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COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Turkey
on 28 June – 3 July 2009

Issue reviewed:
Human rights of asylum seekers and refugees

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Turkey from 28 June to 3 July 2009. In the course of this visit the Commissioner held discussions on certain human rights issues, including the situation of asylum seekers and refugees, with national and local authorities, international and non-governmental organizations and visited relevant institutions including places of detention.

The present Report focuses on the following major issues:

1. Overview of the situation of asylum seekers and refugees in Turkey in the context of European and international law: Noting the challenges and pressure that Turkey faces due to an increasing flow of mixed migration, the Commissioner appreciates the willingness of the authorities to address these challenges by introducing new asylum legislation. He calls upon the European and international community to assist Turkey in this respect. Urging the authorities to speedily lift the geographic limitation of the 1951 UN Refugee Convention, the Commissioner recommends that domestic definitions of asylum seekers and refugees be aligned with international standards. Noting with concern certain lacunas in ensuring effective access to the asylum procedures, the Commissioner recommends also the implementation of a system of better and more speedily identifying asylum seekers in the flow of mixed migration at the outset, notably by enhancing training of border officers.

2. Protection of asylum seekers and refugees by the current legal framework: Noting with concern the precarious situation of foreign nationals who have come from conflict areas and have remained over years, the Commissioner recommends that the Turkish authorities speedily find a stable humanitarian solution for the individuals concerned, in dialogue with this group and their representatives as well as with the Office of the United Nations High Commissioner for Refugees (UNHCR) and that full and effective protection of the rights of their children be ensured. In view of the need to better guarantee the individual right to seek and enjoy asylum, the Commissioner recommends introduction of a reliable country of origin information system, a comprehensive legal aid scheme and safeguards to ensure that qualified information and translation are always available before a decision on the merits of an application is taken. Regarding appeal procedures, the Commissioner recommends their reform in such a way that a complete judicial assessment in law and fact be ensured by the competent domestic courts, including a suspensive effect for persons whose life or freedom would be seriously threatened in case of forced return. Recalling that accelerated asylum procedures must not have a lower standard of human rights protection than regular procedures, the Commissioner recommends that the authorities re-assess their current accelerated procedures and their implementation in view of the relevant Council of Europe standards. Remaining concerned that access to the asylum procedures is not always ensured in places of detention, at airports and land borders, the Commissioner recommends that clear instructions be given to border officials and their training be reinforced to ensure that potential asylum seekers are properly informed of their rights on arrival.

3. Cooperation with UNHCR: In view of the long standing cooperation of the Turkish authorities with UNHCR, the Commissioner strongly encourages Turkey to conclude a formal host country agreement as well as to review the current practice of conducting a new procedure for refugees already recognised by UNHCR outside Turkey. Further he recommends reform of the current system granting UNHCR access to individuals on a ministerial case by case decision, in such a way that speedy access of UNHCR to places of administrative detention is generally ensured.

4. Reception and living conditions of registered temporary non-European asylum seekers: Welcoming the measures under way to create several regional reception centres, the Commissioner recommends a speedy implementation of this project to ensure a dignified standard of living for asylum seekers. Meanwhile he urges the Turkish authorities to promptly close reported gaps concerning access to health care. To better safeguard asylum seekers against exploitation, the Commissioner recommends review and modification of the current

restrictive practice of work permits' issuance, given in particular that no sufficient accommodation and reception capacity is currently in place.

5. Administrative detention: Having welcomed the efforts made by the Turkish authorities to improve living conditions in places of detention he visited, the Commissioner remains concerned about reports of severe deficits in other holding facilities. He urges the authorities to secure dignified standards of living for all detained asylum seekers, to ensure that detention is the exception and be limited to certain purposes and to the shortest possible time. The Commissioner recommends that returns and thus release from detention not be delayed for lack of means to pay for travel costs and be secured by providing a sufficient separate budget independent from those of for local or regional administrations. Further he urges the authorities to ensure the prompt provision of information to asylum-seekers in a language they understand, including the reasons of their arrest and detention, to provide for prompt judicial review of detention and to speedily ratify and implement the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).

6. Issues relating to forced returns of asylum seekers and refugees: The Commissioner notes with concern a reported increase in forced returns in 2008 in the border region to Iraq and Iran and alleged lack of investigation into certain cases. He commends the express commitment of the Turkish authorities to observe the principle of *non-refoulement* and urges them to better ensure its effective implementation in particular at points of entry. Further he recommends improvement of instructions addressed to and training of border officers and that effective investigations into cases of alleged human rights violations be ensured. The Commissioner calls upon the Turkish authorities to urgently review the detention of a group of Iranian refugees whose deportation has been stayed under Rule 39 of the European Court of Human Rights. Further he recommends speedy ratification of Protocol No 4 to the European Convention on Human Rights which, inter alia, proscribes the collective expulsion of aliens.

7. Particularly vulnerable groups: Commending the special care unaccompanied asylum seeking children receive in Turkey, the Commissioner recommends that the Turkish authorities apply the benefit of doubt in age assessment, thus ensuring that all asylum seeking children may benefit from state care. Observing that asylum procedures should be conducted speedily, notably for children, the Commissioner urges the authorities to ensure proper, prompt, regular information in a language the children understand and to assign a personal guardian for each child. Further he recommends that reported shortcomings in providing medical service and education be systematically addressed as well as to introduction and effective application of the principle of the best interest of the child in asylum and refugee law and policy. The Commissioner notes that more measures are required to improve safety for LGBT asylum seekers, including awareness raising for society at large and special training of police and asylum officers. Welcoming the continuous fight of the Turkish authorities against trafficking in human beings the Commissioner recommends prompt adoption of the new action plan, paying special attention to improved victims' identification among refugees notably at places of entry (airports, land borders) as well as enhancing training of police in this context and speedy ratification of the Council of Europe Convention on Action against Trafficking in Human Beings signed on 19 March 2009.

8. Involvement of civil society in refugee protection and support: Welcoming the fact that numerous NGOs are active in human rights protection of asylum seekers and refugees the Commissioner calls upon the authorities to more proactively involve such NGOs, thus making use of their expertise, notably in the context of preparing the new asylum law and the framework of a national human rights institution. He further recommends broad dissemination of Turkish versions of the relevant Council of Europe documents on human rights as a basis for enhanced staff training.

The Report ends with the Commissioner's conclusions and recommendations.

The Turkish authorities' comments are appended to the Report.

Introduction

1. The present Report follows a visit to Turkey by the Council of Europe Commissioner for Human Rights (the Commissioner) from 28 June to 3 July 2009.¹
2. The Commissioner sincerely wishes to thank the Turkish authorities in Strasbourg, Istanbul, Izmir and Ankara for the assistance that they provided in facilitating the independent and effective performance of his visit.
3. In the course of the visit the Commissioner held consultations with a number of state authorities, including the President of the Republic, Mr Abdullah Gül, the Minister of Justice, Mr Sadullah Ergin, the Minister for EU Affairs and Chief Negotiator, Mr Egemen Bağış, the Undersecretary of the Ministry of Foreign Affairs, Ambassador Ertuğrul Apakan and the Undersecretary of the Ministry of Interior, Mr Osman Güneş.
4. The Commissioner met also with other representatives of national and local authorities, international agencies, as well as with religious leaders and he held meetings with a number of non-governmental, human rights organizations. He noted with satisfaction the existence in Turkey of a vibrant civil society consisting of non-governmental organizations that work with dedication for the promotion and protection of human rights in the country.
5. In Istanbul and Izmir the Commissioner visited facilities detaining foreigners subject to removal. Further, in Istanbul, the Commissioner met unaccompanied minors living in a children's institution and persons who fled from Chechnya.
6. The Commissioner, in his capacity as an independent and impartial institution of the Council of Europe, wishes to continue his sincere and constructive dialogue with the Turkish authorities and to assist them in their efforts to further enhance the implementation of the Council of Europe human rights standards.
7. In the present Report, after an overview of the situation of asylum seekers and refugees in Turkey in the context of European and international law (section I), the Commissioner focuses on the following major issues: Protection of asylum seekers and refugees by the current legal framework (section II); Cooperation with UNHCR (section III); Reception and living conditions of registered temporary non-European asylum seekers (section IV); Administrative detention (section V); Issues relating to forced returns of asylum seekers and refugees (section VI); Particularly vulnerable groups (section VII) and Involvement of civil society in refugee protection and support (section VIII) followed by conclusions and recommendations (section IX).

I. Overview of the situation of asylum seekers and refugees in Turkey in the context of European and international law

8. The Republic of Turkey joined the Council of Europe in 1949 and ratified the European Convention on Human Rights in 1954. It is thus one of the oldest member states of the Council of Europe. It has ratified and been bound by most of the major European and international human rights instruments. It has not yet ratified the OP-CAT. In 1962 Turkey ratified the 1951 Convention relating to the Status of Refugees and in 1968 also its 1967 Protocol; it is a member of the UNHCR Executive Committee.
9. Turkey maintains the geographic limitation pursuant to Article 1 B of the 1951 UN Refugee Convention. Thus the application of the Refugee Convention is limited 'to persons who

¹ During his visit the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of the Commissioner's Office and by Ms Silvia Grundmann, Adviser.

have become refugees as a result of events occurring in Europe'. Thus non-European asylum seekers are excluded from protection under the Refugee Convention. As the vast majority of asylum seekers coming to Turkey originate from non-European states, Turkey has created a system for granting them 'temporary asylum' which runs in parallel with UNHCR procedures.

10. Pursuant to the 1994 Asylum Regulation, as amended in 1999, non-European asylum seekers may apply to the Turkish government for 'temporary asylum seeker status' with a view to being resettled elsewhere with the aid of UNHCR. The Implementation Directive of June 2006 further regulates this procedure. In parallel, UNHCR, under its mandate, conducts refugee status determination ("RSD") for non-European asylum seekers. There is no standard mechanism that ensures UNHCR's involvement from the outset of the asylum procedure. This is of particular concern in the case of persons having entered, stayed or tried to leave Turkey in breach of domestic law and are therefore apprehended. If they then choose to claim asylum while being detained, UNHCR has to request the agreement of the Ministry of Foreign Affairs and the Ministry of Interior in order to be able to visit the individual applicants in the detention facility and to conduct the RSD interview. UNHCR reports that so far, in most cases this permission has been denied, including cases of refugees from Iran already recognized by UNHCR outside Turkey.
11. In the context of current EU accession negotiations, Turkey will bring its asylum law gradually in line with EU standards. Thus a fully fledged domestic asylum procedure including procedural safeguards will have to be developed, replacing the current mix of UNHCR and domestic procedures. The Readmission Protocol that exists between Turkey and Greece might also be revisited.² The responsibility for the domestic system is assumed by the Ministry of the Interior through its Department of Foreigners Borders and Asylum which is part of the General Directorate of Security.
12. Asylum applications have risen sharply in Turkey from 2006 to 2008. First instance asylum claims amounted to 4 550 in 2006, 7 650 in 2007 and 12 980 in 2008, an increase of 70% from 2007 to 2008.³ In 2007, the majority of asylum seekers came from Iraq (3 471), Iran (1 687) and Somalia (1 124).⁴ In 2008, Turkey continued to receive the majority of applications from persons of Iraqi (6 904) and Iranian (2 116) origin.⁵ However, the number of applicants originating from Afghanistan has risen from 705 in 2007 to 2 642 in 2008, Turkey being among the top four recipients after the United Kingdom (3 700) and before Greece (2 300) and Italy (2 000).⁶
13. UNHCR reports that as of 31 March 2009, 18 432 non-European persons of concern were registered with UNHCR, including 11 581 refugees recognized under UNHCR's mandate and 6,851 asylum seekers waiting for a decision on their applications. Iraqis are 45 percent, Iranians are 23 percent, Afghans are 17 percent and Somalis are 7 percent. The remaining 8 percent are non-European asylum seekers and refugees belonging to 45 different nationalities.⁷ As of 31 March 2009, 2,463 persons were registered with UNHCR as asylum

² The Greek authorities have expressed concern about the application of the Protocol by the Turkish authorities, allegedly not accepting numerous requests for readmission, see para 13 of the Commissioner for Human Rights report following his visit to Greece 8-10 December 2008 on human rights of asylum seekers, CommDH(2009)6, 4 February 2009.

³ See UNHCR, *Asylum Levels and Trends in Industrialized Countries 2008*, 24 March, Table 1, p. 13 www.unhcr.org

⁴ Ibid. Table 21, p. 33.

⁵ Ibid. Table 22, p. 35.

⁶ Ibid. p.11.

⁷ The 45 countries of origin are the following: Algeria, Angola, Burundi, Bangladesh, Bhutan, Chad, China (including asylum seekers from Tibet), Cameroon, Congo-Brazzaville, Cuba, Democratic Republic of Congo, Eritrea, Ethiopia, Guinea-Conakry, Ivory Coast, India, Israel, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Kuwait, Liberia, Lebanon, Mali, Mauritania, Morocco, Myanmar, Niger, Nigeria, Pakistan,

seekers. Iraqis are 61 percent, Iranians are 17 percent, Afghans are 9 percent and Palestinians and Somalis are 2 percent respectively.⁸

14. Turkey is faced with a high number of irregular migrants. Although it seems that no exact data is available, the Commissioner noted that the Turkish Armed Forces announced to have apprehended more than 29,000 irregular migrants between January and October 2007.⁹ Another source, quoting an Interior Ministry report indicates 360,000 apprehended foreigners between 1998 and 2003.¹⁰ The Turkish authorities in their written reply to the Committee on the Elimination of Racial Discrimination stated that in 2008, they apprehended 56,876 irregular immigrants, most of them from Afghanistan, Pakistan, Iraq and Palestine. In 2008, of 9,045 asylum applications registered, 3,555 were granted refugee status.¹¹

II. Protection of asylum seekers and refugees by the current legal framework

15. Under international law, a refugee is a person who is outside their country of origin and who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and is therefore unable or unwilling to return to that country.¹² An asylum-seeker is commonly defined as a person seeking protection as a refugee before having been formally recognized. It should be noted that asylum seekers enjoy the right to due process for their claim to be assessed. Also, remedies against the removal decision should have suspensive effect in case of arguable claims that the removal entails a real risk of persecution or the death penalty, torture or inhuman or degrading treatment or punishment.¹³
16. Resulting from the geographic limitation to the 1951 UN Refugee Convention, Turkish law defines only persons of European origin as refugees, while persons of non-European origin are defined as asylum seekers, provided, in both cases, that the Ministry of Interior has positively decided their claim. For the assessment, the Ministry resorts to the criteria of the 1951 UN Refugee Convention. The Commissioner, however, in line with international standards and his previous reports, will use the term 'asylum-seeker' for all persons seeking protection and the term 'refugee' for those who have been recognized, irrespective of their country of origin.

1. Asylum seekers from Europe

17. In Turkey, asylum seekers from Europe fall under the 1951 UN Refugee Convention. Although this group is comparatively small, Turkey in the past was faced with refugees from Bulgaria, Bosnia and Herzegovina, Kosovo and in particular Chechnya. The Commissioner has been informed that so far there have been 43 persons recognized as refugees under the Convention. In fact, it appears to be the practice of the authorities to simply tolerate their stay in Turkey giving them a "guest" status which is somewhat unclear. As a result, they do not enjoy international refugee protection and have no access to UNHCR procedures, excluding them from resettlement in third countries. Their "guest status" can be revoked any time.

Palestinians, Philippines, Rwanda, Saudi Arabia, Sri Lanka, Sudan, Syria, Tajikistan, Turkmenistan, Tunisia, Uzbekistan, Yemen, and 16 stateless persons, UNHCR Turkey briefing of 6 April 2009.

⁸ Ibid.

⁹ Amnesty International, *Stranded, Refugees in Turkey denied protection*, April 2009, p. 8.

¹⁰ Briefing paper Asst. Prof. Dr. Lami Bertan Tokuzlu, Istanbul May 2009 p. 1 with further ref.

¹¹ CERD/C/TUR/3, 4 March 2009 3rd periodic report, 74th session, written reply by the government of Turkey to question 2.

¹² 1951 UN Refugee Convention Art. 1.A.

¹³ Guideline X of Committee of Ministers *Guidelines on human rights protection in the context of accelerated asylum procedures*, 1 July 2009, www.coe.int/t/cm.

18. The Commissioner is particularly concerned about a group of approximately 1 500 Chechens who arrived in Turkey from 1999 until 2005 and have received such “guest status”. Until today they are living under very precarious circumstances, many of them in the Istanbul area. Reportedly, several hundreds still live on sites, unofficially referred to as “camps” with non-regular supply of water, electricity and gas due to insufficient means to pay for such services.¹⁴ The majority of them seems to have no access to legal employment, possibly for lack of documents.
19. The Commissioner visited one camp at the shore of Fenerbahce, Istanbul where about 170 people, among them 80 children, lived at the time of his visit in very basic small cabins formerly used by workers of the Turkish State Railways as a summer resort. He learned that since 2006 there is electricity and water supply albeit the electricity breaking down in times of high demand, especially when used for heating during the winter when the rooms become damp due to lack of isolation. He was informed about rumours that the camp should be closed, their inhabitants not knowing where to turn to in that event.
20. At the time of the visit their situation was particularly vulnerable as their visa had expired and no prolongation had been given. The Commissioner is very concerned about the fact that under Turkish law, staying without a valid visa constitutes a criminal offence and may result in detention. Lack of documents was a particular problem for most of the people the Commissioner talked to. Some of them had been obliged to hand their passport to the Turkish authorities upon arrival ten years ago. Children born in the camp did not have a birth certificate as Turkish authorities refuse to issue one. In this regard, the Commissioner recalls that there are international standards to prevent and reduce statelessness.¹⁵ The Commissioner was relieved to learn that meanwhile, with the help of UNHCR, an unofficial arrangement was found to allow the children to attend school. However, it was reported that they do not receive official acknowledgment of their attendance as diplomas are not issued due to lack of documentation attesting to their identity and/or former education.
21. The Commissioner recommends that urgent measures be taken to find a humanitarian solution for this group of people having come to Turkey many years ago from a conflict area, most of them having no hope to return. He wishes to underline that he regards help for this group exclusively as a humanitarian issue and trusts that the Turkish authorities will receive international support in finding a durable solution ensuring that families can stay together and provide a future for their children.

2. Non-European asylum seekers

22. Among Council of Europe member states, apart from Turkey, Monaco is the only other state that maintains also the geographic limitation but does not have an influx of refugees.
23. The Turkish authorities informed the Commissioner that they envisage lifting the geographic limitation in line with the progress of the EU accession negotiations, along with the completion of necessary amendments to the legislation and improvement to infrastructure according to the National Action Plan for Asylum and Migration and the EU’s active engagement in burden-sharing. The authorities stressed, however, that their consideration to lift the geographic limitation will include efforts aimed at preventing mass influxes into Turkey. The Commissioner observes that the previously given target deadline of 2012 for lifting the geographic limitation is not mentioned any longer.

¹⁴ Amnesty International, *ibid.* p. 14.

¹⁵ See UN Convention relating to the Status of Stateless Persons, Convention on the Reduction of Statelessness and the European Convention on Nationality which has not been signed by Turkey.

24. There are two parallel procedures for non-European refugee applicants, a domestic one and an international one. Non-European applicants must file two separate applications. One with UNHCR to determine their refugee status (RSD) and to allow for their resettlement outside Turkey, the main resettlement countries being USA, Canada and Australia. The other with the Ministry of Interior under the 1994 Asylum Regulation amended in 1999 and the 2006 Implementation Directive, also called "Circular",¹⁶ to determine whether an applicant has a legitimate need for temporary asylum in Turkey and may thus stay pending resettlement. This legal framework appears to be overly complex and seems to result in many inconsistencies and frictions with internationally acknowledged standards for refugee protection.
25. In the majority of cases, 'temporary asylum' is granted for those refugees who are recognized by UNHCR. However, in a growing number of cases in recent years national authorities did not match UNHCR decisions.¹⁷ It seems that no procedure exists in cases of divergence and the Commissioner wonders about the consequences of such a lacuna. Furthermore, it appears that the domestic determination procedure concerning 'temporary asylum' has severe deficiencies. Although a project to establish a country of origin information system was initiated in 2008, no such system for compiling up-to-date information is in place. Police officers conducting interviews as part of other duties and the civil servants of the Ministry of Interior who decide on the status¹⁸ are thus left without a system enabling them to assess credibility of applicants and risks in cases of return. Privacy in interviews is not always observed, interpretation and legal aid is not always provided for and interview procedures vary greatly from one provincial governorship to the other. Allegedly, only deportation orders are issued in writing but rejected asylum seekers do not receive a written, substantiated decision or information on their right to legal aid and to appeal.
26. Although since 1986, UNHCR has resettled more than 53 000 refugees to third countries, this is not a solution open to all refugees recognized under UNHCR's mandate as during 2008, only 34 percent could be resettled.¹⁹ This leads to frustration and often to attempts to depart irregularly from Turkey via the Mediterranean Sea, putting lives at risk. UNHCR informed the Commissioner that they face obstacles in resettling a particular group of 127 Iranian refugees of Kurdish origin having fled via Iraq to Turkey, the Turkish authorities being afraid that their resettlement could attract flows through the Iraq border. During his visit the Commissioner learned that that this group has lived in Turkey for almost 10 years, due to irregular departures having shrunk from originally some 1,023 persons to 127, many of them aged and/or ill. The Commissioner, having sensed an improving climate for dialogue and cooperation with UNHCR during his talks with the authorities, trusts that the Turkish government will consider all options including voluntary resettlement to speedily reach a humanitarian solution for all members of this group.

¹⁶ The 2006 Implementation Directive amends the 1994/1999 Asylum Regulation, providing detailed guidance for the refugee status determination procedure and establishing some guidance for the provision of assistance to asylum seekers and refugees.

¹⁷ Ibid p. 20.

¹⁸ Since 2008, the Istanbul governate is the only one authorized to make the interview and decide on the refugee status, while all other governates may only conduct the interview through their police.

¹⁹ In 2005, UNHCR resettled 1 262 refugees. During 2006, 1,609 were resettled. In 2007, 2,667 refugees have departed to resettlement countries, 2 040 of them to USA. In 2008 3,832 refugees were resettled. So far in 2009 (until 31 March), 1,451 refugees have been resettled. The main countries of destination are USA, Australia, Canada and Finland, UNHCR Turkey briefing of 6 April 2009.

3. Judicial review and appeal

27. According to the 2006 Implementation Directive, applicants must be notified of the “temporary asylum” decision. This happens usually only in cases of negative decision which must be appealed within 15 days. It will then be reviewed by a senior officer of the Ministry of Interior’s department that has issued the initial decision. An NGO providing legal support to asylum seekers claims that the above Directive does not contain procedural guidelines on the details of the appeal. Notably it is not clear whether the appeal procedure entails always a re-hearing. The NGO has requested in vain detailed information from the Ministry of Interior in this matter.²⁰
28. On the positive side, the Ministry of Interior after having rejected the asylum appeal, then, based on the 2006 Implementation Directive, generally assesses whether the applicant would face “serious harm” if returned to his or her country of origin or whether there are grounds for subsidiary protection or humanitarian considerations (health, education, family unity). NGOs expressed criticism as the Directive is no statutory legislation and can thus be altered without consultation.
29. If the appeal is rejected, this decision can be challenged at the Administrative Court, as is the case with all administrative decisions. Reportedly, rejected asylum seekers are not informed of this possibility or of their right to legal aid.²¹ The Commissioner is concerned about such reports as lack of such crucial information severely raises the risk of *refoulement*, that is, being sent back to countries where there is a real risk against one’s life or freedom.
30. Between 2002 and 2007 only 123 asylum seekers lodged an administrative appeal against a negative first instance decision and only 22 lodged a judicial appeal with the Administrative Court. Although no figures were given, an NGO believes that this number increased dramatically in 2008, criticising the judicial appeal procedure as unreliable.²² The deportation order is only suspended if the Administrative Court issues an interim measure, which is only occasionally the case. It seems that domestic administrative courts do not assess the claim on the merits, in particular whether there is a risk of being submitted to degrading and inhuman treatment in case of a deportation and thus a potential violation of Article 3 ECHR.
31. In recent cases the European Court of Human Rights has expressed criticism of the domestic judicial procedure, the court limiting itself to the issue of formal legality of the applicant’s deportation rather than assessing the substance of her fears and holding that the domestic appeal procedure was no effective remedy (violations of Articles 3 and 13 ECHR).²³ It is also recalled that Guideline 5, paragraph 3, of the *Twenty Guidelines on Forced Return* adopted in 2005 by the Council of Europe Committee of Ministers, provides that there should be a suspensive effect when the returnee has an arguable claim that his or her life or freedom would be seriously threatened
32. The Commissioner believes that the Turkish authorities should reform the asylum appeal procedure in order to ensure a complete judicial assessment of the administrative decision in law and in fact by administrative courts.

²⁰ Helsinki Citizens’ Assembly – Turkey Refugee Advocacy and Support Program 5 February 2008 World Refugee Survey 2008 , answers to questionnaire, p. 6.

²¹ Ibid. p. 21.

²² Idem.

²³ *Jabari v. Turkey* , judgment of 11/07/2000.; the Court under its Rule 39 also issued an interim measure, staying deportation. See also *D. and others v. Turkey*, judgment of 22/06/2006.

4. Accelerated asylum procedures and safeguards

34. Under Turkish law, an accelerated asylum procedure can be used for people who have violated rules when entering or trying to exit Turkey, people who have committed a crime and for people who have already lodged an unsuccessful asylum claim. In these cases asylum claims should be decided within five days, with a right to appeal within two days. During the accelerated procedure, the applicants are being detained. NGO representatives, lawyers and UNHCR are often unable to access the asylum seekers and thus to provide counseling. Asylum seekers alleged that they were not communicated the decision taken and were forced to sign documents they did not understand. Some of them were released after months without a decision on their status.²⁴
35. The Commissioner notes that the domestic provisions for applying the accelerated procedure²⁵ appear to be rather broad as they include persons who possess incomplete, false or no documents or whose residence permit has expired. He observes that there appears to be no safeguard for particularly vulnerable groups such as victims of trafficking in human beings and it appears unclear whether the accelerated procedure can also be applied to unaccompanied minors.
36. The Commissioner wishes to recall that the Council of Europe has over the years built up a substantial body of relevant human rights standards not least by the case law of the European Court of Human Rights. A most recent summary of these standards can be found in the Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures adopted on 1 July 2009.²⁶ The Commissioner draws the attention of the authorities in particular to the procedural guarantees and to the role of UNHCR that should be able to access asylum seekers, as well as to the principle of best interest of the child which is paramount.²⁷

5. Access to legal aid

37. It seems that the general legal aid scheme in practice is not always accessible for asylum seekers and refugees, partly due to a shortage of specialised lawyers. The Commissioner is aware of one NGO providing sustained and qualified free legal assistance for the UNHCR procedures as well as for the domestic procedures with the Ministry of Interior. Bar associations are generally not involved. A number of other NGOs provide a more limited form of general information and basic counseling.²⁸ However, the Commissioner was informed that the bar associations of Ankara and Van provide legal assistance to asylum seekers making judicial appeals to the administrative courts. The fact that only very few lawyers are fluent in the languages spoken by refugees and the severe shortage of interpreters further hampers access to legal aid.

6. Access to the asylum procedure in detention, at airports and land borders

38. Irregular entry, stay or attempt to depart results in apprehension and administrative detention. In such cases no access to the domestic asylum procedure is given and UNHCR is denied access to the detained in the majority of the cases. While non-European asylum seekers entering Turkey in a regular manner, generally have access to the domestic procedure and can thus apply for temporary asylum seeker status, this is not the case for any person who has crossed the border in an irregular manner and is apprehended before registering with UNHCR in Van or Ankara. The Turkish authorities view any application for

²⁴ Amnesty International, *ibid.* p.22.

²⁵ Section 13 of the 2006 Implementation Directive.

²⁶ 1062nd meeting of the Ministers' Deputies.

²⁷ See Guidelines IV, XIV, III.

²⁸ Helsinki Citizens' Assembly, *ibid.* p. 10 ff.

asylum that is made after arrest for irregular entry, presence or attempted departure to be in bad faith and thus deny access to the domestic temporary asylum procedure. The Commissioner observes that this practice appears to contradict section 2 of the 2006 Implementation Directive on duties of application authorities, stipulating that even when an applicant “failed to apply within a reasonable period of time and cannot provide any reasonable excuse”, domestic authorities are still required to accept the application “without prejudice”.

39. UNHCR is not aware of cases apprehended for irregular entry or stay in 2008 that were referred to the domestic procedure for temporary asylum. UNHCR’s access to arrested individuals is subject to approval by the Ministry of Foreign Affairs and Ministry of Interior. In 2008 UNHCR intervened in 393 incidents, involving 3,351 undocumented foreigners among whom many wished to seek asylum. UNHCR was given permission to see only 72 individuals. Access to all others was denied. In the absence of a functioning referral system to the temporary asylum procedure, UNHCR assumes that most of them were removed from Turkey without an adequate assessment of their potential need for international protection.²⁹
40. Asylum seekers are initially charged with a criminal offence, when having entered the country with false passports but then acquitted and subjected to administrative detention in a so-called “Foreigners’ guest-house”. Although under Turkish law they may claim asylum from there, in practice they seem to face severe obstacles due to a lack of information on this possibility and on the asylum procedure, refusal of police officers to take applications and absence of interpreters. Furthermore, while in administrative detention, they do not enjoy the right of access to a lawyer as generally provided for by Turkish law for persons criminally charged.³⁰ The Commissioner notes with concern that NGOs report facing severe obstacles to accessing potential asylum seekers in detention and that no independent monitoring mechanism exists to ensure that access to the asylum procedure is being granted.
41. Furthermore, the Turkish authorities do not allow NGOs, lawyers or UNHCR to access persons held in airport transit zones, even if these persons wish to claim asylum. According to UNHCR, the Turkish authorities do not view these persons as having accessed Turkish territory and therefore do not apply the 1994 Asylum Regulation. Consequently these individuals cannot apply under the domestic temporary asylum procedure or under the RSD procedure afforded by UNHCR.
42. The Commissioner visited the airport transit zone at Istanbul Atatürk Airport and spoke separately with the authorities in charge (passport section) and with the 11 detainees: 6 men mainly from Africa and one from Sri Lanka and 4 women including an Iraq mother with her small child. He was informed that people apprehended in transit for lack of valid travel documents are considered to be inadmissible to Turkish territory. Their number amounts to 5,000 to 6,000 per year out of 40,000 to 50,000 daily passengers at this airport, half of them being in transit. They are usually sent back by plane within 48 hours. So far, the authorities have not encountered a request for asylum from anybody apprehended in transit. However, they would refer such a request to the competent authorities (the foreigners’ police) for conducting an interview.
43. The Commissioner wonders whether the current practice sufficiently ensures that asylum seekers and refugees can be identified in the context of mixed migration flows. He commends the authorities’ attempts to keep the length of detention at the airport very short but asks about effective safeguards against the risk of *refoulement*, so that no individuals

²⁹ Written Submission by the Office of the United Nations High Commissioner for Refugees in the Case *Abdolkhani and Karimnia v. Turkey* (I) application n° 30471/08, January 2009, p. 5.

³⁰ Amnesty International, *ibid.*, p. 16 ff.

will be sent back to a country where they face a serious risk against their lives or freedom. He stresses that there must not be any area that bears a risk of potential human rights violation because individuals have no access to protection for formal grounds or because they lack information. He believes that access of UNHCR, support organisations and legal counselling would substantially reduce such risk.

44. NGOs have also expressed concerns that asylum seekers coming by land are routinely denied the possibility to claim asylum at borders as the domestic regulations require the asylum-seeker to have crossed the border, having arrived *in* the country, before the authorities have the duty to receive the application. The Commissioner recalls that under international standards, any asylum seeker may file a claim when arriving at the border, thus enjoying the protection of the respective state exercised by its border authorities. He thus calls upon the Turkish authorities to speedily clarify the issue and oblige border authorities by law to accept asylum applications at borders as well as to ensure the practical implementation of such law. Furthermore, he encourages the Turkish authorities to ensure that written information in a language asylum seekers understand containing also UNHCR and NGO contact details, is available at entry points for people potentially in need of international protection, including airport transit zones, border gates and all other places of foreign nationals' detention.

III. Cooperation with UNHCR

45. Despite Turkey being an original signatory of the 1951 UN Refugee Convention and although UNHCR has been working in Turkey since 1960 and conducting Refugee Determination Status (RDS) since the mid 1980s, there is no formal host country agreement between UNHCR and Turkey. During his visit, the Commissioner learned that the Directorate of Security of the Ministry of the Interior has established monthly meetings with UNHCR and daily cooperation exists on the working level. The Commissioner welcomes the intent expressed to him by the Ministry of Interior to explore further coordination and collaboration with UNHCR with a view to reach a more structured agreement.
46. An agreement would provide for opportunity to discuss other areas of concern such as the fact that Turkish authorities currently do not recognize UNHCR refugees if they were recognized by UNHCR outside of Turkey. Recalling that UNHCR is bound to the same standards in and outside Turkey, the Commissioner sees no obstacle to recognizing a positive refugee status determination conducted by UNHCR outside Turkey. This way Turkish authorities would be relieved from cases already assessed and the resettlement process for such refugees could start immediately, most likely resulting in their earlier departure from Turkey.
47. During his visit, the Commissioner was informed that UNHCR strives towards a speedy refugee determination but is much hampered by severe capacity constraints. Thus it is not always ensured that protection officers can visit quickly places where there is no representation as is the case for example in Izmir. The Commissioner is aware of a critical assessment of UNHCR procedures by an NGO mainly criticizing their length. He believes that this study can provide valuable guidance to Turkish authorities when conducting their parallel procedures for granting temporary stay.³¹
48. The Commissioner understands that the current parallel procedures result from the geographic limitation of the 1951 UN Refugee Convention that Turkey still applies. He believes that such a dualism results in overly complex procedures raising also questions of

³¹ See Helsinki Citizens Assembly (HYD), "An Evaluation of UNHCR Turkey's Compliance with UNHCR's RSD Procedural Standards, September 2007.

transparency, accountability and efficiency as well as information sharing. In the interest of simplifying the asylum procedure the Commissioner commends the reflection of the Turkish authorities on lifting the geographic limitation and encourages them to do so promptly.

IV. Reception and living conditions of registered temporary non-European asylum seekers

49. The Commissioner is aware that Turkey currently does not maintain general reception and accommodation facilities for registered asylum seekers and refugees. He thus notes with appreciation the Turkish project proposal to the European Commission to obtain funding for the establishment of several regional reception centres to accommodate asylum seekers upon arrival.³² The Commissioner commends that different concepts for their organisation are currently discussed and encourages the Turkish authorities to include UNHCR and NGOs active in this field into the consultations. The EU Council Directive on Minimum Standards for the Reception of Asylum Seekers³³ and the UNHCR Recommended Standards on Reception Centres of 13 February 2009 provide valuable guidance in this respect.
50. The Commissioner welcomes the efforts of the Turkish authorities to increase shelter capacity for vulnerable groups such as victims of trafficking and women fleeing domestic violence. Furthermore, he appreciates that accommodation is provided for unaccompanied minors.
51. Registered asylum seekers and those who received this status and are awaiting a resettlement with the help of UNHCR, are obliged to reside in one of the 30 designated or "satellite" cities. There, they have to find accommodation on their own, receiving very limited assistance from local authorities mainly in the form of ad hoc support from social welfare funds and varying from one city to the other. While primary health care through public clinics is available free of charge in most provinces, cost of medication is not covered and treatment for serious illnesses appears often to be insufficient. The Commissioner appreciates that children of asylum seekers may attend primary school but notes with concern that children without legal status, i.e. residing in an area other than the designated city or having failed to pay the residence fee, may face practical difficulties.
52. Registered asylum seekers are legally obliged to pay a residence fee (*ikamet*) every six months of about €150 (TL 306) per person, mandatory for every foreigner staying in Turkey regardless of status and means. For children between 15 and 18 years of age, about €120 (TL 243) are due. In Europe, only Monaco demands such a residence fee from asylum seekers. Failure to pay the fee is considered an offence resulting in loss of legal status. According to UNHCR the residence fee is a major obstacle to implementing resettlement for such refugees already accepted by third countries as they are denied the necessary exit authorization from the Ministry of Interior.³⁴ Furthermore, loss of legal status also results in losing access to the very basic services provided for. NGOs have criticised the residence fee as excessively high for people with almost no means and no possibility to earn their living by legal means as it is practically impossible to obtain a work permit.
53. Although asylum seekers and refugees may ask for a work permit under domestic law, practical difficulties amount to such a threshold that UNHCR is only aware of one case in

³² Currently five to seven reception centres are planned, funded by the European Commission and supported by Dutch and British government partners.

³³ Council Directive 2003/9/EC.

³⁴ Written Submission by the Office of the United Nations High Commissioner for Refugees in the Case *Abdolkhani and Karimnia v. Turkey (I)* application n° 30471/08, January 2009, p. 5.

which an asylum seeker obtained a permit.³⁵ The Commissioner is concerned that the current restrictive practice may foster exploitation and lure asylum seekers into prostitution, in particular as the mandatory residence fee constitutes an extra burden.

54. During his visit to Turkey the Commissioner discussed the residence fee with the authorities and learned that the Governors have discretion to reduce or to waive the fee but that the application of this possibility greatly varies as no common standards or guidelines currently exist. He welcomes the willingness of the authorities to look into this matter and recommends abolition of the residence fee for all asylum seekers and refugees and their children. Furthermore, he believes that unpaid residence fees should not impede resettlement arrangements which could otherwise be implemented as this contradicts Turkey's own interests, prolonging their responsibility for the persons to be resettled.
55. Recalling that under international law wage-earning and self-employment for refugees are considered advisable,³⁶ he recommends that the Turkish authorities review their restrictions on obtaining an employment permit and ensure legal access to the labour market in particular as no sufficient reception and accommodation capacity in Turkey currently exists.

V. Administrative detention

56. Irregular entry, stay or attempt to depart results in apprehension and detention. It is reported that despite the aforementioned section 2 of the 2006 Implementation Directive, no access to the asylum procedures are given and UNHCR is denied access to the detained in the majority of the cases. Until their departure or expulsion, apprehended foreigners are generally detained in a so called "foreigners' guesthouse" (*yabancılar misafirhanesi*), based on an administrative ruling from the Ministry of the Interior which means that no court order is necessary and no judicial review exists. Consequently, detainees in "foreigners' guesthouses" have no possibility to challenge the legality or the length of their detention. Domestic law does not proscribe a maximum period of detention. According to NGO information detention periods range from less than a week to more than a year, in many cases depending on when detainees or their relatives can afford a ticket to allow for travelling back to their countries of origin.
57. The Turkish authorities informed the Commissioner that domestic legislation stipulates that travel costs are borne by the deportee. However, in case of insufficient means costs are covered by a yearly lump sum allocated by the Ministry of Interior. The Commissioner notes that local authorities have to use their community budget if the allocated sum is consumed. He is thus concerned that deportation costs can negatively affect expenditure for the respective community including services for asylum seekers and refugees and recommends a separate sufficient budget independent from the one of local entities.
58. The government has submitted that accommodating foreigners subject to expulsion in restitution centres is not an act of detention but merely an administrative procedure for foreigners whose deportation procedures are under way.³⁷ The Commissioner wishes to underline that such a position seems to be in conflict with the European Court of Human Rights' case law, prescribing that detention must not be arbitrary and therefore must be

³⁵ The permission must be obtained by the employer who will have to prove that no Turkish citizen will be able to fulfill the job, a requirement which can almost never be met.

³⁶ See Articles 17 and 18 of the 1951 UN Refugee Convention.

³⁷ CERD/C/TUR/3, 4 March 2009 3rd periodic report, 74th session, written reply by the government of Turkey to question 13.

based on individual grounds, place and conditions should be appropriate, while the length of detention should be reasonable for the purpose pursued.³⁸

59. These places of detention or “foreigners’ guesthouses” exist in all major Turkish cities and are administered by the Tracing and Control Police Section of the Foreigner’s Department of each city’s Security Directorate. During his visit the Commissioner was informed that the local human rights board inspects these detention facilities, sometimes unannounced. While appreciating this important activity, the Commissioner is aware that due to the current legal structure of such human rights boards, they do not constitute an independent domestic monitoring mechanism, a lacuna which would be remedied once Turkey has ratified the OPCAT signed in 2005 and has implemented its provisions. The same is true for the Human Rights Inquiry Commission of the Grand National Assembly of Turkey. In his meeting with the Chairperson in Istanbul, the Commissioner learned about their interaction with the local human rights boards and their numerous activities including also inspection of places of detention. The Commissioner trusts that the Turkish authorities, currently preparing a reform of their human rights protection mechanisms with a view to establishing a national human rights institution, will carefully assess the possibilities for independent mechanisms on national and local level with regard to the Paris Principles and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), for which the Commissioner recommends prompt ratification.
60. The Commissioner is aware of recent extensive reports on the deficits of “foreigners’ guesthouses”, indicating that the living conditions in a number of the “foreigners’ guesthouses” are extremely poor. The detention facilities were usually overcrowded, dirty and often insect-infested without hot water. Detainees were not provided with basic necessities but had to buy toiletries and additional food, often at excessive prices. Food was generally poor in quality and not sufficient in quantity and safe drinking water was not freely available. Many detainees suffered from skin infection. Medical care was often denied, had sometimes to be paid for and interpreters were scarce. Generally no meaningful activities like exercises or outdoor activities were available. Outside communication was severely restricted due to public telephones in the facilities being excessively expensive, a shortage of such phones, lack of privacy, the inability to receive calls and minimal access to visitors, including NGOs, lawyers and UNHCR.³⁹ There were also allegations that police officers collect between \$ 100 and \$ 150 per person from refugees to be released for transport to satellite cities without issuing a receipt, while other refugees had to pay only TL 50.
61. It has been reported that the tension between staff and inmates is generally very high, amounting to an indifferent behaviour towards expressed needs of the detainees and frequent verbal abuse. Part of this tension could be due to the low staff-inmate ratio, the facilities being severely overcrowded and understaffed. The Commissioner is particularly worried about repetitive, numerous allegations of unjustified physical abuse by police officers, including beating and slapping.
62. The Commissioner visited the foreigners’ detention centres in Istanbul-Kumkapi and in Izmir and spoke separately with the authorities in charge of the centres and with several detained persons. He found both centres of generally good material and sanitary standards. In Izmir he was delighted to discover that the formerly deteriorated detention facility had been replaced by a newly built institution, in operation since 2008 with a capacity of 250

³⁸ European Court of Human Rights, *A. and Others v. The United Kingdom*, Grand Chamber judgment of 19 February 2009.

³⁹ Helsinki Citizens Assembly, Refugee Advocacy & Support Program, *Unwelcome Guests: The Detention of Refugees in Turkey’s “Foreigners’ Guesthouses”*, November 2007; Human Rights Watch, *Stuck in a revolving door*, November 2008, in particular on the situation in Edirne and Kirklareli.

places, an infirmary with 14 beds, an outside court and a common cafeteria. The rooms are equipped with bunk beds for 20 people sharing a toilet, two wash basins and a shower with hot water provided three times per week. Women and children have two rooms separated from the men's section. The local authorities informed the Commissioner that the old, unsuitable building that had been used was torn down. He noted, that at the time of his visit, in Istanbul-Kumkapi, a facility from 2007 with a total capacity of 560 places (360 for male, 200 for females) 96 persons (56 male and 40 female) were held, amounting to an occupation of 17%. The same was true for Izmir with an occupation of 10%, namely 25 people at the time of the visit.

63. The authorities explained that such numbers may change hourly as they aim at speedy deportations which are sometimes hampered by the lack of cooperation of countries of origin in determining the nationality and identity of persons and supplying them with documents. In Izmir the authorities reported to have released or sent back about 200 people since May 2009, the average length of detention being currently two months. If the detention exceeds six months, local authorities ask the Ministry of the Interior how to proceed. In both facilities, the authorities expected a major rise for the second half of the year due to increased migration over the summer which might then cause capacity constraints to the facilities, in particular when 200 – 300 people may be apprehended on a day.
64. The Commissioner appreciates the new approach to shorten administrative detention and would like to be informed about the general policy in this respect. He notes that children are kept in detention together with their parents and calls upon the authorities to seek alternatives to detaining families and limit administrative detention of children to extraordinary circumstances precisely defined in law in accordance with the standards of the European Convention on Human Rights and of the UN Convention of the Rights of the Child.
65. When the Commissioner talked to the detainees in both above-mentioned facilities, he noted that even minor violations of the relevant aliens' legislation, i.e. overstaying the duration of the residence permit may result in detention. Furthermore, the Commissioner observed that the detainees were lacking information about the procedures, their rights and the expected duration of their stay. This was illustrated by the one page information sheet he received in the Izmir facility.⁴⁰ The Commissioner, however, noted with satisfaction the information provided by the Kumkapi authorities according to which one month ago they started to hand out a form available in different languages to persons subject to deportation, specifying the reasons for their deportation. The Commissioner sees this as a positive step towards ensuring full and prompt information and wishes to underline that in all cases where asylum seekers remain in detention they should always be informed promptly, in a language they understand, of the reasons of their arrest and detention, in conformity with Article 5, paragraph 2, of the European Convention on Human Rights.⁴¹

VI. Issues relating to forced returns of asylum seekers and refugees

66. The Commissioner notes with concern that NGOs as well as UNHCR continue to report incidents of deportation and *refoulement* of UNHCR recognized refugees and registered asylum seekers. He is aware that the UN Committee on the Elimination of Racial

⁴⁰ Titled "Foreigner's Rights While You Are At Izmir Directorate of Police in Foreigner's Guesthouse".

⁴¹ See also judgment of the European Court of Human Rights in the case of *Saadi v the United Kingdom*, 29/01/2008, where a violation of Article 5, paragraph 2, was found due to a delay of 76 hours in providing reasons for detention to the applicant asylum seeker who was held at Oakington IRC.

Discrimination (CERD) also expressed concern over these reports and called upon Turkey to refrain from deporting refugees or persons registered with UNHCR as asylum seekers.⁴²

67. In this context, the Commissioner was informed of the situation of a group of Iranians who used to be members of the People's Mujahedin of Iraq (PMOI) and were recognized as refugees in May 2006 under UNHCR's mandate while they were residing in the Ashraf camp, Iraq. Some individuals among this group have crossed the border with Turkey trying to find a durable solution which was considered unattainable in Iraq. The Turkish authorities have deported them back to Iraq,⁴³ allegedly in some cases resorting to irregular measures, putting the refugees' lives at risk.
68. Since October 2008, seven of these Iranian refugees remain in administrative detention in Kirklareli, after the European Court of Human Rights indicated stay of their deportation as long as their applications are pending in Strasbourg. Similarly to other cases in which the European Court has indicated interim measures under its Rule 39, the Ministry of Interior has decided to keep these individuals in detention until the European Court delivers its final judgement.
69. Reports indicated that in 2008 there was an increase in forcible returns of refugees and asylum seekers to countries where they were at risk of serious human rights violations including irregular deportations resulting in the death or injury of asylum seekers, one example being a group of Uzbek refugees twice forcibly returned to Iran, first in September and then in October 2008. During the first forcible return, members of the group were said to have been beaten and threatened with rape unless they crossed back into Iran.⁴⁴
70. During his visit, the Commissioner learned that the investigation launched by the Turkish authorities resulted in finding no person's liability. A case that received broad media coverage was the drowning of four people in April 2008, when Turkish police forced a group of 18 refugees and asylum seekers (Iranian and Syrian nationals) to cross a fast-flowing river on the Turkey-Iraq border, near the Habur (Silopi) border crossing. According to UNHCR the group included five Iranians who had mandate refugee status and one of them drowned.⁴⁵ When his body was found, the UNHCR identity card was still in his pocket. Prior to his visit, the Commissioner was informed by the Turkish authorities that the fatalities occurred when the men tried to swim back to Turkey, information which seemingly is not in line with UNHCR information. The Commissioner remains deeply concerned about this incident in particular as no investigation into the exact circumstances of the incident appears to have been initiated so far.
71. UNHCR also informed the Commissioner that refugees and asylum seekers properly registered in the national procedure for temporary asylum are protected from *refoulement*, and the Government generally tolerates the presence of those registered only with UNHCR. However, UNHCR has observed with concern that the instances of *refoulement* of persons of concern to the Office are becoming more frequent. In 2008, 13 refugees recognized under UNHCR's Mandate and 9 asylum seekers were refouled (mainly to Iran and Iraq), and 50 refugees and 5 asylum seekers have been deported to third countries (mainly to Iran, Iraq and Syria).⁴⁶

⁴² CERD/C/TUR/3, 4 March 2009 3rd periodic report, 74th session, Concluding observations para 15.

⁴³ See also the statement of facts of the communicated case of *Abdolkhani and Karimnia v. Turkey (II)*, appl. n° 50213/08 and the Written Submission of January 2009 by the Office of the United Nations High Commissioner for Refugees in the first communicated case of these applicants, *Abdolkhani and Karimnia v. Turkey (I)*, application n° 30471/08.

⁴⁴ Amnesty International, *Report 2009*, Turkey.

⁴⁵ Today's Zaman 26 April 2008, <http://www.todayszaman.com/tz-web/news-140161-un-refugee-agency-criticizes-turkey-for-deadly-refugee-deportation.html>.

⁴⁶ See the statement of facts of the communicated case of *Abdolkhani and Karimnia v. Turkey (II)*, appl. n° 50213/08 and the Written Submission of January 2009 by the Office of the United Nations High

72. The Turkish authorities informed the Commissioner that asylum seekers who are not granted refugee status but are assessed to have a risk of persecution in their countries of origin, are allowed to temporarily stay on grounds of subsidiary protection and protection with humanitarian considerations. The Commissioner appreciates the expressed commitment of the Turkish authorities to compliance with the principle of *non-refoulement* as laid out in Article 33 of the 1951 UN Refugee Convention which places a prohibition on sending asylum seekers back to countries where their life or freedom would be threatened. He calls upon the Turkish authorities to ensure effective implementation of this principle by border patrols and speedy, efficient investigation into cases of alleged violations. Furthermore, he urges prompt ratification of Protocol No 4 to the European Convention on Human Rights that was signed by Turkey in 1992 and, inter alia, proscribes the collective expulsion of aliens.

VII. Particularly vulnerable groups

1. Unaccompanied minors

73. The Commissioner appreciates that unaccompanied minors seeking asylum are cared for by the social services. They usually reside together with Turkish children in orphanages or in separate institutions. The Commissioner is, however concerned about reports that in practice such minors, although being entitled to education and health care, seem to face obstacles in accessing these services. The Commissioner was informed that unaccompanied minors cannot get free health service for lack of having an ID number and have thus to rely on charitable support to receive treatment even in severe cases like tuberculosis. This lacuna may be caused by the fact that many unaccompanied minors cannot pay the residence fee and thus do not have a residence permit necessary to access social services.
74. Furthermore, the Commissioner learned that Turkish authorities do not use a margin of appreciation and do not apply the benefit of doubt principle when it comes to age assessment of unaccompanied minor refugees. As a result, it is possible that children are left without care if their age is not assessed correctly. Even more worrisome is the fact that a wrong age assessment and the lack of a margin of appreciation in favour of the minor leads to their administrative detention together with adults. Furthermore, the Commissioner notes that there seems to be no time limit during which the police interview for temporary asylum needs to take place, and some children need to wait a rather long time. On the positive side, the Commissioner learned that the interviews are generally conducted in the presence of a social worker.
75. The Commissioner believes that the above-mentioned shortcomings need to be systematically addressed and thus recommends introduction and effective implementation of the principle of the best interest of the child in asylum and refugee law and policy within the context of the proposed asylum law reform.
76. In Istanbul the Commissioner visited the Yeldegirmeni Child and Youth Centre a former orphanage that was recently turned into a facility for unaccompanied minor asylum seekers and refugees with a capacity of 60 places. Consequently, the Turkish children who had lived together with the foreign minors were placed elsewhere. The Commissioner understands that this decision was made without prior consultation of the children. The Commissioner uses this opportunity to reiterate that children should be heard before taking

Commissioner for Refugees in the first communicated case of these applicants, *Abdolkhani and Karimnia v. Turkey (I)*, application n° 30471/08.

decisions concerning them. This general rule is even more important for refugee children living under difficult circumstances outside their family and most probably being traumatized. Thus he notes with appreciation the cooperation between an NGO and the center in particular for psychological support and encourages the Turkish authorities to promote such cooperation in all institutions where unaccompanied minors reside.

77. At the time of the visit the facility hosted 59 male children between 14 and 17 years of age, the majority stemming from African countries and Afghanistan. The children reside in freshly renovated rooms with five double bunk beds with new mattresses. They have access to newly furnished common rooms with TV sets and a fully equipped exercise room. A variety of activities is provided at the center, ranging from courses in different languages to computer training, creative classes in arts and crafts, drama and music. While the institution is of a very good material standard, it appears that languages classes cannot always be ensured for all children, some of them not having had the opportunity to learn Turkish or English within the five months of their stay.
78. Furthermore, the Commissioner wonders whether it is ensured that all unaccompanied minors may attend school and receive diplomas. In this context, the Commissioner welcomes the new project of the Turkish authorities providing two months long complementary courses (YOSEP) for children under 15 years of age not having completed compulsory schooling. The Commissioner would be interested to receive updated information on the implementation of this project as well as on access to higher education and recognition of diplomas.
79. For children under state care, Turkish civil courts, in line with domestic law, may appoint guardians or trustees. For Turkish children, usually staff members of the Social Services and Child Protection Agency (SHCEK) are appointed. Domestic law does not distinguish between Turkish and foreign children but an NGO active in the protection of unaccompanied minors is not aware that individual guardians are generally appointed to foreign children. However, recently, upon a joint UNHCR/NGO initiative, an NGO worker was appointed trustee for an unaccompanied minor, now also overseeing the asylum procedures. During his visit the Commissioner learned that legally, the institution the unaccompanied minor is placed in, is appointed as guardian. The Commissioner believes that a particular person who will be able to build a relationship with the child should be actively involved as a guardian.
80. The Commissioner noted during his talks with the children that they have little information on the procedures and on what will happen to them when they turn 18. It was obvious that this information gap caused considerable stress and anxiety to those youngsters, a situation that is placing an additional burden on the staff of the institution. The Commissioner believes that a more proactive approach, ensuring proper, timely and detailed information about the processing of their asylum claim would be beneficial for unaccompanied children and social workers alike. A personalized concept of guardianship could also help closing this information gap.

2. LGBT asylum seekers and refugees

81. The Commissioner is aware that LGBT asylum seekers and refugees face particularly difficulties in many countries, including Turkey. Due to repressions sometimes amounting to life danger experienced in their country of origin, they are often traumatized. This is particularly true for LGBT refugees from Iran who seek asylum in Turkey, facing prosecution and even death sentence in Iran. The trauma deepens when faced with verbal and physical violence and a lack of insufficient protection, notably by police in their host country. In the satellite cities they are assigned to, they often face even violent harassment

from the local population and are subject to marginalization by other asylum seekers and refugees. Consequently they express deep feelings of isolation.⁴⁷

82. The Commissioner met with members of the LGBT Rights Platform in Istanbul to generally be informed on the situation of LGBT persons in Turkey, as well as on the specific situation of LGBT asylum seekers and refugees. He commends that the authorities of the Izmir detention facility informed him upon his visit that they keep transgender persons separately in the infirmary to ensure better protection. Nevertheless more needs to be done on all levels of society to provide for a safe environment of LGBT asylum seekers and refugees.
83. The Commissioner calls upon the Turkish authorities, as a first step, to intensify awareness raising for society at large and to provide for special training of police including border officials and asylum officers to combat hostile attitudes towards the particularly vulnerable group of LGBT asylum seekers and refugees. In this context the Turkish authorities might wish to draw inspiration from international law, in particular as it is reflected in the UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity of 21 November 2008.

3. Victims of trafficking in human beings

84. Trafficking in human beings for labour or sexual exploitation is a major problem in many European countries and sadly Turkey is no exception being a destination and to a lesser extent a transit country. Turkey demonstrated continuous strong anti-trafficking law enforcement and prosecutorial efforts including judicial action against public officials and in one case a judge, for assisting traffickers, mediating prostitution or accepting bribes.⁴⁸ The authorities also sustained their prevention efforts with more frequent meetings of their interagency task force and an awareness raising campaign for their telephone hotline but did not yet adopt the new national action plan.⁴⁹
85. The Commissioner strongly welcomes the vigour of the Turkish authorities when combating trafficking in human beings and the progress achieved in prosecution and prevention. He remains, however, concerned about the failure to adopt the new action plan and about reported lack of improvement in victims' protection, in particular deficits in victims' identification having led to deportation. He was therefore delighted to learn about a workshop for victims' identification carried out jointly by the authorities and an NGO in Istanbul and recommends more activities in this field. Furthermore, he commends that Turkey signed the Council of Europe of Europe Convention on Action against Trafficking in Human Beings in March 2009 and calls for its speedy ratification.

VIII. Involvement of civil society in refugee protection and support

86. The Commissioner notes with appreciation the growing number of NGOs involved in the protection and support of asylum seekers and refugees. Their involvement ranges from supplying food, clothes, medical care to providing for assistance with the procedures including legal aid. During his visit, the Commissioner met with numerous NGO representatives and is very grateful for having been able to share their expertise and valuable information. The Commissioner understands that in Turkey, due to the limited

⁴⁷ For a detailed description see Helsinki Citizens Assembly – Turkey Refugee Advocacy and Support Program & ORAM Organization for Refuge, Asylum & Migration, *Unsafe Haven: the Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey*, a joint publication, June 2009.

⁴⁸ See U.S. Department of State, chapters on Turkey, *Trafficking in Persons Reports* of June 2008 and 2009.

⁴⁹ *Ibid.* Report of June 2009.

engagement of the authorities, civil society together with UNHCR is the backbone of the assistance given to asylum seekers and refugees. He appreciates that NGOs in Istanbul participate in the subcommittee on asylum chaired by the Governor responsible i.a. for the police force. The Commissioner was informed that an NGO very active in the field of refugee protection is not invited any more to meetings and seminars organized by the Ministry of the Interior since the publication of a critical report on the detention of refugees.

87. The Commissioner reiterates the importance and necessity of an open, constant and constructive dialogue between the authorities and civil society representatives with a view to protecting human rights. In Izmir, he had an inspiring exchange of views with the members of the Human Rights Board comprising i. a. members of business, teachers', journalists and bar associations, two NGOs and members of all political parties. The Commissioner sees such local human rights boards as an important forum for dialogue if NGOs will be admitted to them on an equitable basis. Further, he encourages the Turkish authorities to strengthen the dialogue in the context of their legislative work on the new human rights institution and the new asylum law, notably by inviting civil society representatives' comments.

IX. Conclusions and Recommendations

General

88. The Commissioner is aware of the challenges Turkey, as a country of transit and mixed movements of asylum seekers and immigrants, encounters on a daily basis and in particular during the summer months. Like in other Mediterranean Council of Europe member states, the increase of irregular migration has put additional pressure on the country's already strained capacity. The Commissioner believes that such Mediterranean countries, including Turkey, should receive increased assistance from European and international bodies and not least the European Union in order to develop and implement an efficient immigration and asylum system ensuring protection to those in need and in line with Council of Europe human rights standards.
89. He thus notes as a positive sign the express will of the Turkish authorities to address these challenges by introducing a new, modern asylum law which is currently under preparation. The 10-point action plan developed by UNHCR to help countries to better ensure refugee protection in the flow of mixed migration can provide valuable guidance.⁵⁰ The Commissioner was delighted to learn that UNHCR and NGOs have been invited to contribute to the discussion and trusts that a fruitful mutual exchange will take place on all levels. He encourages the Turkish authorities to further enhance this discussion and exchange, i.e. by establishing regular working groups on relevant issues.
90. The Commissioner is convinced that Turkey would benefit by withdrawing from the geographic limitation of the 1951 UN Refugee Convention as this would abolish the currently overly complex system and lead to a single coherent and more efficient asylum procedure. He thus welcomes the announcement made in Turkey's Action Plan for Asylum and Migration of 17 January 2005, and reaffirmed by the authorities during his visit, to lift the limitation. He regrets however, that so far no time frame has been given and urges the authorities to speedily lift the geographic limitation to the 1951 UN Refugee Convention. As a first step, the Commissioner recommends that the Turkish authorities align their definitions of asylum seekers and refugees with international standards. Furthermore he considers it essential to ensure effective access to the asylum procedures for all potential applicants. He thus recommends the introduction of a system that would identify promptly

⁵⁰ UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action, revision 1, January 2007, available via <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

asylum seekers in the flow of mixed migration and provide effective protection of the persons in need, in particular by enhancing training of border officers.

Protection of asylum seekers and refugees by the current legal framework

91. The Commissioner recommends that special attention be paid to the situation of foreign nationals coming from conflict areas, potentially in need of international protection. He calls upon the Turkish authorities to find a stable solution for the group of Chechens and other forcibly displaced persons from Europe in a similar situation, allowing either for their speedy resettlement in third countries or for a rapid integration into Turkish society so long as a safe return is no option. In this regard the Commissioner wishes to underline the importance of dialogue with the people concerned and their representatives and suggests inviting UNHCR to be more involved. The Commissioner stresses that in no event children of such groups must be victims of bureaucratic obstacles and thus calls upon the Turkish authorities to ensure that such children may visit primary and secondary schools in a non-discriminatory manner which includes the possibility of obtaining certificates of school attendance and diplomas. The Commissioner urges the authorities to look carefully into the issue of de facto or de iure statelessness of displaced persons. In this regard, he recommends the prompt accession of Turkey to the 1997 European Convention on Nationality.
92. Reiterating that the current parallel system appears overly complex and expressing his hope that this will be remedied speedily in the context of a new asylum law, the Commissioner recommends, in the meantime, that the authorities improve current domestic procedures with a view to better guaranteeing procedural rights. He calls upon the authorities to implement a reliable country of origin information system to better enable police officers and civil servants to assess the credibility of applicants and the risk they may face in case of return. Further, he stresses that privacy in interviews should always be observed and that qualified interpretation and translation should be always available before a decision on the merits of an application is taken. The Commissioner remains particularly concerned about the current lacuna of providing legal aid and recommends that a comprehensive legal aid scheme be made available to asylum seekers.
93. He regards it indispensable that asylum seekers receive a written, substantiated decision and information on the right to appeal in a language they understand. Further, he recommends that the authorities reform the appeals procedure in such a way that a complete judicial assessment of the administrative decision in law and in fact will be ensured by the administrative courts, including a suspensive effect in cases where the returnee has an arguable claim that his or her life or freedom would be seriously threatened.
94. The Commissioner reiterates that accelerated asylum procedures must not have a lower standard of human rights protection than regular procedures and that the right to legal advice is particularly important in accelerated procedures. He thus calls upon the Turkish authorities to ensure that this right is observed in all cases. To ensure a satisfactory level of human rights protection, he recommends that the authorities re-assess the current accelerated asylum procedures and their implementation in view notably of the relevant Committee of Ministers Guidelines of 1 July 2009.⁵¹
95. Further, the Commissioner is concerned that uniform access to the asylum procedures in places of detention, at airports and land borders is not always ensured. He believes that the above mentioned Guidelines could serve as terms of reference also in this regard. The Commissioner further recommends that clear, written instructions be given to border

⁵¹ Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures adopted on 1 July 2009.

officials and that their training be reinforced with a view to ensuring that potential asylum seekers are properly informed of their rights at arrival.

Cooperation with UNHCR

96. Despite Turkey being an original signatory of the 1951 UN Refugee Convention and although UNHCR has been working in Turkey since 1960, conducting Refugee Determination Status since the mid 1980s, there is no formal host country agreement between UNHCR and Turkey. The Commissioner has not been able to find an explanation for this lacuna, in particular, as numerous contacts exist. He calls upon the Turkish authorities to remedy the current gap.
97. Further, he urges the Turkish authorities to review their current practice of conducting a new procedure for refugees for which an UNHCR office outside Turkey already made a positive refugee status determination. The Commissioner believes that this would relieve the domestic decision making bodies from unnecessary work and result in more speedily resettlement.
98. He recommends reform of the current system of granting UNHCR selective access to individuals subject to a case by case decision of the Ministry of the Interior in such a way that speedy access of UNHCR to places of administrative detention is ensured if a potential asylum-seeker requests to be visited by an UNHCR representative, including airport transit zones.

Reception and living conditions of registered temporary non-European asylum seekers

99. The Commissioner welcomes the Turkish proposal to the European Commission for funding of several regional reception centres for asylum seekers and strongly recommends a speedy implementation of this project recalling that ensuring a dignified standard of living should be the guiding principle. As a complementary step the Commissioner calls upon the authorities to urgently review reported gaps in access to health care for asylum seekers and speedily close them.
100. The Commissioner believes that it is advisable that asylum seekers and refugees may enter the labour market in conformity with the law as this best safeguards them against exploitation and prostitution. He thus recommends that the current restrictions on obtaining an employment permit be reviewed and that legal access to the labour market be ensured by the Turkish authorities in particular as no sufficient reception and accommodation capacity currently exists.
101. The Commissioner appreciates the willingness of the Turkish authorities to reconsider the current scheme of demanding a residence fee from asylum seekers and refugees in the same manner as for any other foreigner. Recalling that this group of foreigners mostly lives under precarious conditions and is impoverished, he strongly recommends abolition of the residence fee for all asylum seekers and refugees and their children. As a first and most urgent step the Commissioner strongly recommends that the Turkish authorities ensure that unpaid residence fees do not remain an obstacle to resettlement by UNHCR if otherwise the conditions for such resettlement are fulfilled.

Administrative detention

102. The Commissioner commends the efforts made by the Turkish authorities to improve living conditions in the places of administrative detention he visited in Istanbul and Izmir. Nevertheless he notes with concern reports of severe deficits in other holding facilities, in particular in situations of overcrowding. He urges the Turkish authorities to avoid overcrowding and abstain from using unsuitable facilities like gendarmeries for longer

stays. Recalling the relevant Council of Europe standards⁵² and reiterating that a dignified standard of living must in particular be observed in places of detention, the Commissioner calls upon the authorities to make further efforts and provide decent living conditions in all places of administrative detention, ensuring adequate hygiene, food, medication, activities and exercise and regular contacts to the outside. Further he recommends improvement of safeguards against verbal and physical abuse by other detainees and also by police officers through clearer instructions and enhanced training.

103. In particular, in view of the fact that asylum seekers are occasionally detained with other irregular migrants who are not in need of international protection, the Commissioner stresses that the international refugee law principle of non-detention of asylum seekers should be firmly established in domestic law and strictly applied. Detention should be the exception and should be limited to the shortest possible time and only for the following purposes: (a) to verify the identity of the refugees;(b) to determine the elements on which the claim to refugee status is based, which, in the absence of detention, could not be obtained (c) to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents to mislead the authorities of the country of refuge; (d) to protect national security or public order.⁵³
104. The Commissioner urges the authorities to ensure that detention is not prolonged if returns are solely delayed for lack of means to pay for the cost of travel and recommends provision of a separate budget, independent from the one of the respective communities that run the detention facilities.
105. Alternatives to detention measures should be expressly provided for in the law. Relevant reports and guidelines by UNHCR and specialist NGOs may be helpful in this respect.⁵⁴
106. In cases where asylum seekers remain in detention, they should always be informed promptly, in a language they understand, of the reasons of their arrest and detention, in conformity with Article 5, paragraph 2, of the European Convention on Human Rights.
107. The Commissioner recommends that the authorities assess the current system of lodging a complaint against the detention with a view to ensuring prompt judicial review of reason and length of detention by the competent domestic courts.
108. The Commissioner urges the Turkish authorities to speedily ratify the OPCAT and implement an independent monitoring mechanism for all places of detention including administrative ones.

Issues relating to forced returns of asylum seekers and refugees

109. The Commissioner commends the express commitment of the Turkish authorities to observe the principle of non-refoulement. He urges the authorities to strengthen their efforts to better ensure effective implementation of this principle on all levels of administration and in particular at entry points. The Commissioner recommends that the Turkish government enhances safeguards by improving instructions to and training of border control officers and

⁵² See CPT standards at <http://www.cpt.coe.int/en/docsstandards.htm>.

⁵³ See also Commissioner's Viewpoint, *States should not impose penalties on arriving asylum seekers*, 17/03/2008, www.coe.int/t/commissioner/Viewpoints/080317_en.asp, Council of Europe Committee of Ministers Recommendation Rec(2003)5 *on measures of detention of asylum seekers*, 16/04/2003, www.coe.int/t/cm.

⁵⁴ See UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, April 2006, www.unhcr.org, N. Chmelickova (ed), *Survey on Alternatives to Detention of Asylum Seekers in EU Member States*, 2007, <http://alternatives-to-detention.org>.

by ensuring effective investigations in cases of alleged violations, in line with the established case law of the European Court of Human Rights.

110. The Commissioner calls upon the Turkish authorities to urgently review the necessity of detention in Rule 39 cases of protection against deportation by interim measures being granted by the European Court of Human Rights. He further recommends prompt ratification of Protocol No 4 to the European Convention on Human Rights that, inter alia, proscribes the collective expulsion of aliens.

Particularly vulnerable groups

111. The Commissioner appreciates that unaccompanied children, when identified, receive special care and reside together with Turkish children in orphanages or in separate institutions like the one he visited. He notes with concern that identification as a child is not always ensured and recommends that the benefit of doubt be applied in age assessment to protect unaccompanied children from unintended administrative detention. In view of the general principle that asylum interviews and procedures be conducted speedily, the Commissioner wishes to underline the particular importance of this principle for children who have a different perception of time and who therefore suffer more than adults from long waiting periods. The Commissioner therefore urges the Turkish authorities to ensure prompt, proper, regular information of unaccompanied minors in a language they understand and to assign a personal guardian serving as an easily accessible contact person for the authorities and the child.
112. Further, he recommends that the authorities systematically address reported shortcomings in providing access to medical service and education for all migrant children and that they introduce and effectively apply the principle of the best interest of the child in asylum and refugee law and policy.
113. The Commissioner strongly believes that more needs to be done to ensure a safe environment of LGBT asylum seekers and refugees. As a first step, he recommends that the Turkish government intensifies awareness raising for society at large and provides for special training of police including border officials and asylum officers to combat hostile attitudes towards this particularly vulnerable group. In this context the Turkish authorities might wish to draw inspiration from international law, in particular as is reflected in the UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity of 21 November 2008. Furthermore, the Commissioner calls upon the Turkish authorities to ensure proper protection of LGBT persons in all places of detention.
114. The Commissioner appreciates the continuous commitment shown by the Turkish authorities in combating trafficking in human beings and the progress achieved in prosecution and prevention. He notes, however, with concern that the new national action plan has not yet been adopted and recommends that the Turkish authorities remedy this shortcoming promptly. Special diligence should be paid to identification of victims of trafficking among refugees not least at places of entry such as airport transit zones and land borders. Enhanced training of law enforcement staff, possibly with NGO involvement, as conducted in Istanbul, would be advisable. The Commissioner welcomes that Turkey signed the Council of Europe Convention on Action against Trafficking in Human Beings on 19 March 2009 and calls for its speedy ratification.

Involvement of civil society in refugee protection and support

115. The Commissioner notes that numerous NGOs are actively working for the protection of human rights of asylum seekers and refugees, sometimes under difficult circumstances. The Commissioner calls upon the Turkish authorities to make use of the expertise acquired

by NGOs and more pro-actively involve them, in particular in the context of the legislative work on the new asylum law and the framework for the human rights institution.

116. In the context of enhancing training for all staff dealing with asylum seekers and refugees as recommended above, the Commissioner believes that including respective Council of Europe documents into such training would be beneficial. He thus recommends translation into Turkish and broad dissemination to administrative, judicial and law-enforcing officials the Committee of Ministers Twenty Guidelines on Forced Return (2005),⁵⁵ the Recommendation CommDH/Rec(2001)19 of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders⁵⁶ as well as the Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures (2009).
117. The Commissioner wishes to conclude by stressing that he will continue to follow closely the developments concerning human rights of asylum seekers and refugees and intends to take all necessary measures, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards relating to their human rights protection. The Commissioner stands ready to continue a sincere, constructive dialogue with and assist the Turkish authorities in their efforts to address the shortcomings and reflect on further improvement as outlined in the present Report.

⁵⁵ Available at www.coe.int/t/cm.

⁵⁶ Available at www.coe.int/t/commissioner.

Appendix

**COMMENTS OF THE REPUBLIC OF TURKEY
ON THE REPORT REGARDING
“HUMAN RIGHTS OF ASYLUM SEEKERS AND REFUGEES”
BY MR.T.HAMMARBERG, COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE
FOLLOWING HIS VISIT TO TURKEY
(28 JUNE-3 JULY 2009)**

GENERAL COMMENTS AND OBSERVATIONS

Turkey has become crossroads for ever-increasing number of mixed migration flow especially from its economically and politically unstable East, striving to cross its territory towards Europe.

Turkey has taken concrete steps to address the challenges she faces due to these migratory flows. Within this context, Turkey continues its efforts within the framework of the accession process with the EU in line with the National Action Plan for Asylum and Migration which envisages a new asylum law, necessary amendments in the domestic legislation, as well as administrative capacity building, restructuring and improvement of physical infrastructure.

Currently, Twinning Projects on “Establishing Reception and Accommodation Centers for the Asylum Seekers and Refugee Guest Houses” and “Country of Origin and Asylum Information System” which is an essential component of a full-fledged Refugee Status determination procedure are underway.

TURKISH ASYLUM SYSTEM

Overview

Turkey is party to the 1951 Geneva Convention relating to the Status of Refugees and 1967 Additional Protocol with “geographic limitation”. Due to this limitation, Turkey grants those who enter from “non-European countries” and lodge an asylum application in its territories, “asylum seeker” status, allowing them to reside in Turkey until they are settled in a third country by the UNHCR. The provisions of the Convention only apply to asylum seekers entering Turkey from “European countries”.

Turkey, however, strictly complies with the principle of “non-refoulement” as laid out in the Geneva Convention.

Asylum-seekers who are not granted the refugee status but are assessed to be under the risk of persecution in their countries of origin, are not deported, and are allowed to temporarily stay in Turkey within the concept of “Subsidiary Protection and Protection with Humanitarian Considerations”.

Turkish asylum system is based on the Regulation No 94/6169 of 30 November 1994 and Implementation Directive of 2006 regarding asylum procedures and principles.

The rights conferred to asylum seekers and refugees within the above mentioned regulation and relevant laws include social and medical assistance and access to education and labour markets.

On the other hand, Turkey signed the Optional Protocol to the UN Convention Against Torture (OPCAT) on 14 September 2005. Necessary legal procedure for the ratification of the Protocol has been initiated on 6 August 2009.

Legal Framework

Foreigners who enter Turkey through legal or illegal means and lodge an asylum application in Turkey are not deported, and their asylum applications are processed.

The article relating to “Applicant’s Access to Asylum Procedures” of the Implementation Directive dated 22 June 2006 states that in case an asylum application is lodged to the police unit at the border regions, applicants will be ensured to apply, without delay, to the Governorate of the relevant province or to the General Directorate of Security Foreigners/Passport Branch.

A brochure on “Basic Information for Asylum Applicants in Turkey” prepared by the Ministry of the Interior in 8 languages is available at the border crossings and in regions where asylum applications could be lodged.

The “1994 Asylum Regulation on the Procedures and Principles to be Applied to Possible Population Migration or Individual Aliens who Requested Residence Permit in order to be granted Refuge Status by Another Country and Aliens who approach our borders in order to apply for Asylum as a Group” was amended in January 2006 in order to align it with the relevant EU *acquis* on asylum and migration.

Consequently, the Implementation Directive, which is based on 1951 Geneva Convention and 1994 Asylum Regulation and relevant internal laws and regulations were enacted in June 2006 in line with the EU *acquis* and the National Program, with a view to aligning national asylum procedures with EU *acquis* and best practices.

The Article 4 of the regulation 1994/6169 as amended states that Persons, who entered Turkey legally, shall apply, within the shortest reasonable time, for asylum to the Governorate of the Province where they are present and those persons who entered Turkey illegally, shall apply, within the shortest reasonable time, for asylum to the Governorate located at their point of entry, as soon as possible. Those who fail to apply within the shortest reasonable time shall notify their valid reasons for failure to apply and shall cooperate with the competent authorities with regard to this issue.” The amended version of the regulation no longer contains 10-day period to lodge asylum application.

Applicants have also been informed of their rights and obligations within 3 days of their application in written and oral means in the language they comprehend.

Turkey abides by the general provisions of the European Convention on Human Rights, 1951 Geneva Convention, and other related national and international law with respect to asylum.

Important segments and elements of the following EU regulations were merged into the Implementation Directive:

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status (EU Council Procedure Directive)
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (EU Council Qualification Directive)
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (EU Council Admission Conditions Directive)

The rights conferred to asylum seekers and refugees within the above mentioned regulation and other relevant laws include social and medical assistance, as well as access to education and labour market.

Food, accommodation, health services, financial support etc. are provided by Social Assistance and Solidarity Foundation, Municipalities, State Hospitals in the provinces and Turkish Red Crescent, under the supervision of Governorates. In this respect, the assistance given to 17537 asylum-seekers in 2008 amounts to 1.547.909,69 TL (approximately 700.000 Euros) in 2008 and since January 2009, 1.230.114,10 TL (approximately 562.000 Euros) to has been spent for 5708 asylum-seekers.

Current Developments in the field of Asylum and Migration

- A National Action Plan - NAP (Turkey's Action Plan for Asylum and Migration) was drafted as an outcome of the twinning project entitled "Support for the Development of an Action Plan to Implement Turkey's Asylum and Migration Strategy." The NAP has been put into effect upon the approval of the Prime Ministry on 25 March 2005. It envisages a new asylum law along with the necessary amendments in Turkish legislation, administrative capacity building and restructuring as well as improvement of physical infrastructure.
- Turkey continues its efforts to harmonize its legislation and improve the facilities for the asylum seekers and refugees within the framework of the accession process with the EU in line with the above-mentioned Action Plan. In this regard, the latest developments are as follows:

(i) A Twinning Project on *the Country of Origin and Asylum Information System* which is an essential component of a full-fledged Refugee Status Determination Procedure has been initiated with the partnership of Federal Republic of Germany **on 28 February 2008**. The purpose of the Project which will be implemented for 24 months is to ensure that the Ministry of the Interior establishes and utilizes a Country of Origin information system, has complete knowledge on Refugee Status Determination (RSD) procedure and develops a training program of its own for the personnel of the future Asylum Authority. The Project has a total budget of 12.051.000 Euros.

Twinning component of the Project envisages training programs for the personnel, and investment component of it includes the establishment of Country

of Origin Information System Center who will process asylum data and the install of technical equipment and a network in 6 regional centers (Ankara, İstanbul, İzmir, Erzurum, Gaziantep, Van), in Foreigners Departments of 81 provinces and at 14 border crossings.

(ii) The Twinning Project on *Establishing Reception and Accommodation Centers for the Asylum Seekers and Refugee Guest Houses* has been approved by the EU Commission on 13 November 2007. The proposal of The Netherlands-UK Consortium for the implementation of the project which has a budget of 62.400.000 Euros has been accepted and third version of the Twinning Contract has been submitted to the EU Commission Delegation in Ankara **on 23 February 2009**.

The twinning component of the project envisages training of personnel vis-à-vis the administration of the centers.

Within the investment component of the Project, Asylum seeker reception and accommodation centers shall be established and made operational primarily in the provinces of İstanbul, İzmir, Ankara (Ayaş), Gaziantep, Van, Erzurum and have a capacity of 750 persons each, serving as Regional Centers.

The consortium, WYG International which started its work on 30 November 2008 is expected to prepare the construction projects of the centers in a year, and once the tendering procedure is completed, the actual construction is scheduled to begin in the second half of 2010.

(iii) The Twinning Project on *Establishing Return Centers* for illegal migrants has been approved by the EU Commission on 13 November 2007. Those centers which will serve to host foreigners to be returned until relevant procedures are completed shall be constructed in the provinces of Ankara and Erzurum with the capacity of 750 persons.

The UK-Netherlands-Greece Consortium has been selected as Twinning Partners for the realization of the Project of 19.500.000 Euros. Twinning component of the Project includes training programs for the relevant personnel and preparation of instruction manuals concerning the administration of the centers.

The investment component of the Project is combined with that of Establishing Reception and Accommodation Centers for the Asylum Seekers and Refugee Guest Houses and continues accordingly.

(iv) The Office for Development and Implementation of Administrative and Legal Capacity of Migration and Asylum Affairs was established **in October 2008** within the Ministry of the Interior, which will mainly coordinate the projects in the area of asylum and will also be in charge of preparation of necessary legal and institutional arrangements.

The work on preparation of a new draft Road Map on Asylum and Migration is underway under the co-ordination of the “The Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation” which was formed after the approval by the Minister of the Interior on 15.10.2008.

The work on drafting a new law which will ensure the alignment of asylum-migration legislation to the EU acquis and will determine the procedure and principals on the asylum seekers and refugees are underway.

The Asylum and Migration Task Force was decided by the Undersecretary of Ministry of the Interior on 09.02.2009 to continue its activities under the co-ordination of “The Bureau of Enhancing the Capacity and Implementation of the Asylum and Migration Legislation”. The Task-Force has resumed its activities in May 2009 and envisaged to meet every 2 months.

REMARKS

Turkey is extensively affected by mass population movements. Lifting the geographic limitation is an issue which should be overcome without damaging the economic, social and cultural fabric of Turkey.

Lifting the geographic limitation is envisaged to take place in line with the completion of the EU accession negotiations according to the National Action Plan on Asylum and Migration of Turkey, with two criteria to be met:

- (i) Necessary amendments to the legislation and improvements to infrastructure should be materialized.
- (ii) EU should engage in burden-sharing.

Following the finalization of the above-mentioned projects, a proposal for lifting the geographic limitation might be submitted to the Turkish Grand National Assembly in line with the progress of Turkey’s negotiations for accession to the EU.

Special attention is attached to the training activities of personnel in charge of asylum applications and procedure at the headquarters and provinces, in order to increase the knowledge on asylum and refugee law and thus to guarantee the rights of asylum seekers who are in need of international protection. Within the framework of cooperation with the UNHCR the EU projects, 4240 personnel have been trained at the level of international standards. As the second step of the said cooperation, the personnel continue to be trained in the Advanced Level Status Determination Seminars, where participants are being trained through sample case studies especially on implementation of criteria and principles to determine refugee status.

NGOs in Turkey also attend joint training programs implemented by the Ministry of the Interior and the UNHCR. Additionally, within the psychological support project, training programs and activities such as consultancy, social support, and trips are organized with NGOs. NGOs have also taken part in the preparations of asylum and migration legislations.

UNHCR has been given access to the foreigners guesthouses. UNHCR officials have also been given permission to meet the applicants who are currently at the guesthouses, in the UNHCR Office, if requested.

In case UNCHR provides refugee status for an asylum-seeker who has not yet applied for asylum before the Turkish authorities, the file of the asylum-seeker concerned is included into the procedures and evaluated rapidly.

The Ministry of the Interior cooperates with the UNHCR in evaluating the status of the applicants. In that context, information has been exchanged about the applicants in finalizing their status.

The Ministry also cooperates with the UNHCR in its efforts to improve the domestic legislation on asylum and migration.

There is an Agreement which governs the status of UN Agencies and Organs in Turkey, including the UNHCR. On the other hand, a "Cooperation Framework Agreement" between the Turkish Ministry of the Interior and UNHCR Representation in Turkey is in force which regulates cooperation and support activities between Turkey and the UNHCR.

Special attention is given to the situation of Chechens especially residing at the Facilities of Turkish State Railways in Fenerbahçe/İstanbul. The Ministry of the Interior has mandated two Inspectors to prepare a comprehensive report on the conditions at these facilities. The work is underway.

Special attention is also given to LGBT. Their settlement in satellite cities has been determined by taking into account the social and cultural fabric and the awareness of the people in the said provinces.

Efforts to improve the physical conditions and capacity of the guesthouses continue.

Between 1999-2008, over 16,5 million Dollars (25,457,442 TRL) has been spent for food, shelter, health and transportation of illegal migrants. Additionally substantial amount has been donated to support the illegal migrants by the Social Assistance and Solidarity Fund in provinces.

The Tunca Guesthouse in Edirne province will be replaced with a new centre with a capacity of 700. The 'Gazi Osman Pasa Migrant Guesthouse' in Kırklareli province shall be used until the construction of new centre in Edirne is finished in 2010.

Two new centres will be built in Aydın and Van provinces by end 2010 each of with a capacity of 700 persons.

The guesthouse in Bitlis province that was built in 1980 with a capacity of 750 will be renovated by fall 2009.

Two former prisons will be converted to guesthouses in Burhaniye and Ayvalık, Balıkesir provinces by 2010/2011.

A recent Circular issued by the General Directorate of Social Assistance and Solidarity will allow unified channelling of assistance to the needy foreigners including illegal migrants by the Social Assistance and Solidarity Associations in every Provincial Governorate or District Governorate. The needs of the illegal migrants' which are not possible to be met through the regular budgets of government agencies like daily needs such as food clothing etc. and their medication expenses will be met through the Social Assistance and Solidarity Incentive Fund. (Law of Social Assistance and Solidarity Incentive № 3294)

Work permit for foreign nationals is mainly regulated by the Law on the Work Permits of Foreigners #4817 that was put into effect on 6 September 2003 and the Regulation of the mentioned Law dated 29 August 2003.

The Ministry of Labour and Social Security became the single authority to issue all work permits for foreign nationals to ensure better management and control over the process thus avoiding any exploitation attempts.

Article 4 of the Law stipulates that, "unless otherwise provided in the bilateral or multi-lateral agreements to which Turkey is a party, the foreigners (worker and/or self-employed) are obliged to obtain a permission before they start to work dependently or independently in Turkey."

This Law aims to make it easier to get a work permit and to discourage people from working illegally. The law provides legal protection for foreigners against exploitation in labour markets and extending legal and administrative safeguards to individual services.

A six months residence permit is required when a foreigner applies for a work permit.

CONCLUSION

Turkey is determined to take concrete steps to improve its legal and infrastructural capacities in order to provide better living conditions for asylum seekers and refugees.

Since the problem is multifaceted and complex, it requires internationally shared responsibility, solidarity and burden sharing and the solutions are beyond the means of a single country.

In this respect, Turkish Government welcomes the Commissioner's call upon the European and international community to assist Turkey.