appropriate assistance. The living conditions in both facilities were good. Services provided include psycho-social support but a lack of interpreters may prevent UAMs from deriving any benefit from it.

According to the law, entitlement to support ends when a child turns 18. In certain circumstances it may be extended for a short, additional period. Concern has been expressed about the lack of adequate transitional arrangements.

At the child care facility in Gaziantep, I met several very young Muslim children from Austria and Bosnia-Herzegovina whose parents were serving prison sentences. It transpired that some of the parents in question had travelled from Council of Europe countries to Syria before being apprehended in Turkey.

I was told that, in the absence of their parents' consent, the relevant consular authorities or other family members abroad are not necessarily notified that these children have been placed in state care. These children are unquestionably a vulnerable group deserving special attention.

## 2. Education

Providing education to the high number of refugee and migrant children in Turkey is a significant challenge. Of the 2.75 million Syrians registered under temporary protection, more than half are children. It is also reported that Turkey plays host to over 800,000 school-age Syrian children.

Refugee and asylum-seeking children have a full right to education. Those who have not yet obtained registration as beneficiaries of one of the regimes described in part III may also attend school as "guest students". But children of irregular migrants do not have any educational opportunities. The European Committee of Social Rights does not consider this to be in conformity with the obligation on States Parties to the European Social Charter to ensure that all children present in their territory have effective access to education, irrespective of their migration status.

Syrian children have the option of attending either a Turkish state school or a "temporary education centre". These centres are usually Syrian-run, teach a Syrian curriculum in Arabic and have been granted recognition by the Turkish authorities. Many Syrians chose to send their children to such centres. In this sense, the "temporary education centres" might be facilitating access to education. They also serve a worthy goal, in that they respect Syrian identity. However, they may end up hindering effective integration by – among other things – failing to provide sufficient teaching in Turkish. This does not favour university attendance or access to the labour market. The new policy, therefore, seems to be to encourage attendance of Syrian children at local schools. This could be a solution, provided that the children in question are also taught their parents' history and culture and how to read and write in Arabic.

Approximately 330,000 Syrians are enrolled in schools in Turkey. The rate of participation in education among refugee children living in camps is 85%. This rate decreases sharply for those who live outside camps. The low level of enrolment in school for those outside the camps is a matter of particular concern. A number of children have been out of education for several years. Their future prospects are seriously undermined with each year of education missed.

I was told that a number of factors, practical and financial, contribute to the low enrolment rate. Some schools do not accept "guest students" insisting on full registration documents. As already observed, these may not be available because of registration delays or freezes on registration in some places. ASAM in Istanbul acts as a point of liaison between schools and families when such problems occur. Informing the school authorities of their legal obligation to enrol refugee and asylum-seeking children is, quite often, enough to resolve the problem. A further concern is inadequate support to help children integrate in Turkish schools by overcoming linguistic difficulties. Discrimination against migrant children is also an issue in some places. From the financial perspective, tuition costs for Syrian schools can be prohibitive for some. Finally, many refugees and asylum-seekers send their children out to work to supplement the family income, rather than enrolling them in schools.

As regards the places I visited, on the one hand, I was very impressed by the educational facilities offered in Sarıçam and İslahiye 2 camps. The camps had a number of schools with dedicated teaching staff. Many activities were organised for the children. However, the education provided there largely follows the model of the Syrian schools. For the reasons explained above, it may be time to promote Turkish-administered education – with an Arabic language and Syrian culture component – for camp residents. On the other hand, the situation for children in Düziçi camp is dire. There was an empty container, with a blackboard, designated as an education space, but I was informed by the authorities that because of the transient nature of the population it was not feasible to arrange for teaching. In any case the size of the container was clearly wholly inadequate for the high number of children in the camp. Although high turnover may mean that children do not spend long there, it is unacceptable for them to suffer any break in their education. The same is true of children in removal centres, although, of course, this report calls for children not to be detained at all.

In so far as UAMs are concerned, those in child care facilities are provided with informal education, vocational and recreational activities and Turkish language classes. They can also enrol in Turkish schools. In one of the institutions visited by my delegation, those responsible alluded to a lack of interest from the children in education or training. It was clear that language was a significant barrier to their engagement: very few were able to express themselves adequately in Turkish, despite extended stays in the country. While examples were given of children who had successfully integrated into the state education system, a large number of boys did not appear to go to school. More linguistic and psycho-social support is required to encourage their participation.

To conclude, I fully share the concerns expressed by the Ministry of Education that, while it may not be too late, there is not much time left to ensure that the generation of refugee and migrant children currently in Turkey is not lost. The absence of adequate education prospects for the majority of these children aggravates the trauma resulting from their displacement. It also increases the risk of alienation and disaffection. This could lead some into criminality or extremism. Resources are needed to build infrastructure and increase capacity; to develop incentives for school attendance, especially for girls; to recruit and train a sufficient number of teachers; and to provide material and financial support.

### 3. Child labour

The employment of children under the age of fifteen remains a considerable problem in Turkey. Although it also affects Turkish children, the influx of refugees has led to an explosion of Syrian children working especially in textile factories and agriculture. This is both a consequence of and a cause for children not attending school. I saw many very young children begging, engaging in street vending or helping their parents collect scrap metal for sale. A large number of refugee children start working at a very early age. The hourly wages they receive are pitiful. Yet it seems that they are often their families' only source of income. Children's exposure to exploitation<sup>32</sup> and physical and moral hazards creates a serious threat to their enjoyment of their most basic rights.

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<sup>32</sup> The risk of labour exploitation by criminal gangs is similar to that of sexual exploitation alluded to in the next part.

The authorities are aware of the problem and seem to be keen to tackle it. Officials at the Ministry of Family and Social Policies explained that they are implementing psychological and social support programmes, in cooperation with AFAD, as well as awareness-raising programmes to prevent child labour. As pointed out above, the authorities and several NGOs are also beginning to put in place projects to give financial assistance to parents who send their children to school. However, these schemes are very much on an *ad hoc* basis for the time being. They have not been rolled out widely enough to create an incentive for most Syrian parents not to send their children to work. Whether they succeed or not will be crucial in determining the content of a general nationwide scheme. Such a scheme should be developed as a matter of priority. In order to combat child labour effectively, the authorities should also create incentives for adult employment, by improving for example the work permit regime and starting to recognise foreign qualifications.

A separate issue concerns the treatment of children found begging or working. According to several governors, children who are apprehended working or begging in the streets are swiftly brought back to their families. No repressive measures are supposed to be taken against them. Nevertheless, I have also received reports of children being arrested and taken to Düziçi camp. In one case, three children were apprehended by the police while selling small items in the street with their aunt and her children. They were taken to a removal centre and were only released some time later, following the intervention of a lawyer and an NGO. The way that children caught begging or engaging in street vending are treated should be dictated by what is in their best interest. The detention of such children is not acceptable. The police and other relevant professionals must receive human rights training to ensure that any action they take promotes children's wellbeing.

## VIII. VIOLENCE, TRAFFICKING AND SEXUAL EXPLOITATION

### 1. Early marriage, trafficking and sexual abuse

I received testimony from families living outside camps that they find it hard to keep their children safe. The vulnerability of single mothers, often responsible for several young children, is particularly concerning. I cannot exclude that these women and their children may be targeted by criminals for sexual exploitation or trafficking.

I was very concerned to hear of an increasing number of cases of early marriage of Syrian girls, primarily due to poverty or as a means to "secure the child's honour". There are also reports of Syrian child brides being "marketed" to older men. Despite the authorities' assurance that there is no problem of trafficking of migrant children in Turkey, I was not fully convinced that adequate checks were in place. The replies I received to my questions in this connection were quite vague or conveyed a rather superficial approach.

My interlocutors accepted that it was often difficult to determine whether girls between fifteen and eighteen had been forced to marry. Had there been pressure to alleviate the financial burden on the family? Or did these girls act according to their perception of their “duty”? In any event, the very fact that these girls only conclude religious marriages gives rise to legal concerns, in the sense that they and the children born from such relationships may not be sufficiently protected.

Accounts of a growing number of Syrian girls younger than fifteen entering into marriages are, of course, more alarming. According to Turkish criminal law, sexual relations with a child under the age of fifteen are considered to be child abuse. Those engaging in such relations should be prosecuted. Moreover, the authorities should provide the girls in question with safe and confidential avenues to seek help.

There are also reports of sexual abuse of children in the camps. Camp representatives informed me that, when such cases are reported, law enforcement officials take appropriate action. However, it appears that families sometimes decline to press charges. There are also complaints of sexual harassment of women in camps, mainly involving private security officers or cleaners. Moreover, women outside camps have also complained of harassment by their employers. Fear of reprisal or cultural barriers may prevent them from reporting such incidents.

There is no doubt that sexual harassment, exploitation and violence can result in long-term developmental and psychological damage. In the case of Syrian girls, the damage is likely to be exacerbated by the psychological trauma these girls, like all those fleeing war in Syria, already suffer. I note that Turkey has ratified the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201). I look forward to Turkey’s constructive co-operation in the monitoring exercise recently launched by the Lanzarote Committee to establish what Council of Europe member States do to protect children affected by the refugee crisis from sexual exploitation and abuse. I also welcome the recent ratification by Turkey of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197) and its imminent entry into force in September 2016. This will give Turkey the opportunity to review its legislation and practices on trafficking and thus further the protection of victims’ rights under the European Convention on Human Rights.

Awareness-raising is also needed among the Syrian community to educate parents on the risks of early or forced marriage. Financial support measures will alleviate the pressures that may lead some girls and their families to consent to such marriages. Moreover, there should be clear procedures and operational mechanisms for responding to allegations of abuse. Victims should be able to benefit from the necessary health, psychosocial and legal services. I encourage the Turkish authorities to pursue their efforts in providing the necessary resources and making these services freely available.

## 2. Domestic violence

Several community centre representatives and others working with refugee and migrant women and children pointed to an increasing trend of domestic violence. I received complaints that the state-run shelters for women victims of domestic violence could not cater for the special needs of refugee and migrant women and their children. For example, there do not seem adequate interpretation services.

Turkey has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS 210). It will participate in a monitoring exercise to be undertaken by GREVIO beginning in February 2017. In the meantime, steps should be taken to identify and tackle the increasing trend of domestic violence through awareness-raising, empowerment of women and children and, where necessary, the effective application of the criminal law. I also note that Turkey has committed itself to prohibiting all forms of corporal punishment of children; action is now required to ensure that this is achieved in practice.<sup>33</sup>

## 3. Prostitution

During my mission to Turkey, it was acknowledged that there was a problem with refugees and asylum-seekers turning to prostitution to make ends meet, but it appeared that no-one was willing to talk about it.

# IX. DETENTION ISSUES

## 1. Conditions of detention

Removal centres are intended for the detention of foreigners in respect of whom administrative detention is permitted by law.

I visited the holding facilities for problematic passengers at Atatürk Airport (Istanbul). I also visited four removal centres: Kumkapı (Istanbul), Edirne (Edirne Province), Pehlivan köyü (Kırklareli Province) and Harmandalı (Izmir). A common complaint by those interned in Edirne, Pehlivan köyü and Harmandalı was that they were locked in their units outside meal times. They also complained of a lack of information and contact with the authorities: most said that they had not been interviewed at all since their arrival.

### *a) Atatürk airport*

The holding facilities in the transit area of Atatürk Airport, which I visited on 31 May 2016, comprise two units for foreigners who, upon arrival by aeroplane, are denied entry into the territory of Turkey.<sup>34</sup> The authorities accepted that those present in the rooms are effectively deprived of their liberty.

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<sup>33</sup> Progress still has to be made with achieving this goal in the home (see the 2015 Conclusions of the European Committee of Social Rights, 2016).

<sup>34</sup> Because of false papers, absence of a visa, exclusion order or suspected terrorist links, for example.

One unit, comprising one room for men and one room for women, holds passengers who have not made requests for a protection status or whose requests are deemed to be inadmissible. When I visited these rooms, they were around half full, with sufficient convertible beds for all those who were present. I was told that turnover was very high in this unit: the vast majority of detainees stay there only for very short periods pending their departure on the next possible flight. A second unit is designed to hold passengers who have made requests for a protection status that are not immediately deemed to be inadmissible. This unit was brand new, having opened on 20 April. It has two dormitories (one for men and one for women) with bunk beds and other furniture, and a room for families and vulnerable people. It also has a cafeteria, a children's playroom, bathrooms and a laundry area. Passengers are not locked in the rooms but have some freedom to circulate between the rooms and the common areas within the unit. At the time of my visit, there were very few passengers in these rooms, including an adolescent boy with his father.

Lawyers seem to have good access to people in the holding facilities. According to the authorities, those who request a protection status will be interviewed by the DGMM within three days. A decision will be issued within a further five days. If an appeal is lodged and the proceedings continue for more than two or three months, the authorities claim that the applicant will be transferred to a removal centre.

The main concern with both units is the absence of natural light and access to outdoor space: the units are inside the airport and do not have windows. I was informed that detainees are free to pass to the transit zone of the airport but it is far from clear how this is implemented in practice.

The newly-opened unit for applicants who have applied for protection status is clearly an improvement on the rooms visited by previous Council of Europe delegations and examined by the European Court of Human Rights.<sup>35</sup> However, the limitations on light and exercise make the new unit inadequate for anything more than a short stay.

*b) Kumkapı*

Kumkapı Removal Centre has two floors for male detainees and one for females. There is a separate living area with two rooms for families. The authorities explained that since January 2016, they had kept the occupancy at around 70% of the maximum capacity of the centre, which is 350. 240 people were present during my visit on 30 May 2016, of which four were accompanied children staying with their mother in one of the family rooms. There was no evidence of overcrowding in the sleeping area. Since the centre is located in the middle of a residential area, there is limited outdoor space – it is essentially a car parking area. There was a separate internal courtyard with a playground for children. The detainees complained that they did not have much access to fresh air. I was assured that the centre would be closed in the coming months as construction was underway to build two new centres in Istanbul: one on the Anatolian side with a capacity of 800 and one on the European side with a capacity of 240.

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<sup>35</sup> *T. and A. v. Turkey*, no. 47146/11, 21 October 2014. As already observed, these rooms are now used only for passengers who will be swiftly returned to their point of departure.



c) *Edirne*

When I visited Edirne Removal Centre, on 31 May, there were 221 detainees. There were no women or children in residence. I was shown an outdoor playground as well as an indoor playroom/classroom for children and a sleeping area for families. The facilities were clearly large enough to house all the male detainees resident there. Nonetheless, because of a practice of separating detainees by nationality, there was serious overcrowding in the room hosting Bangladeshi detainees.

d) *Pehlivanköy*

Pehlivanköy Removal Centre (Kırklareli) is used exclusively to host those readmitted from Greece. It has only recently opened and has a capacity of 750. When I visited it, also on 31 May 2016, there were just over 300 detainees. I was informed that almost all were men. The facilities were brand new and efforts had been made to develop communal areas and services. I was shown a library with a limited collection of religious books, a sports hall, a hairdresser's and a well-stocked classroom. Detainees were not aware of any of these facilities. There is an outdoor, internal courtyard area. A number of detainees were there during my visit. The detainees I interviewed in their rooms, on the other hand, claimed that they were rarely given access to outdoor space. Instead, they spent most of the time between meals locked in their rooms. There were some allegations of ill-treatment by the guards. I was told by the authorities that there were no children in the centre at the time of my visit. However, I visited rooms at random and saw a family of five, including three children under the age of 18. I also saw at least one child playing in the outdoor area.

e) *Harmandalı*

Harmandalı Removal Centre is also a brand new facility. When I visited it on 4 June, I was informed that the detainees had been moved there from an older establishment only the day before. As in Pehlivanköy, the material conditions were good, although the rooms were very hot. In one of the rooms I encountered a ten-year-old boy staying with his brother and another five adults. The biggest complaint from detainees was that they were locked in their rooms for much of the day and had little access to outdoor space. A family my team interviewed also complained about the lack of activities for their school-age children.

Generally speaking, it is clear from the facilities available that the possible detention of children in removal centres is anticipated. During my mission I encountered few. However, I consider this to be a serious matter. I believe the Turkish authorities need assistance in developing a proper system of alternatives to detention for migrant children.

I trust that the Turkish authorities will pursue their sincere efforts to improve detention conditions, wherever this is necessary. I attach a lot of importance in this connection to independent national monitoring and wish to encourage the newly established national prevention mechanism to continue performing its duties with the required determination and commitment.

## 2. Legality of detention

### a) *The legal framework*

There are two types of detention under the LFIP: administrative detention of foreigners for the purpose of removal (Article 57); and administrative detention of “international protection” applicants during the processing of their applications (Article 68). Administrative detention for the purpose of removal is permitted for an initial six-month period. It may be extended for a maximum further six months where the detainee refuses to cooperate and as a result the removal cannot be effected. There must be monthly reviews and a detainee must be released where detention is no longer considered to be necessary. Article 68 administrative detention for “international protection” applicants is an “exceptional” measure. It is only permitted in one of four situations: to determine the person’s identity or nationality in the case of serious doubt; to prevent entry into Turkey in breach of terms and conditions of entry at border gates; where it is necessary to identify the elements of the grounds for their application; or where the person poses a serious public order or public security threat. Detention under Article 68 is permitted for a maximum of 30 days. For both types of detention, an individualised assessment of the need for detention is required. There is also an obligation to notify the detainee of the reasons for his/her detention.

In addition, the TPR affords a broad power to “accommodate” those excluded from temporary protection “for humanitarian reasons” pending their return to their home country. It is clear from the context that, while referring to “accommodation”, the text envisages detention.

The LFIP provides important safeguards for those placed in administrative detention: notification requirements, time-limits and the need for reasons to be provided. Nevertheless, there seem to be a number of shortcomings in their application. All the detainees whom I interviewed claimed not to know why they were being detained. While they showed me several official documents in their possession, none of these concerned the basis for their detention in Turkey. They all claimed not to have been provided with such documents.

The apparently broad detention power afforded by the TPR is also problematic. There is no need for a decision authorising administrative detention. Nor does the legislation contain any safeguards, in particular time-limits.

### b) *Apprehension at the border*

A number of those in detention had been apprehended while trying to cross into Greece or Bulgaria illegally. I was informed by the Turkish authorities that these people are transferred to removal centres for further investigation into their immigration status. It is not clear from the legislation what the legal basis of such administrative detention is.<sup>36</sup>

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<sup>36</sup> What happens to Syrians who are taken to removal centres is discussed below.

*c) Detention of "international protection" applicants apprehended outside their satellite cities*

A number of those I met in removal centres were "international protection" applicants who had been apprehended outside the satellite city to which they had been assigned. They claimed not to know why they were being detained or what would happen to them next. The purpose of the detention of such persons was not clear; nor was its legal basis. In some places I was informed by the authorities that the detainees in question would be quickly returned to their satellite cities; in others, that they would be deported (presumably on the basis that their "international protection" applications were deemed to have lapsed on account of their failure to comply with reporting and residence conditions).

*d) Detention of those suspected of involvement in criminal activity or terrorism*

I was informed that 40% of the detainees in Kumkapı Removal Centre had arrived there directly from prisons in order to be deported. There were also a number of detainees suspected of terrorism. These detainees included Syrians, in respect of whom there was no prospect of imminent removal to their home country. It appeared that the authorities envisaged the removal of these detainees to third countries in due course. It was not clear whether this prospect was realistic; it is difficult to envisage that any third country would be willing to accept non-nationals with criminal or terrorist backgrounds. I was therefore not persuaded that their administrative detention had any basis at all in the LFIP. It appears that these detainees were held on the basis of the broad power in the TPR to detain indefinitely those excluded from temporary protection.

*e) Returns from Greece*

As already stated, those returned from Greece under the EU-Turkey agreement – with the exception of Syrians – are detained in Pehlivan köy Removal Centre (Kırklareli) pending removal to their countries of origin. Their detention is therefore ostensibly lawful on the basis of Article 57 of the LFIP. However, some of those returned subsequently made applications for "international protection". At that stage, the detainees became subject to the detention powers contained in Article 68 of the LFIP, which makes detention exceptional, on the basis of limited grounds, and imposes a 30-day limit. When I interviewed on 31 May 2016 the group of Congolese detainees who had made "international protection" applications on 24 May, I was informed that they had not been given any further information concerning their detention. In particular, they did not know that they were subject to a different detention regime. Civil society organisations confirmed the existence of a problem when "international protection" applications were made from detention, in the sense that there is no systematic review of the detention ground to confirm that detention remains appropriate and lawful.

As a consequence, many applicants risk being unlawfully detained or remaining in detention for longer than the 30-day period permitted by Article 68.

*f) The special situation of Düziçi camp*

Düziçi camp is not formally classed as a removal centre but as a "temporary accommodation centre", like the other 25 refugee camps in Turkey. However, it is clear that Düziçi differs from the other camps. As already explained, those resident in Düziçi camp have been brought there by the authorities from other

parts of Turkey, unlike camps where refugees reside voluntarily. Syrians returned from Greece under the EU-Turkey agreement are also flown directly to Adana and transferred to Düziçi camp. By the time I visited, the 12 Syrians who had been returned from Greece under the EU-Turkey agreement to date had either been released or had voluntarily returned to Syria.

Although the authorities informed me that those residing in Düziçi were free to leave at any time, none of the residents whom I interviewed believed that this was the case. They all stated that when they had asked to be released they had been told to “wait a little while longer”. Some had been in the camp for more than a month. Staff of the camp carried handcuffs and truncheons. Entry to the camp was manned by security officers and there was a heavy metal gate. The camp itself was surrounded by a fence topped with barbed wire.

I was particularly troubled by the situation in Düziçi. I have no doubt that the residents of the camp are in *de facto* detention, without any of the safeguards afforded to them by law. The detention of Syrians returned from Greece is especially concerning since it would appear that it has no legal basis: the Turkish authorities have given assurances to the European Commission that all Syrians returned under the EU-Turkey agreement will be granted temporary protection<sup>37</sup> in Turkey. There is therefore no prospect of removal such as to justify Article 57 detention; and since they are under the temporary protection regime, Article 68 is not applicable.

## X. BORDER ISSUES: CLOSURE, USE OF FORCE AND REFOULEMENT

### 1. The closure of the border

There have been a number of reports that all official border crossing points between Turkey and Syria are now closed. According to these reports, since March 2015 only those with urgent medical needs have been allowed to cross. Others caught trying to cross the border are immediately pushed back to Syria or detained in Turkey and subsequently expelled, often in large groups. It has also been alleged that Turkish border guards have shot at those trying to cross the border with Syria; there are reports that a number of Syrians have been killed.

During my mission, the closure of the border was not confirmed by any of the authorities I met. However, several of the lawyers, organisations and Syrian refugees to whom I spoke were clear that this was the *de facto* situation. Refugees who had arrived in Turkey over the past year told me that they had crossed the border at unofficial crossings. All the evidence points to the fact that the border with Syria has indeed been closed.

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<sup>37</sup> Not all of those who are returned have previously been registered under the temporary protection regime in Turkey. In any case, temporary protection status lapses for those who leave the country and must be granted anew upon their return.

This raises concerns regarding Turkey's compliance with the principle of non-refoulement. The European Court of Human Rights has interpreted this principle to mean that a State must refrain from returning a person, directly or indirectly, to a place where s/he faces a real risk of being subjected to torture or to inhuman or degrading treatment. The Court's case-law makes it clear that the non-refoulement obligation is not limited to those who have entered member States' territories. It may also apply in certain circumstances to those encountered by states' officials in the context of border controls.<sup>38</sup> Reports that Syrians are expelled in large groups also raise concerns about the practice of collective expulsions.<sup>39</sup> It appears that the practice of collective expulsion is not banned by national law, and that the legislation contains no equivalent guarantees: while the law requires that the decision on protection status should be notified to each person to be removed, this does not necessarily imply an individual assessment of the need for removal.

Syrians I spoke to told me they had aborted previous attempts to cross the border when they spotted Turkish border guards for fear of being mistreated. Some had indeed witnessed ill-treatment.

The Council of Europe should help Turkey comply with the non-refoulement principle by providing the necessary political encouragement and operational support. The Council of Europe can also help by working with the Turkish authorities to ensure that allegations of ill-treatment and killings are effectively investigated in accordance with the applicable standards in the European Convention of Human Rights. It should also help to prevent the recurrence of such incidents by appropriate training of border guards.

## 2. Returns and removals from Turkey

Aside from reports of refoulement at the Syrian border, I was also confronted with allegations that Syrians apprehended inside Turkey risk being returned to Syria. The authorities explained that if it is established that those apprehended have Syrian nationality, they are swiftly sent back to the provinces where they have registered; if they have no temporary protection card, they are registered and released. However, there have been allegations that Syrians are, in practice, transported to remote detention facilities where they are subjected to prolonged detention, in some cases, and eventual deportation to Syria. Although I was not able to verify these claims, some of the authorities I met referred to the fact that undesirable Syrians are taken to the border. I trust that the Turkish authorities will investigate these allegations and take any appropriate action should they be found to have some basis in fact.

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<sup>38</sup> *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012. The UNHCR has also made clear its view that the principle of non-refoulement establishes an obligation not to return a refugee or asylum-seeker to a country where s/he would be at risk of persecution or other serious harm, which applies wherever a state exercises jurisdiction, including at the frontier.

<sup>39</sup> Although Turkey has not ratified Protocol No. 4 to the European Convention of Human Rights, collective expulsions raise issues under Articles 3 and 13 of the Convention where there is no individual assessment of asylum claims: see *Babajanov v. Turkey*, no. 49867/08, 10 May 2016 (not yet final – either party may request that the case be referred to the Grand Chamber for a rehearing within three months of the judgment being handed down. In the event of any such request, a panel of five judges will determine whether to grant it).

Non-Syrian detainees also consistently complained they were under pressure to sign voluntary return agreements. This happened either because the authorities refused to register their claims for “international protection” or because the detainees themselves preferred to return to their home countries than remain in long-term detention. Some detainees informed me they had been forced to sign documents that they did not understand having been told by the authorities that their signatures were necessary in order for them to be provided with accommodation and food. The UNHCR explained that they were involved in voluntary return interviews, but would not sign off on voluntary return requests where these had been made only because the detainees wished to leave detention.

## XI. RETURNS FROM GREECE AND RESETTLEMENT

As at 22 June 2016, there had been 468 returns from Greece to Turkey. Among these were at least 13 individuals who had tried to seek asylum in Greece but had been returned to Turkey before their asylum requests had been registered. The Congolese nationals to whom I spoke in Pehlivan köy Removal Centre (Kırklareli) confirmed they had spoken to UNHCR representatives in Chios and had been given a date for an asylum interview. They claimed to have explained this to the Greek authorities who came to transport them to a boat destined for Turkey, and to have provided them with the relevant UNHCR papers. I also interviewed three Afghans and an Indian detainee on the UNHCR list who similarly confirmed they had been returned to Turkey from Chios after having expressed their intention to make a claim for asylum in Greece. It is unclear whether what occurred in the case of these 13 individuals was an isolated error or part of a more widespread practice. This is a matter that ought to be swiftly clarified and necessary measures should be taken to prevent this from happening again.

As at 22 June 2016, 733 refugees had been resettled from Turkey since 4 April, to nine EU member States. Germany and Sweden have accepted the lion's share of the resettled refugees.<sup>40</sup> The number of resettlements, of course, exceeds the number of returns to date. However, the low number of resettlements, and resettlement pledges, is disappointing. Turkey cannot be expected to shoulder the burden of accommodating and integrating such high number of refugees and asylum-seekers alone: other Council of Europe member States must show solidarity with Turkey to resolve this situation with full respect for refugees' human rights.

There are reports that refugees with academic or professional qualifications who have been granted resettlement under the EU-Turkey agreement are denied permission to leave Turkey, without explanation. If these reports are true, then this is matter of great concern, especially given the absence of prospects for long-term integration in Turkey. Once the UNHCR has determined resettlement eligibility, the question whether to accept a resettlement offer should be for refugees alone.

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<sup>40</sup> The other countries who have accepted refugees under the resettlement scheme are Finland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands and Portugal.

## XII. CONCLUSIONS

It is impossible to encompass in this report all aspects of the position of refugees and migrants in Turkey. The situation there is particularly complex given the enormous challenges posed by the fact that Turkey hosts the largest refugee population in the world, as well as the interaction of domestic legislation and policy with the various elements of the EU-Turkey agreement.

My intention in this report is to identify issues where the Council of Europe can offer its assistance to Turkey with the country's agreement. The overriding concern in this exercise is to ensure that the human rights of migrants and refugees, as guaranteed by the various instruments of the Organisation, are fully respected. To this end, I have a number of recommendations. Thus, the Council of Europe should:

- encourage the Turkish authorities to lift Turkey's geographical limitation to the 1951 Refugee Convention;
- assist the Turkish authorities in reviewing their legislation (statutes and regulations) on the treatment of foreigners – including their detention – in the light of international standards on refugee and migrant protection;
- assist the Turkish authorities in strengthening the system – including the legislation – for unaccompanied minors;
- assist the Turkish authorities in providing training on human rights standards – including the principle of non-refoulement and the country's obligations under Article 5 of the European Convention on Human Rights – to DGMM staff;
- assist the Turkish authorities in developing a system of alternatives to detention for families;
- call on the Turkish authorities to regularise the registration situation of all Syrian refugees present in Turkey without delay and provide refugees and asylum-seekers with all the information they need to be able to exercise their rights under national law;
- assist the Turkish authorities in providing training to administrative-court judges on issues arising under the European Convention on Human Rights in the application of the legislation on the treatment of foreigners;
- call for the mobilisation of resources (via its cooperation with the CEB (the Council of Europe Development Bank) and its contacts with other donors)) to assist the Turkish authorities with
  - the construction of additional reception and “temporary accommodation” centres and the conversion of tent camps to container camps
  - providing further welfare support to refugees and migrants living outside camps
  - providing refugees and migrants with interpretation whenever this is necessary in their dealings with providers of key public services (in the fields, for example, of health, education, the fight against crime, civil and administrative justice and civil-status and family-law matters) and
  - building infrastructure, increasing capacity and providing the necessary financial support to encourage school attendance;
- liaise with other stakeholders with a view to
  - strengthening the civil-society sector so that it can provide refugees and migrants with all necessary information on the application of the Turkish legislation governing their treatment and
  - enabling bar associations to provide legal aid to all refugees and migrants who are entitled to it under domestic law;

- provide the Turkish authorities with expertise on how to ensure the enjoyment of key social rights – according to relevant international human-rights standards – by all migrants, independently of their registration status;
- assist the Turkish authorities in providing training to law-enforcement officials on ensuring respect for the country's obligations under Article 5 of the European Convention on Human Rights;
- assist the Turkish authorities in developing effective policies against child labour and in reviewing their legislation on work permits to facilitate asylum-seekers' and refugees' access to the labour market;
- provide the Turkish authorities with expertise on how to adapt the Turkish school curriculum to cater better for Syrian children, how to deliver appropriate linguistic support to migrant children entering the Turkish education system and how to develop incentives for school attendance;
- assist the Turkish authorities in setting up a system for the recognition of refugees' academic/professional qualifications;
- assist the Turkish authorities in the development of social-inclusion policies for refugees, through the transfer of know-how and the sharing of good practices; some of the Organisation's key monitoring mechanisms, such as the European Commission against Racism and Intolerance (ECRI), have built extensive relevant expertise, which can be very usefully relied on for these purposes; so has the Intercultural Cities programme; linguistic integration – for school-age children and adults – should be a key feature of such policies;
- support the Turkish authorities' efforts to build the necessary capacity so as to be able to implement the Council of Europe standards on: action against trafficking in human beings; protection of children against sexual exploitation and sexual abuse; and preventing and combating violence against women and domestic violence;
- call on the Turkish authorities to ensure respect for the principle of non-refoulement by those guarding the border with Syria; assist the Turkish authorities in providing training to those guarding the same border so as to ensure that they carry out their duties in compliance with the country's human-rights obligations; and strengthen the authorities' capacity to conduct swift and effective investigations into allegations of shortcomings in this respect; and
- issue a call for more resettlement offers in favour of refugees wishing to leave Turkey.

Strasbourg, 22 July 2016

Tomáš Boček

Special Representative of the Secretary General on Migration and Refugees



## APPENDIX I

## Programme

## Monday 30 May 2016

- 8:30 Working breakfast in Istanbul with Refugee Rights Turkey
- 9.30 Visit to Yeldeğirmeni Minors Shelter, Istanbul (Delegation 1)
- 9.30 Meeting with Deputy Governor and Istanbul Provincial Director for Migration and visit to Kumkapı Removal Centre, Istanbul (Delegation 2)
- 12.45 Official lunch
- 14.00 Visit to ASAM multi-service centre for Syrian refugees in Tarlabası, Istanbul, and meeting with UNHCR
- 16.00 Meeting with NGOs and lawyers

## Tuesday 31 May 2016

- 9.00 Meeting with Deputy Governor of Edirne and short briefing (also attended by Heads of Edirne Police, Security Forces, Migration Management and the Ambassador of the Ministry of Foreign Affairs Edirne Representation)
- 9.30 Visit to Edirne Removal Centre, Edirne Province
- 11.30 Welcome by Deputy Governor of Kırklareli
- 12.00 Official lunch
- 13.00 Visit to Pehlivan köy Removal Centre, Kırklareli Province
- 17.00 Visit to Problematic Passenger Rooms, Ataturk Airport, Istanbul

## Wednesday 1 June 2016

- 9.00 Meeting with Deputy Governor of Adana and Director of Provincial Migration Management
- 10.00 Visit to Sarıçam Temporary Protection Centre, Adana Province
- 12.30 Meeting with Deputy Governor of Osmaniye, District Governor of Düziçi and Director of Provincial Migration Management
- 12.45 Official lunch
- 13.45 Visit to Düziçi Temporary Protection Centre, Osmaniye Province
- 16.30 Visit to İslahiye 2 Temporary Protection Centre, Gaziantep Province

## Thursday 2 June 2016

- 9.00 Meeting with NGOs and lawyers, Gaziantep
- 11.30 Meeting with Deputy Governor of Gaziantep, Provincial Director of AFAD and Director of Provincial Migration Management
- 13.00 Official lunch
- 14.00 Visit to Gaziantep Provincial Directorate of the Ministry of Family and Social Policies Child Care Facility
- 15.00 Visit to Gaziantep Registration Centre
- 16.30 Visit to ASAM multi-service centre for Syrian refugees, Gaziantep

## Friday 3 June 2016

- 8.00 Working breakfast in Ankara with UNHCR, UNICEF, EU Delegation to Turkey, World Food Programme and Turkish Red Crescent
- 10.00 Meeting with Director General for Migration Management
- 11.00 Meeting with Undersecretary of the Ministry of EU Affairs
- 12.30 Working lunch with Director General for Consular Affairs at the Ministry of Foreign Affairs
- 14.30 Meeting with AFAD
- 16.00 Meeting with Director General for Family and Community Services at the Ministry of Family and Social Policies
- 17.00 Meeting with Undersecretary of the Ministry of Education

## Saturday 4 June 2016

- 8.00 Working breakfast in Izmir with Mülteci-Der
- 10.00 Visit to Harmandalı Removal Centre and meeting with Deputy Governor of Izmir, Director of Provincial Migration Management and Director of Harmandalı Removal Centre
- 13.30 Official lunch
- 14.30 Visit to ASAM multi-service centre for Syrian refugees, Izmir
- 15.30 Visit to centre run by Syrian refugee solidarity organisation, Izmir
- 16.45 Meeting with NGOs and lawyers, Izmir