

Global Detention Project Submission to the UN Committee against Torture (CAT)

57 Session (18 Apr 2016 – 13 May 2016)

Consideration of State Report – Turkey

Geneva, 28 March 2016

Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information for consideration of the Fourth periodic report of Turkey with respect to the implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Convention against Torture), ratified by Turkey in 1998. The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration- or asylum-related reasons.¹

KEY ISSUES

I. Places of immigration detention: "foreigners guesthouses" versus "removal centres"

Observers, including the European Committee against Torture, have long noted the need for Turkey to clarify the type of facilities used for detention based on immigration status and avoid the use of misleading euphemisms.² In response to these criticisms, in May 2010, Turkey adopted a Circular on Combating Illegal Migration changing the name of "foreigners' guesthouses" to "removal centres."³ Article 58 of the recent immigration law, Law No. 6458 on Foreigners and International Protection adopted on 4 April 2013 uses "removal centres." However, the State report submitted to CAT in January 2015 makes use of both "guesthouses" and "removal centres." Language used can bear consequences on the legality of detention and on the need for availability of procedural standards. In *Abdolkhani and Karimnia v. Turkey* (2009) the European Court of Human Rights (ECtHR) stated that Turkey's system for detaining foreign nationals had no legal basis and that the applicants had been arbitrarily detained in violation of Article 5 of the European Convention on Human Rights.⁴

Question: Can the government clarify the nature and extent of deprivation of liberty in both types of facilities, and who is responsible for custody?

¹ This submission is based in part on GDP research on immigration detention policies and practices in Turkey, available at: <http://www.globaldetentionproject.org/countries/europe/turkey>.

² European Committee for the Prevention of Torture, "Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 17 June 2009" CPT/inf (2011)13. <http://www.cpt.coe.int/documents/tur/2011-13-inf-eng.pdf>. "§39. In the course of the visit, the delegation visited a total of six "detention centres" for foreigners in different provinces. The CPT prefers to use this term rather than the misleading euphemism "guest houses", since the persons held in these centres are undoubtedly deprived of their liberty."

³ İçişleri Bakanlığı 2010 Genelgesi (Yasa Dışı Göçle Mücadele).

⁴ ECHR *Z.N.S. v. Turkey*, *Abdolkhani and Karimnia v. Turkey*, Judgment of the European Court of Human Rights, Application no. 30471/08, paras. 125-143, 22 September 2009; *Z.N.S. v. Turkey*, 2010, Judgment of the European Court of Human Rights, Application no. 21896/08, 19 January 2010; see also Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention Addendum: Mission to Turkey, Human Rights Council, A/HRC/4/40/Add.5, 7 February 2007.

According to GDP research approximately 14 removal centres were in used in 2014 with an estimated total immigration detention capacity of 1,740. The January 2015 government response provides a much higher figure: “There are 26 active guesthouses for foreigners with 2,172 person capacity in 26 provinces across the country. In coordination with the EU, 6 Admission, Monitoring, and Sheltering Centres are being built in Erzurum, Gaziantep, Van, Kayseri, Kırklareli, and İzmir provinces, and one guesthouse for irregular immigrants is being built in Erzurum province. The said centres that are still under construction will be put into service with the highest level of regional and international human rights standards. Existing centres with low capacity that do not fully meet the necessary physical conditions are planned to be closed once the above mentioned centres are put into service.”⁵ Here again language needs clarifying.

Additional questions about detention infrastructure: What is the difference between “admission”, “monitoring”, and “sheltering” centres in terms of levels of deprivation of liberty? What is the full name and address of all sites of immigration detention facilities (removal centres, guesthouses, etc), including their respective capacity as of early 2016? Is age and gender segregation, as well as segregation of criminals and immigration detainees implemented? Which include removal centres family units?

Please indicate if construction of the removal centres subsidized by the European Commission and referred to in the European Commission 2013 Progress Report (in Erzurum, Edirne, Aydın, Bitlis and Van) has been completed and if operations at them have begun. In addition, please indicate the authorities that are responsible for detention and management of these and other immigration detention facilities.

II. Readmitted persons and agreements with the European Union

Turkey has established a number of agreements with the European Union (2013) and European countries (Greece 2002) concerning the “readmission” of unauthorized persons back to the respective countries that are parties to these agreements.

Questions: The readmission agreement signed with the European Union (EU) (Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation signed in December 2013) will come into force on 1 June 2016.⁶ Will the readmission agreement with the EU be implemented according to plans? How many persons have been readmitted under the readmission agreement with Greece? Are readmitted persons placed in immigration detention?

In addition to these readmissions agreements, special note should be made of the agreement reached on 18 March 2016 between the European Union and Turkey. According to the European Commission: “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. ... Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey.”⁷

Questions: What arrangements is Turkey contemplating to host the potentially very large numbers of people who will be returned from Greece under this new agreement? Will they be placed in immigration detention? If so, where and for how long? If Turkey intends to detain all or some of the people returned under this agreement, there is a significant chance that current detention centre capacities will be overwhelmed. How does Turkey intend to accommodate these detained individuals while still adhering to its international obligation under the Convention against Torture?

⁵ Committee against Torture, “Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure Fourth periodic reports of States parties due in 2014 – Turkey,” United Nations, CAT/C/TUR/4, 26 January 2015.

⁶ European Commission, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Second Report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap {SWD (2016) 97 final}, 4 March 2016, COM (2016) 140 final.

⁷ Council of the European Union, “EU-Turkey statement, 18 March 2016, » European Council, Press Release 144/6, 18 March 2016. <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

III. Immigration detention monitoring

The National Human Rights Institution of Turkey was designated as NPM upon the Cabinet Decree dated 9/12/2013 that entered into force following its publication on the Official Gazette no 28896 dated 28 January 2014.

Questions: Have recommendations on conditions of detention following visits by the NHRI been implemented? How is protection of immigration detainees from abuse and ill-treatment guaranteed? Can the government provide statistics of complaints lodged in relation to immigration detention? Does UNHCR have unhindered access to all current facilities used for immigration detention?

IV. Legal Framework

The principal norm governing immigration detention the Law No. 6458 on Foreigners and International Protection was adopted on 4 April 2013 (YABANCILAR VE ULUSLARARASI KORUMA KANUNU Kanun No. 6458).⁸

Questions: Have the regulations for “the establishment, management, operation, transfer and supervision of removal centers” as well as transfers of foreigners for deportation to removal centres (Law No. 6458 Article 58) been adopted and implemented? (Note: the UN Special Rapporteur on the Human Rights of Migrants recommended in 2013 that the regulations should be “in line with international human rights standards concerning procedural safeguards and conditions of detention”).

V. Statistical information

Please provide statistics on how many persons – disaggregated along age and gender lines – have been placed in immigration-related annually during the preceding five years. What is the average length of immigration related detention? Are children, including unaccompanied minors, detained (in law and in practice) and where are they detained?

VI. Conditions of placement and inside detention

During a visit in 2012, the Special Rapporteur on the Human Rights of Migrants criticized Turkey’s widespread detention of foreigners for immigration-related reasons, including families and children. He argued that the EU focus on increasing border security was leading to an increased prioritization of detention as a solution.⁹ Many observers including the Helsinki Citizens Assembly¹⁰ have reported on the abusive and unsanitary conditions in Turkish detention facilities, which according to the European Court of Human Rights (ECtHR) operated for a long time without adequate legal authority.

Amnesty International (AI) recently reported that asylum seekers, who formally were not generally detained in Turkey, are being detained in increasing numbers and in deplorable conditions. In a December 2015 report, it documents instances of unlawful detention and situations of hundreds of refugees and asylum-seekers apprehended near Turkey’s land or sea border with the EU and transported over long distances to places of detention where they were “held in prolonged detention, denied all communication with the outside world and in some cases forcibly returned to their home countries, in violation of Turkish and international law.” AI states: “it is difficult to avoid the conclusion that Turkey’s unlawful treatment of refugees and asylum-seekers caught attempting to leave irregularly has been triggered by the political and logistical demands exerted upon them by the EU to stop hundreds of thousands of people crossing a sea border with Greece of more than 700 km.”¹¹

Questions: Can the government provide information about conditions of detention, cell space, hygiene, food, bedding and access to health care and open air for immigration detainees? In view of conditions described in the

⁸ Law No. 6458 on 2013 of Foreigners and International Protection. <http://www.refworld.org/docid/5167fbb20.html>.

⁹ Special Rapporteur on the Human Rights of Migrants, “Report by the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Turkey (25–29 June 2012),” Human Rights Council, A/HRC/23/46/Add.2, 17 April 2013. www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx.

¹⁰ Helsinki Citizens’ Assembly, “Unwelcome Guests: The Detention of Refugees in Turkey’s “Foreigners’ Guesthouses.” Helsinki Citizens Assembly, Refugee Advocacy & Support Program), November 2007.

¹¹ Amnesty International, “Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey”, 2015, <https://www.amnesty.nl/nieuwsportaal/rapport/europes-gatekeeper-unlawful-detention-and-deportation-refugees-turkey>.

Amnesty International report, according to which mobile phones are confiscated and communications are denied to detainees, what mechanisms are in place to ensure that deportations following immigration detention are not carried out in violation Article 3 of the Convention against Torture?

VII. Procedural Standards

Please describe any procedural standards that are in place in law and practice for immigration-related detainees, including information about the grounds and conditions of detention (in a language the persons understand), access to legal counsel, visits and contacts with relatives, access and visits by NGOs and national human rights institutions, review of detention order, access to consular representatives (upon request from the detainees). Please indicate who is authorized to request and implement detention orders.

VIII. Alternatives to detention

Please indicate if non-custodial measures (also known as “alternatives to detention”) are provided in law and employed in practice. If there are, please describe when they are used and the impact they have had on the numbers of people detained in the country.
