

Refusing Refuge: Investigating the Treatment of Refugees in Turkey

Fact-Finding Mission Report

February 2007

Kurdish Human Rights Project
KHRP
Established 1992



Bar Human
Rights
Committee
OF ENGLAND AND WALES

REFUSING REFUGE: INVESTIGATING THE TREATMENT OF REFUGEES IN TURKEY

FACT-FINDING MISSION REPORT

FEBRUARY 2007

KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

Acknowledgments

This report was researched and written on behalf of the Kurdish Human Rights Project and the Bar Human Rights Committee of England and Wales (BHRC) by Catriona Vine (member of BHRC and KHRP Legal Team) and Lucy Claridge (KHRP Legal Officer). It was edited by Rachel Bernu, Walter Jayawardene and Mustafa Gündođdu (KHRP).

The authors are grateful to the following individuals and organisations for their cooperation and assistance in this project: Volken Görendađ of Amnesty International (Van), Zozan Özgökçe of Van Women Association (VAKAD), Bostaniçi Women's Cooperative (BİKAD-KOOP), Tracey Maulfair, Gesche Karrenbrock, Roland Schilling and Metin Çorabatır, United Nations High Commission for Refugees (UNHCR) (Van and Ankara), Mehmet Nuri Yıldız and Ayhan Çabuk of Van Bar Association, Mahmut Kaçan of Ağrı Bar Association, Necip Bey, Nejat Taştan and Yüksel Mutlu of İHD (Van and Ankara HQ), Tahir Bey, Abidin Engin and Abdulbasit Bildirici of Mazlum-Der (Van), Önder Beter of The Human Resource Development Foundation (HRDF) in Ankara, Ibrahim Vurgun Kavlak of Association for Solidarity with Asylum Seekers and Migrants (ASAM), Mehmet Veysi Dilekçi, Gaffar Güleççe and Ayhan Çerik of Democratic Society Party (DTP), Cavit Torun of Justice and Development Party (AKP), Mesut Deđer of Republican People's Party (CHP), the Ministry of Interior Affairs, Pırl Akkuş, The Finnish Ministry of Foreign Affairs and The Dutch Ministry of Foreign Affairs

KHRP gratefully acknowledges the support of

The Big Lottery Fund (UK), Irish Aid (Ireland), The Sigrid Rausing Trust (UK), Oak Foundation (USA), Bar Human Rights Committee for England and Wales (UK), Finnish Ministry for Foreign Affairs (Finland), Bishop's Subcommission for Misereor (Germany), UN Voluntary Fund for Victims of Torture (Switzerland), The Bromley Trust (UK), and Sticing Cizera Botan (Netherlands).

Layout & Design: Torske & Sterling Legal Marketing www.torske.co.uk

Keywords: Turkey, refugees, UNHCR, refugee status determination, RSD, National Action Plan, EU accession, deportation.

Printed in Great Britain

February 2007

Published by the Kurdish Human Rights Project (London)

ISBN(ten) 1 905592 06 X

ISBN(thirteen) 978 1 905592 06 7

All rights reserved

Kurdish Human Rights Project



Established 1992

Kurdish Human Rights Project

11 Guilford Street

London

WC1N 1DH, UK

Tel: +44 (0) 207 405-3835

Fax: +44 (0) 207 404-9088

khrrp@khrrp.org

www.khrrp.org

Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



Bar Human Rights Committee of England and Wales

Garden Court Chambers

57-60 Lincoln's Inn Fields

London, WC2A 3LS, UK

Tel: +44 (0) 7993 7755

Fax: +44 (0) 207993 7700

bhrc@compuserve.com

www.barhumanrights.org.uk

The Bar Human Rights Committee is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales.

Table Of Contents

GLOSSARY	11
EXECUTIVE SUMMARY	13
SECTION 1: BACKGROUND –REFUGEES IN TURKEY AND OBLIGATIONS UNDER THE 1951 GENEVA CONVENTION AND EUROPEAN CONVENTION	15
1. The Individuals Seeking Protection in Turkey : Some Facts and Figures	15
<i>a. Numbers</i>	15
<i>b. Methods of entry into Turkey</i>	16
<i>c. Iranian Kurds stranded in Turkey</i>	16
2. The Refugee Convention and Turkey	17
<i>a. The 1951 Convention and the 1967 Protocol</i>	17
<i>b. Geographical limitation</i>	20
<i>c. When does a person become a refugee?</i>	20
<i>d. Well-founded fear of persecution: a subjective and objective test</i>	21
<i>e. The principle of non-refoulement</i>	23
<i>f. Third country principle</i>	23
3. European Convention for the Protection of Human Rights and Fundamental Freedoms	24
SECTION 2: THE TREATMENT OF REFUGEES IN TURKEY ON PAPER AND IN PRACTICE: SHORTCOMINGS AND CONCERNS	25
1. Refugee Status Determination: Practice and Procedure	25

<i>a. The Ministry of Interior's procedures</i>	25
<i>b. UNHCR procedures</i>	29
2. The Mission's Concerns	37
<i>a. Concerns about the RSD procedures of the Ministry of Interior</i>	37
<i>b. Concerns about UNHCR's RSD procedures</i>	42
3. Social, Economic and Infrastructural Problems	47
<i>a. Reception centres</i>	47
<i>b. Work permits</i>	47
<i>c. Education</i>	48
<i>d. Medical treatment</i>	48
<i>e. Housing</i>	50
4. Case Study: <i>D v. The Republic of Turkey</i>	50
CONCLUSION:	
The National Action Plan and Progress Towards EU Accession	53
RECOMMENDATIONS	55
ANNEX 1 - Accounts of Applicants who met with the Mission	59
ANNEX 2 – MoI Implementation Directive, B.05.1.EGM.0.13.03.02	65

Glossary

AKP	<i>Adalet ve Kalkınma Partisi</i> (Justice and Development Party)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
FFM	Fact-finding mission
HRDF	Human Resource Development Foundation / <i>İnsan Kaynağını Geliştirme Vakfı</i>
İHD	<i>İnsan Hakları Derneği</i> (Human Rights Association of Turkey)
MoI	Ministry of Interior (Turkey)
NGO	Non-governmental organisation
RSD	Refugee Status Determination
UNHCR	United Nations High Commissioner for Refugees
YTL	New Turkish Lira

Executive Summary

*'It may be assumed that, unless he seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some compelling reason.'*¹

Although Turkey is a party to the 1951 Geneva Convention ('the 1951 Convention') and 1967 Protocol, as a result of a reservation to the 1967 Protocol Turkey applies a 'geographical limitation' to its obligations whereby the Convention applies only to persons who have become refugees as a result of events occurring in Europe. According to the UNHCR, few Europeans seek or receive Convention refugee status in Turkey or anywhere else, although they may enjoy effective protection in practice. Non-European asylum seekers, once they manage to cross the border into Turkey, face numerous problems with health, housing and the refugee status determination (RSD) process itself. This is particularly problematic given that Turkey lies along major migration routes towards Europe from Africa, south and south-west Asia and the Middle East. Further, Turkey shares 499km of border with Iran and 352km with Iraq,² both of which generate large numbers of refugees, particularly due to the continuing conflict and instability in Iraq and the widespread human rights violations committed in Iran, especially against its Kurdish minority. Turkey has, however, made a commitment to lifting the 'geographical limitation' during the EU accession process, once the necessary legislation, infrastructure and staffing are in place.

The aim of the mission was to gather information regarding the situation of persons arriving in Turkey seeking asylum and humanitarian protection, particularly those who are non-European. In particular, the mission was concerned about a group of approximately 1,200 Iranian refugees, who are believed to have entered Turkey after seeking protection in Iraq, and who are currently denied refugee status within Turkey as a result of the geographical limitation. Many other non-Europeans seeking asylum in Turkey have fled conflict and difficult political situations in their home states. As the report will detail, the mission was concerned not only by the

1 UNHCR Handbook, paragraph 39

2 CIA World Factbook at <<https://www.cia.gov/cia/publications/factbook/geos/tu.html>> (accessed 8 Jan 2007)

lack of protection for these individuals as a result of the 'geographical limitation' but also by the flawed RSD procedures on the part of the Ministry of Interior and UNHCR. With no possibility for safe return, little prospect for settlement in a third country and denied their basic rights in Turkey, they are stranded. The mission also sought to investigate Turkey's commitment to lifting the 'geographical limitation' and the adequacy of the framework that is being put in place.

In conducting its research, the mission met with and interviewed a number of groups including NGOs, members of political parties, MPs and Government representatives in Van and Ankara, during a week at the beginning of July 2006. The mission requested meetings with the Van office of the ruling *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) and Van Governor's Office, but they refused to meet us. The mission also met with a number of refugees from a range of states, who have made applications for asylum in Turkey, to learn more about the application process and their situation in general. Details of all interviews are contained in footnotes: for example, 'FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006' indicates information received during a mission interview with Tracey Maulfair of the Van branch of UNHCR on 3 July 2006.

Section 1: Background – Refugees in Turkey and Obligations Under the 1951 Geneva Convention and European Convention

1. The Individuals Seeking Protection in Turkey : Some Facts and Figures

a. Numbers

Turkey lies along major migration routes leading from Africa, south and south-west Asia and the Middle East into Europe. UNHCR reports that as of 31 March 2006,³ 7,185 non-European persons of concern were registered with UNHCR including 2,172 refugees and 5,013 asylum-seekers waiting for a decision on their applications. Traditionally in Turkey the majority of asylum seekers coming to Turkey were of Iranian or Iraqi origin. Thus from 2001 to 2003, the majority of new arrivals were Iranian (70 per cent) or Iraqi (18 per cent). In 2005 of the 3,914 newly arrived asylum-seekers 40 per cent were Iraqi, 37 per cent were Iranian, 8 per cent were Afghan and 8 per cent were Somali. In the first quarter of 2006 of the 784 newly arrived asylum seekers, 47 per cent were Iranian, 33 per cent were Somali, 14 per cent were Iraqi and 6 per cent were Afghan.⁴

Among the refugees who are currently awaiting re-settlement 82 per cent are Iranian, 5 per cent are Iraqi, 4 per cent are Somali and 3 per cent are Afghan. The Iranian refugees include some 1, 171 persons who entered Turkey from Iraq. The situation of these individuals is dealt with below.⁵

UNHCR reports⁶ that overall its recognition rate for non-European refugees in 2003 was 76 per cent or 3,300 persons whereas in 2005 that figure dropped to 59

3 *Asylum in Turkey: UNHCR Briefing Note*, UNHCR, 18 April 2006

4 *ibid.*

5 *ibid.*

6 *ibid.*

per cent or 1,368 persons.

At the end of March 2006 there were 7,185 asylum seekers whose status had not been finally determined by UNHCR. Eight per cent of these people are located in the Eastern Border region, 7 per cent in Ankara, 31 per cent in Istanbul, 59 per cent in “satellite cities” and UNHCR claim not to know where the remaining 5 per cent are.⁷

b. Methods of entry into Turkey

The mission learned that⁸ the majority of asylum seekers in Van province cross the border from Iran illegally using people traffickers. They cross the border either on foot or riding mules. Those who enter Turkey illegally generally cross the borders with smugglers without documents and are required under Turkish law to register in the border province where they entered. Most are registered in Van, and in the neighbouring provinces of Ağrı and Hakkari.

c. Iranian Kurds stranded in Turkey

There are currently approximately 1,200 Iranian Kurds who entered Turkey through Iraq around four years ago. The Turkish authorities consider that these people should return to Iraq when conditions permit. However, UNHCR has recognised them as refugees and wishes to place them for re-settlement. Despite this, UNHCR says that the Turkish authorities will not provide them with exit visas and so UNHCR is unable to re-settle them. UNHCR told the mission that in March 2004, the Government offered these Iranian refugees temporary residence permits, however with safe return to Iraq not possible and re-settlement being denied to them, these people are ‘stranded’ in Turkey in a precarious and vulnerable situation.

⁷ *ibid*

⁸ FFM Interview with Volkan Görendağ, 2 July 2006

They have no secure legal status, no jobs, no housing and no money.⁹

The mission spoke to a number of NGO representatives both in Van and Ankara who were very concerned about the status of these individuals and their treatment both by UNHCR and the Turkish authorities.¹⁰ It is understood that the reason for the Turkish authorities' refusal to grant exit visas or regularise these individuals' situations is to discourage any future refugees, particularly Kurdish refugees, coming over the Iranian border into Turkey. Volkan Görendağ of Amnesty International in Van referred to violence, which was used to disperse a demonstration being held by these individuals in Ankara in 2005. He told the mission that a number of individuals sustained injuries as a result of the actions of the police.¹¹

2. The Refugee Convention and Turkey

a. The 1951 Convention and the 1967 Protocol

Soon after the Second World War, instead of *ad hoc* agreements adopted in relation to specific refugee situations, there was a call for an instrument containing a general definition of who was to be considered 'a refugee.' The *Convention relating to the Status of Refugees* was adopted by a Conference of Plenipotentiaries of the United Nations on 28 July 1951, and entered into force on 21 April 1954.

According to the general definition contained in the 1951 Convention, a refugee is a person who: 'As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted ... is outside his country of nationality...'

9 FFM Interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006. A similar situation exists in Turkey for Chechen refugees. During the first Chechen war (1994-1996), Turkish authorities played host to exiled Chechens. Similarly as a result of the second Chechen war it is estimated that some 3,000 to 4,000 Chechens arrived in Turkey between 1999 and 2001. Since then, however, the number has declined. Initially such individuals were welcomed however their situation in Turkey has changed partly as a result of the events of 11 September 2001. The status of the remaining Chechen refugees is unclear. In the past, the Ministry of Interior has made it plain to UNHCR that their intervention in the issues of residence permits, humanitarian assistance, detention (for example on the visit of President Putin to Turkey) was not welcome. However more recently UNHCR has been given verbal assurances that the Ministry of Interior will now deal with these individuals' cases if they make an asylum application.

10 FFM Interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, ; Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

11 FFM Interview with Volkan Görendağ, 2 July 2006

Eventually the need was felt to make the provisions of the 1951 Convention applicable to such new refugees. As a result, a *Protocol relating to the Status of Refugees* was prepared. After consideration by the General Assembly of the United Nations, it was opened for accession on 31 January 1967 (the '1967 Protocol') and entered into force on 4 October 1967.

By accession to the 1967 Protocol, states undertake to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention, but without the 1951 time limitation. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to states parties to the 1951 Convention.

As of 1 March 2006, 146 states had become parties to one or both instruments. Turkey adopted the 1951 Convention subsequent to its approval by the Turkish Grand National Assembly on the basis of the Law No 359 of 29 August 1961.

The 1951 Convention and the 1967 Protocol contain three types of provisions:

- Provisions giving the basic definition of who is (and who is not) a refugee, and who, having been a refugee has ceased to be one.
- Provisions that define the legal status of refugees and their rights and duties in their country of refuge. Although these provisions have no influence on the process of determination of refugee status, the authority entrusted with this process should be aware of them, for its decision may indeed have far-reaching effects for the individual or family concerned.
- Other provisions dealing with the implementation of the instruments from the administrative and diplomatic standpoint. Article 35 of the 1951 Convention and Article 11 of the 1967 Protocol contain an undertaking by Contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions and, in particular, to facilitate its duty of supervising the application of the provisions of these instruments.

Pursuant to a decision of the General Assembly, UNHCR was established on 1 January 1951. The Statute of the Office is annexed to Resolution 428 (V), adopted by the General Assembly on 14 December 1950. According to the Statute, the High Commissioner is called upon, *inter alia*, to provide international protection, under the auspices of the United Nations, to refugees falling within the competence of his/her office.

The Statute contains definitions of those persons to whom the High Commissioner's

competence extends, which are very close to, though not identical with, the definition contained in the 1951 Convention. By virtue of these definitions the High Commissioner is competent for refugees irrespective of any date or geographic limitation.

Therefore, a person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not s/he is in a country that is a party to the 1951 Convention or the 1967 Protocol or whether or not s/he has been recognized by his host country as a refugee under either of these instruments. Such refugees, being within the High Commissioner's mandate, are usually referred to as 'mandate refugees'.

Thus it can be seen that a person can simultaneously be both a mandate refugee *and* a refugee under the 1951 Convention or the 1967 Protocol. The person may, however, be in a country that is not bound by either of these instruments, or s/he may be excluded from recognition as a Convention refugee by the application of the date or the geographic terms of the Statute.

The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees states that 'The assessment as to who is a refugee, i.e. the determination of refugee status under the 1951 Convention and the 1967 Protocol, is incumbent upon the Contracting State in whose territory the refugee applies for recognition of refugee status.'¹² Both the 1951 Convention and the 1967 Protocol provide for co-operation between the contracting states and UNHCR. This co-operation extends to the determination of refugee status, according to arrangements made in various contracting states.

Resolution 428 (V) and the Statute of the High Commissioner's Office call for co-operation between governments and the High Commissioner's office in dealing with refugee problems. The High Commissioner is designated as the authority charged with providing international protection to refugees, and is required *inter alia* to promote the conclusion and ratification of international conventions for the protection of refugees, and to supervise their application.

Such co-operation, combined with this supervisory function, forms the basis for the High Commissioner's fundamental interest in the process of determining refugee status under the 1951 Convention and the 1967 Protocol. The part played by the High Commissioner is reflected, to varying degrees, in the procedures for the determination of refugee status established by a number of Governments.

12 HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979

b. Geographical limitation

When drafting the 1951 Convention the desire of a number of states not to assume obligations which could not be foreseen also resulted in the possibility of limiting their obligations under the Convention to persons who had become refugees as a result of events occurring in Europe.

When acceding to the 1967 Convention which lifted both the geographical and temporal limitations Turkey published a declaration on the basis of Law No. 359 (which was lodged as a reservation to the 1967 Protocol) asserting that it applies the Convention only to persons who have become refugees as a result of events occurring in Europe. UNHCR confirmed to the mission that in practice the Turkish definition of Europe in the geographical limitation extends now to members of the Council of Europe.¹³

Of the States party to the 1951 Convention at the time of writing this report, Turkey is one of very few countries that retain a geographical limitation.

In 2004, UNHCR resettled 2,292 refugees from Turkey. This figure appears however to be decreasing and during 2005, 1,262 refugees were resettled.¹⁴ During the first quarter of 2006, 371 refugees were resettled to third countries. The main countries of destination in 2005 were the USA, Finland, Canada and Australia.¹⁵

c. When does a person become a refugee?

A person is a refugee within the meaning of the 1951 Convention as soon as s/he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which refugee status is formally determined. *Recognition of refugee status does not therefore make the person a refugee but declares that person's status as one.* The person does not become a refugee because of recognition, but is recognised because s/he is a refugee. Determination of refugee status is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.

13 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

14 *ibid*

15 *ibid*

d. Well-founded fear of persecution: a subjective and objective test

The phrase ‘well-founded fear of being persecuted’ is the key phrase of the definition of a refugee. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin.

To the element of fear, a state of mind and a subjective condition, is added the qualification ‘well-founded’. This implies that it is not only the frame of mind of the person concerned that determines their refugee status, but that this frame of mind must be supported by an objective situation. The term ‘well-founded fear’ therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

The UNHCR Handbook notes at paragraph 40: ‘An evaluation of the *subjective* element is inseparable from an assessment of the personality of the applicant, since psychological reactions of different individuals may not be the same in identical conditions. One person may have strong political or religious convictions, the disregard of which would make his life intolerable; another may have no such strong convictions. One person may make an impulsive decision to escape; another may carefully plan his departure.’ Although fear must be reasonable, exaggerated fear, however, may be well-founded if, in all the circumstances of the case, such a state of mind can be regarded as justified.

The Handbook further notes at paragraph 41 that an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. In making such an assessment it will be necessary to take into account:

- the personal and family background of the applicant,
- his membership of a particular racial, religious, national, social or political group,
- his own interpretation of his situation, and
- his personal experiences.

Knowledge of conditions in the applicant’s country of origin, while not a primary objective, is an important element in assessing the applicant’s credibility. The applicant’s statements must be viewed in the context of the relevant background situation. The Handbook notes that when claiming a well founded fear the applicant may rely on what happened to friends and relatives and other members of the same

racial or social group to show that the fear that s/he also will become a victim of persecution is well-founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant. The situation of each person must be assessed on its own merits. In the case of a well-known personality, the possibility of persecution may be greater than in the case of a person in obscurity. All these factors, for example a person's character, background, influence, wealth or outspokenness, may lead to the conclusion that fear of persecution is 'well-founded'.¹⁶

'Fear'

The word 'fear' refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution.

'Persecution'

There is no universally accepted definition of 'persecution', however from Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights, for the same reasons, would also constitute persecution. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case including the particular geographical, historical and ethnological context.

'For reasons of race, religion, nationality, membership of a particular social group or political opinion'

In order to be considered a refugee, a person must show well-founded fear of persecution for one of the above reasons. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, for example a political opponent who belongs to a religious or national group, or both. The combination of these elements may be relevant in evaluating his well-founded fear.

¹⁶ Paragraph 43

e. The principle of non-*refoulement*

The most fundamental protection bestowed by the 1951 Convention on a refugee is the absolute prohibition on *refoulement*. Article 33(1) of the 1951 Convention provides:

No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The fundamental and binding nature of Article 33 is emphasised by the fact that it is among the articles to which contracting states may not make any reservations. In principle the scope of the Article ought to extend to the person seeking refugee status as well as one whose status has formally been established. It is submitted that the effect of Article 33 extends to protection against extradition.¹⁷ The additional protection given to persons to secure the freedoms recognised by the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) will prevent the return of a person to a territory where they face a real risk of torture, inhuman or degrading treatment or punishment or other violation of the rights accorded to them by the ECHR.

f. Third country principle

The 1951 Convention itself does not address the question of which country should determine whether a person is a refugee and grant asylum to such a person. In practice the starting point for determining in which state refugee status and asylum should be considered is based on where the claimant actually makes the claim. The Executive Committee of UNHCR has expressed the need for common criteria for identifying the country responsible for considering and determining asylum claims. The Committee stated that the criteria should be clear so as to avoid disagreements between states. Account should be taken of the asylum seeker's intentions and any agreements for the return of illegal entrants should be applied with due regard to the situation of the asylum seeker. Asylum should not be refused solely on the ground that it could have been sought from another state, or that there had not been compliance with any time limit for applying or with any other formal requirement.

¹⁷ Supreme Court of Austria Decision 2 Os 303/58, 29 May 1958; Goodwin-Gill *The Refugee in International Law* (1996) p.150; Article 3(2) of the European Convention on Extradition 1957; UNHCR Executive Committee Conclusion 17 (1980).

Connections with another state and length of stay there, may be factors. An asylum application should not be rejected at a frontier without reference to a central authority. States should be aware of the need to avoid the risk of a refugee losing the right of residence in one country or of not having travel documents, without having the possibility of residing in another country.¹⁸

3. European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 of the ECHR states ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention. Thus states parties are not merely under an obligation not to themselves violate the human rights of those within their jurisdictions but are also under a positive obligation to secure those rights by preventing their violation by others.’ An individual’s rights may be affected either by their removal or deportation from a state party or by their treatment while present in the state party. In terms of the relevance of ECHR rights in the context of deportation or removal, the most important of the protected rights are those under Articles 2, 3, and 8.

In *Chahal v United Kingdom* [No. 22414/93] the European Court of Human Rights (ECtHR) held ‘The prohibition provided by Article 3 against ill-treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion. In these circumstances, the activities of the individual in question, however undesirable or dangerous, *cannot be a material consideration*. The protection afforded by Article 3 is thus wider than that provided by Article 32 and 33 of the United Nations 1951 Convention on the Status of Refugees.’¹⁹ A real risk of loss of life would amount to a real risk of inhuman treatment and therefore expulsion in such circumstances would violate Article 3.²⁰

18 Conclusion 15 (1979)

19 §§79-80

20 *Dehwari v The Netherlands* No. 37014/97 § 61

Section 2: The Treatment of Refugees in Turkey on Paper and in Practice: Shortcomings and Concerns

1. Refugee Status Determination: Practice and Procedure

Refugee status determination (RSD), although referred to at Article 9 of the 1951 Convention, is not specifically regulated by international law. It is the responsibility of each contracting state to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure and its other international obligations.

At present in Turkey there are parallel procedures for determining the status of non-European asylum seekers entering the country performed by both UNHCR and the Ministry of Interior.

a. The Ministry of Interior's procedures

According to a Ministry of Interior Implementation Directive (the 'Implementation Directive'),²¹ aliens who enter Turkey 'legally' claiming that they were exposed to persecution within the terms of Article 1 of the 1951 Convention are required to lodge an asylum application personally at the border gate at their point of entry or to any Governorate or to the General Directorate of Security – Foreigners / Passport Branch in that province. Aliens who entered Turkey 'illegally' must apply personally to the Governorate of the province where they entered the country or to the Foreigners / Passport Branch of the Provincial Security Directorate.²²

The Implementation Directive stipulates that the applicant should be accommodated at the 'transit lounge' while his/her application is being processed. The applicant should be notified of the decision in writing within two days. If the decision maker

21 Ministry of Interior Implementation Directive, B.05.1.EGM.0.13.03.02, in force from 1 April 2005. An unofficial translation of this directive is provided in Annex 2 below.

22 *ibid* Article 2.1

concludes that the applicant may meet the necessary criteria to qualify for refugee status, s/he will be referred to the General Directorate of Security – Foreigners / Passport Branch for detailed examination of the application.²³ If the decision maker concludes that the applicant does not meet the necessary criteria for refugee status, s/he shall be notified about the decision in writing. If there is no appeal against the decision, ‘exit of the foreigner from the country shall be ensured.’ If there is an appeal against the decision, the documents prepared shall be sent to the Ministry of Interior the following day and ‘actions will be taken based on the instruction to be received.’ Appeal will suspend the act of deportation.²⁴

Applicants are required to present themselves to the relevant authorities within the ‘shortest reasonable time.’ Reasons for any delay in presentation will be examined. This period of time has been understood in the past to be 10 working days. There are moves however now to extend this time period.

According to the Implementation Directive, the Ministry of Interior should be informed by telephone about applicants ‘who were high ranking military officers, intelligence officers or politicians in their own country, those who were well known by the public, those who are popular owing to their position or events and those who may cause political problems between our country and another country.’²⁵

Identification information and fingerprints are taken from the applicant and the ‘names, telephone numbers and addresses of the applicant’s family members and relatives in the country of origin will be taken.’²⁶

Following identification, the Implementation Directive provides that a preliminary interview should be conducted.²⁷ This interview will identify the applicants’ route to Turkey, transit countries and treatment there, travel documents used, whereabouts since entering Turkey, reason for leaving country of origin and what will happen if returned to country of origin. Applicants should be asked if they need an interpreter and whether they would prefer a male or female interviewer and interpreter during their main interview. At the end of the interview the notes are to be read-back to the applicant and any additions or corrections should be noted down. A longer interview should then take place within 30 days.²⁸ During this interview the applicant should be given an opportunity to give details of the basis of his/her claim. The Implementation Directive then requires that the interview

23 *ibid* Article 2.1.1

24 *ibid* Article 2.2.4

25 *ibid* Article 2.6

26 *ibid* Articles 3 and 4

27 *ibid* Article 5

28 *ibid* Article 5

notes are read back to the applicant and any additions or amendments should be noted. The applicant is then requested to sign the notes and a declaration that s/he understood the whole interview.²⁹

The Implementation Directive stipulates that only those staff members who have attended 'Refugee law and/or Advanced RSD' training workshops run by the Ministry of Interior, UNHCR and the EU High Level Working Group Project should conduct interviews and make status decisions.³⁰ Article 8 provides:

- 'throughout the interview it shall be kept in mind that this is not an interrogation but an interview and an environment of confidence for the applicant shall be created.'
- 'All kinds of behaviour and conduct that would hinder the applicant to give information shall be avoided'
- 'During the interview, the interviewer shall always remain patient (interviewer shall stay away from personal feelings, these feelings shall not interfere in the interview). Upon the request from the applicant and if deemed appropriate by the interviewer, a break can be given.'

It does not appear to be required that applicants are informed of the reasons for a negative decision by the Ministry of Interior. The mission questioned Bülent Kılınç Chief of Cabinet at the Ministry of Interior about this but he declined to answer the questions asked.³¹ Once an applicant has been informed of the final negative decision by the Ministry of Interior the deportation procedure will start. Applicants who receive a negative decision can challenge the decision in the Administrative Courts. Applicants may receive financial and legal assistance from local NGOs and Bar Associations with any such challenge.

Residence pending determination

Pending the outcome of the refugee status decision by the Ministry of Interior, applicants are usually granted an 'ex officio' six month residence permit. This permit can be renewed for a fee every six months during a maximum period of three years.³² The following categories of persons will not be granted an 'ex-officio' residence permit:³³

- (i) individuals who lodge an application after legal residence

29 *ibid* Article 8

30 *ibid* Article 1.1

31 FFM interview with Bülent Kılınç Chief of Cabinet at the Ministry of Interior 7 July 2006

32 Ministry of Interior Implementation Directive, B.05.1.EGM.0.13.03.02, Article 10. See Annex 2.

33 *ibid* Article 11.1.1-11.1.14

- in Turkey ceased,
- (ii) individuals who lodge an application following a deportation decision as a result of committing a crime during their legal residence,
 - (iii) individuals who do not lodge an application within the shortest reasonable period of time after entering Turkey (usually 10 working days),
 - (iv) individuals who do not apply with shortest reasonable period of time after entering Turkey but who applied after being detained by the security forces,
 - (v) individuals who apply after being caught while trying to leave Turkey illegally,
 - (vi) individuals who apply after being released from prison or when being kept in prison having committed a crime,
 - (vii) individuals whose identities cannot be determined,
 - (viii) individuals who re-apply following a negative decision without presenting new information,
 - (ix) individuals who re-apply having been deported because of committing a crime or being involved in illegal migration in Turkey,
 - (x) individuals who have made numerous entries into Turkey prior to applying,
 - (xi) individuals who provide contradictory and misleading information on identity, travel route and country of origin,
 - (xii) individuals who do not cooperate with officials on eliciting the basis for their claim,
 - (xiii) individuals who lodge an application having been in a safe third country and returned to their country of origin before coming to Turkey,
 - (xiv) individuals who travel to Turkey via a safe third country.

The above individuals will not be granted identity documents and will be subjected to an accelerated procedure and shall be accommodated in a 'guesthouse' pending

the determination of their application (five working days). In the event that there is no vacant place at a guesthouse these individuals shall be issued identity documents and accommodated ‘in an appropriate place and they shall be monitored.’³⁴ Following a positive determination these applicants shall be entered into the regular procedure outlined above and granted an ‘ex-officio’ residence permit. In the event of a negative decision where there is no appeal the individual will be deported. Where there is an appeal against such a negative decision the deportation will be suspended.

Further Article 4 of the Resettlement Act 5543 which came into force on 19 September 2006 states “Foreigners who are not Turkish in origin and not allegiant to the Turkish Culture (sic) and the people who are Turkish in Origin but beared (sic) an expulsion and those who are not regarded as proper to come to Turkey shall not be accepted as an émigré.”

Individuals who have been granted a residence permit must reside in the city specified in the permit. Individuals who leave the city specified on the residence permit without permission will be subject to proceedings under Articles 17 and 25 of the Law on Residence and Travel of Foreigners (Law 5683).³⁵

The mission was concerned to hear that individuals must pay for each residence permit which is issued. The mission heard complaints that this puts tremendous pressure on them and many cannot afford the fees required. Individuals who do not have a residence permit risk deportation.³⁶

b. UNHCR procedures

Information regarding individuals who have lodged an application with the Directorate of Security - Foreigners / Passport branch will be communicated by the Ministry of Interior to UNHCR. Similarly information regarding individuals who lodge an application with UNHCR and who have not lodged an application with the Directorate of Security-Foreigners / Passport branch will be passed to the Ministry of Interior by UNHCR. There are no provisions as to which body individuals should approach first.³⁷

³⁴ *ibid* Article 11.2

³⁵ *ibid* Article 16

³⁶ FFM Interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006

³⁷ FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

Once an applicant is registered with UNHCR they are offered an interview for the purposes of status determination. UNHCR conducts interviews either locally in the province where the individual entered the country or in Ankara.³⁸ The mission was told that for example, there are no female interpreters in Van so interviews requiring female interpreters will be conducted in Ankara (nearly 1,000 miles away, approximately 24 hours by bus).³⁹ UNHCR told the mission⁴⁰ that they have specially trained local staff called protection assistants who conduct the interviews. These protection assistants are not lawyers but will have received a couple of months of training in Ankara. The protection assistants receive the applicant's file one week before the interview to prepare their questions and conduct research.⁴¹

Interviews are conducted with the assistance of an interpreter. UNHCR assured the mission⁴² that persons who are currently applicants will never be used as interpreters for an interview. The interview notes are made in English regardless of the nationality or language skills of the interviewer. UNHCR told the mission that applicants are not given an opportunity to read or have a copy of the interview notes. The mission was told⁴³ that this is a 'work product issue'.

The length of interview will vary depending on the individual facts of each case. Some will take a whole day, although sometimes they take two days. UNHCR told the mission⁴⁴ that it is rare for interviews to take more than three days. Applicants are permitted to have a legal representative present at the interview; however UNHCR does not provide any funding for such representation.

UNHCR told the mission⁴⁵ that in the past initial decisions in the region took many months however most initial decisions are now made within three months of the application being lodged.

A positive determination regarding an individual's refugee status will be communicated by UNHCR to the General Directorate of Security – Foreigners/Passport Branch. The mission understands that in general⁴⁶ the decisions made

38 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative) / Roland Schilling (UNHCR Deputy Representative) / Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

39 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006

40 *ibid*

41 *ibid*

42 *ibid*

43 *ibid*

44 *ibid*

45 *ibid*

46 An obvious exception to this would be differences between UNHCR and the Turkish authorities concerning the Iranian Kurds stranded in Turkey, as described above, p16

by the General Directorate of Security – Foreigners/Passport Branch reflect the decisions made by UNHCR. Individuals who have positive refugee status decisions from both UNHCR and the Ministry of Interior are then registered for re-settlement to a third country.⁴⁷

An applicant who receives a negative determination from UNHCR has an automatic right of appeal to UNHCR. UNHCR told the mission⁴⁸ that individuals will be told of their right to appeal and will be provided with the appeal form on being given notice of a negative determination. The mission asked both Van and Ankara offices of UNHCR for an example of a negative determination letter: the Van office referred the mission to the Ankara headquarters, and although Ankara said they would be willing to provide this when the mission met with them at their office, subsequent email enquiries by the mission met with the response from Ankara that this would not be possible⁴⁹.

Appeals are dealt with by the UNHCR appeals unit which is run by locally trained staff. The appeal decision may be made by staff in the same office that made the initial decision or alternatively it could be made by staff in the central office in Ankara.⁵⁰ UNHCR staff will review the decision to see whether there has been a procedural or substantive error in the initial determination decision. If necessary an applicant will be invited for a second interview.⁵¹

UNHCR told the mission⁵² that in contrast to the initial decision the first appeal can take quite a long time. The file and the interview notes will be reviewed again. If it seems that there's 'something there' the applicant will be invited for a further interview.⁵³ Again UNHCR will notify the Directorate of Security - Foreigners / Passport Branch of their decision. UNHCR told the mission⁵⁴ that, for reasons

47 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative) / Roland Schilling (UNHCR Deputy Representative) / Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

48 *ibid*

49 Response to email request made by Lucy Claridge, mission member, received from UNHCR on 25 July 2006. There is, however, a blank template of a negative determination letter available in Procedural Standards for RSD under UNHCR's Mandate, UNHCR, September 2005, annex 6.1. At <<http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=4317223c9>> (accessed 8 January 2007).

50 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006

51 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

52 *ibid*

53 *Ibid*

54 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

of confidentiality, they do not share the specific details of the file (over and above the identity of the applicant and the relevant decisions made) with the Ministry of Interior.

If UNHCR makes a negative determination on status following the initial appeal, an applicant has a further opportunity to have their file re-opened. In order for this to take place they must show that there is new evidence available or that there has been a change in circumstances to either their personal situation or in the country of origin.⁵⁵

In situations where an individual leaves Turkey but later re-enters the country and makes a fresh application, a decision is made whether to re-open the file. At that stage consideration is given to the reasons for leaving Turkey.⁵⁶

UNHCR told the mission that the Ministry of Interior should refrain from deporting individuals while their appeals remain pending with UNHCR.⁵⁷ However, once a final negative decision is made by UNHCR, the matter is then in the hands of the Ministry of Interior which carries out all deportations. UNHCR is not involved with the process of deportation except for trying to prevent it in certain exceptional circumstances.⁵⁸

Re-settlement of successful non-European refugees

Once a non-European applicant has had a positive determination from both UNHCR and the Ministry of the Interior, they will be eligible for re-settlement to a third country. UNHCR told the mission that based upon current understandings with the Turkish Government, it seeks resettlement opportunities for all non-European recognized refugees. UNHCR submits the resettlement applications of non-European refugees to one of several countries, based upon the priorities and criteria articulated by the government concerned.⁵⁹ Currently, the main countries of destination for non-European refugees in Turkey are Australia, Canada, Denmark, Finland, Norway, Sweden and the United States. Each resettlement country has its own policies and procedures concerning resettlement established under national

55 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

56 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative) / Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

57 *ibid*

58 *ibid*

59 *ibid*

law, and the final decision on resettlement is made by a resettlement country, not by UNHCR.

The process of resettlement can take a considerable amount of time and is dependent on the goodwill of the receiving countries. A number of people to whom the mission spoke, expressed the opinion that resettlement of refugees is increasingly difficult following the events on 11 September 2001.⁶⁰ In 2000, 2,334 refugees were resettled. This figure rose to 2,935 in 2003 and fell to 1,262 in 2005⁶¹. In the first quarter of 2006 UNHCR resettled 371 refugees.⁶² During the time that individuals wait for re-settlement, they are dependent on the protection of both UNHCR and the Turkish State. These individuals are in many respects in the same practical position as those whose decisions are still pending as they do not have the benefit of full protection or support.

International standards

An applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. The UNHCR Handbook states that '[h]is application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.'

⁶³

The Executive Committee of the High Commissioner's Programme, at its twenty-eighth session in October 1977,⁶⁴ recommended that procedures should satisfy the following basic requirements:

- (i) The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory

60 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006, FFM interview with Gesche Karrenbrock (UNHCR Representative) / Roland Schilling (UNHCR Deputy Representative) / Metin Çorabatur (UNHCR External Affairs Officer) 6 July 2006 FFM Interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum Der (Van branch) 4 July 2006: Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

61 *Asylum in Turkey: UNHCR Briefing Note*, UNHCR, 18 April 2006

62 *ibid*

63 UNHCR Handbook paragraph 191

64 *ibid*, paragraph 192.

of a contracting state should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. S/he should be required to act in accordance with the principle of non-*refoulement* and to refer such cases to a higher authority.

- (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
- (iii) There should be a clearly identified authority - wherever possible a single central authority - with responsibility for examining requests for refugee status and taking a decision in the first instance.
- (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his/her case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- (v) If the applicant is recognised as a refugee, s/he should be informed accordingly and issued with documentation certifying refugee status.
- (vi) If the applicant is not recognised, s/he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
- (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

UNHCR's Procedural Standards for Refugee Status Determination published in 2005⁶⁵ (Procedural Standards) outlines a number of core standards which should be met at all times:

- Asylum seekers who approach UNHCR Offices should have appropriate access to UNHCR staff and appropriate Refugee Status Determination procedures and should receive the necessary information and support to

65 Unit 1 *Procedural Standards for RSD Under UNHCR's Mandate*, UNHCR, September 2005. At <<http://www.unhcr.org/cgi-bin/texis/vtx/publ/opedoc.pdf?tbl=PUBL&id=4317223c9>> (accessed 8 January 2007). Hereafter cited as 'Procedural Standards'.

present their refugee claims;

- Procedures should be in place to identify and assist vulnerable asylum seekers;
- RSD applications should be processed on a non-discriminatory basis pursuant to transparent and fair procedures;
- RSD applications should be processed in the most timely and efficient manner possible;
- Staff who are responsible for RSD procedures should have adequate qualifications, training and supervision to effectively carry out their duties;
- Applicants should have an individual interview with a qualified eligibility officer;
- Rejected applicants should have access to procedures for review of the RSD decision by an officer other than the officer who decided the claim in the first place;
- There should be an organization wide consistency on procedures that define substantive rights in the RSD process including procedures affecting the submission and receipt of applications, individual interviews and the notification of UNHCR decisions; and
- All aspects of the RSD procedure must be consistent with established UNHCR policies, relating to confidentiality, standards of treatment of vulnerable asylum seekers and gender and age sensitivity.

The UNHCR Handbook states⁶⁶ that while an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

Basic information through the completion of a standard questionnaire will normally not be sufficient to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his/her case and in fully explaining his/her opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant's

66 paragraph 199

statements will be treated as confidential and that s/he is so informed.⁶⁷

After the applicant has made a genuine effort to substantiate his/her story there may still be a lack of evidence for some of his/her statements. It is rarely possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt.⁶⁸

The Procedural Standards outline that ‘cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Therefore while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.’

According to the UNHCR Handbook, very frequently ‘the fact-finding process will not be complete until a wide range of circumstances has been ascertained. Taking isolated incidents out of context may be misleading. The cumulative effect of the applicant’s experience must be taken into account. Where no single incident stands out above the others, sometimes a small incident may be “the last straw”; and although no single incident may be sufficient, all the incidents related by the applicant taken together, could make his fear “well-founded”’.⁶⁹

Indeed according to the UNHCR Handbook⁷⁰ ‘in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.’ Even such independent research may not, however, always be successful and there may also be statements that are not susceptible to proof. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. The Handbook further comments that the requirement of evidence ‘should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself.’⁷¹ Consideration should be given to the fact that a person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.

67 paragraph 199

68 paragraph 203

69 paragraph 201

70 paragraph 196

71 paragraph 197

2. The Mission's Concerns

a. Concerns about the RSD procedures of the Ministry of Interior

The mission spoke to a number of people who expressed concerns about the Ministry of Interior refugee status determination procedures.⁷² These concerns are outlined below.

Interviews

The mission heard many reports that interviews conducted on behalf of the Ministry of Interior usually take place in police stations and are carried out by low ranking uniformed police personnel who have had little or no training. Many asylum applicants being interviewed in this manner will have experienced or feared torture, inhuman and degrading treatment at the hands of the authorities of their country of origin. The mission heard that as a result interviewees feel intimidated by being questioned by police in uniform and are unable fully to tell their story. These interviews are frequently extremely brief, rigidly following a pro-forma structure with interviewers eliciting the pro-forma amount of information from the applicant.⁷³

The mission heard that often when police officers do receive training in best practice for RSD procedures, there is no provision for ensuring that they continue to work in the field of RSD. Rotations and transfers currently do not appear to take sufficient account of the need to retain the skills that have been learned.⁷⁴ Consequently much of the expertise which is gained through specialist training programmes is lost.

72 FFM Interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, : Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006. Also see accounts of applicants who met with the mission, contained in the Annex 1 below.

73 *ibid.*

74 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006

It was apparent from the mission's discussion both with NGOs⁷⁵ and individuals who had been through the procedure themselves⁷⁶ that in many cases applicants are interviewed once only, thus not complying with the requirements set down in Article 5 of Ministry of Interior Directive B.05.1.EGM.0.13.03.02 (see Annex 2 below), which requires an initial screening interview to be followed by a substantive interview which should allow for an applicant to fully set out the basis of his asylum application.

Further the mission heard allegations that interpreters used during the Ministry of Interior RSD procedures are often asylum seekers themselves.⁷⁷ Using individuals who have been or are currently involved in the RSD procedure is highly undesirable, potentially leading to issues of independence, impartiality and confidentiality.

The mission heard allegations of inappropriate behaviour by the police during RSD interviews.⁷⁸ For example, it was alleged that the police frequently tell interviewees that they are not welcome as they were obviously of no use or benefit to their country of origin. The police are also alleged to treat asylum seekers and refugees as if they are criminals.

Compliance with ECHR regulations

In circumstances where there is a risk that an individual's rights under the ECHR will be violated if returned to their country of origin, the deportation decision can be challenged in the administrative courts. The mission learned of one case where such a challenge was successful. The family who were seeking asylum on grounds of political opinion as a result of being members of the Iranian Kurdistan Democratic Party were at the border when Amnesty International managed to stop the deportation as a result of an interim decision by the ECtHR. That family have since been recognised as refugees and are currently awaiting re-settlement to a third country.⁷⁹

75 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, : Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

76 See Annex 1 for summaries of interviews with applicants for refugee status

77 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, : Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

78 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006.

79 FFM interview with Volkan Görendağ of Amnesty International (Van), 2 July 2006

UNHCR told the mission that where they come across cases where a negative asylum decision has been made but where there are concerns that the individual's rights under the ECHR have been or are going to be breached they will alert the government to this state of affairs. It is understood by the UNHCR representatives to whom the mission spoke that the Ministry of Interior has an informal system of granting residence permits to people who fall into this category. UNHCR expressed the concern that this is not sufficient protection for these individuals as they could still face deportation or *refoulement* at any time.⁸⁰

Indeed, it was clear from the mission's discussions with local NGOs⁸¹ that they are aware of many cases where individuals have been returned to a situation where they face serious violations of their rights under the ECHR. The mission learned of the case of one interpreter who worked for a local NGO whose asylum claim had failed but who was executed on her arrival in Iran.⁸² The mission was told of another interpreter who was working for a local NGO who was imprisoned with the rest of her family having been deported to Iran.⁸³ The mission also learned of an Iranian who had been deported who is now in hiding in Iran because he fears that he will be executed if he is found by the authorities.⁸⁴

Önder Beter from HRDF referred to a case two years previously where an Iranian communist was deported following rejection of his application initially by UNHCR and then by the Ministry of Interior. On being returned to Iran with his wife he was detained. Mr Beter is concerned for his safety as he has not had any information about this man since his deportation.⁸⁵

Reasons for decisions

The mission found that the Ministry of Interior does not provide any (or any adequate) reasons for their RSD decisions. It is essential that the factual and legal

80 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

81 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

82 FFM interview with Necip Bey (Van İHD) 3 July 2006

83 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006 and Necip Bey (Van İHD) 3 July 2006

84 FFM interview with Necip Bey (Van İHD) 3 July 2006

85 Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

basis of decisions made in immigration cases are made clear to the applicant in order that any right of appeal can be effective. These reasons should be set out clearly in the letter which notifies the individual of the decision which has been made by the Ministry of Interior.

Deportation procedure

An NGO representative in Van expressed concern over the alleged existence of agreements for the exchange of Kurdish guerrillas for asylum seekers between Turkey, Iran and Syria.⁸⁶ It was also alleged that there have been confirmed instances where the Turkish police have abused and ill-treated persons during the deportation procedures.⁸⁷ UNHCR told the mission that while they do not play any part in the deportation procedure they understand that individuals who are being deported are normally requested to walk over the border and are not handed over to the authorities. In order to reach the other country they have to walk through a no-man's land which can be very dangerous. In situations where individuals do not have proper documentation UNHCR accepted that individuals may be handed over to the authorities of the country of origin.⁸⁸ It seems, therefore, that neither means of deportation is acceptable as neither fully guarantees the rights of the deportees under the ECHR.

Location of the Directorate of Security-Foreigner/Passport Branch of the police in Van

Mr. Engin from Mazlum-Der in Van told the mission that the Directorate of Security-Foreigner/Passport Branch of the police which deals with RSD in Van had been located in a small office in the Directorate of Security. This caused numerous problems mostly because of limited space but also because of the fact that individuals felt intimidated by the environment at the Directorate. Mr. Engin raised this issue with the relevant parties and now the foreigner's branch has been moved to a building which houses the headquarters of the local riot police. Mr.

86 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006. While the mission was in the region a newspaper released a story of just such an exchange between Iran and Turkey, following which the Kurdish Guerrilla was allegedly executed by Turkish forces on the border (Ülkede Özgür Gündem newspaper 28.06.2006 front page & page 6).

87 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006, FFM interview with Necip Bey (Van İHD) 3 July 2006

88 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

Engin told the mission that although the problems with space have been solved by this move the atmosphere remains intimidating.⁸⁹

Specialist courts

The mission learned that there are no special domestic tribunals to deal with refugee and asylum issues. He believes that the Turkish Administrative Courts do not have sufficient expertise on refugees and so the quality of judicial review of Ministry of Interior decisions is very poor and usually results in the courts upholding the decision of the Ministry of Interior.⁹⁰ The mission understands that moves have been made to increase the expertise of judges who are dealing with RSD matters in the administrative courts. There is, however, a very long way to go to ensure that there is a sufficient level of knowledge and understanding among lawyers and judges. UNHCR in Ankara expressed the concern that for example where individuals are prosecuted for violations of the passport laws the decision to deport the individual may overlook any potential asylum claim. UNHCR have been working to raise awareness of these issues among the judiciary.⁹¹

The mission was encouraged to hear⁹² that, following a recent UNHCR workshop, one of the judges who had received training said that if he had been aware of the relevant international standards when he had been a judge deciding asylum cases in the Administrative Court in Hakkari five years previously, his decisions in many cases would have been different. This however demonstrates the lack of training and understanding of international principles which prevails among judges who are in the border provinces where most of the asylum applications are dealt with. Volkan Görendağ told the mission that the result of the ineffective judicial review of Ministry of Interior decisions is that very few people appeal these decisions, but instead try to leave the country illegally.⁹³

Bribery and corruption

Volkan Görendağ told the mission that he has received many complaints of bribery

89 FFM interview with Mr. Engin Mazlum-Der (Van branch) 4 July 2006

90 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006

91 FFM interview with Gesche Karrenbrock (UNHCR Representative), Roland Schilling (UNHCR Deputy Representative), Metin Çorabatır (UNHCR External Affairs Officer) 6 July 2006

92 *ibid*

93 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006

and corruption in the Ministry of Interior in relation to asylum applications. He said that he is aware of cases where the police are alleged to have taken money from applicants.⁹⁴ These allegations were echoed by a number of other people to whom the mission spoke.⁹⁵

b. Concerns about UNHCR's RSD procedures

Length of process

The mission spoke to a number of people who had concerns about the length of UNHCR's RSD process. The mission heard from NGO representatives that files could remain 'open' for up to seven or eight years before a final decision was made.⁹⁶ The mission spoke to Mr. Engin from Mazlum-Der in Van who said that he had discussed this problem with UNHCR. The response which he received from UNHCR was that initial decisions are made quite quickly but the process of re-opening the file as a result of new information or a change in circumstances can prolong the matter.⁹⁷

Interview procedures

The mission heard numerous complaints from both applicants and concerned NGO representatives about UNHCR's interview procedures.⁹⁸ The principal concerns seemed to be the fact that interviews take place in what can be perceived to be a hostile environment, the questioning technique of the interviewers being inappropriate and unprofessional, communication difficulties in particular among interviewees who have experienced gender-based violence, the fact that NGO

94 *ibid*

95 FFM interviews with Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

96 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006, Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

97 FFM interview with Mr. Engin Mazlum-Der (Van branch) 4 July 2006,

98 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006, Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006. Also see the accounts detailed in Annex 1 below.

representatives are not permitted to attend interviews with applicants as observers, the fact that interview notes are not read back to interviewees and the fact that interviewees are not provided with a copy of the interview transcript.

The mission spoke to an NGO⁹⁹ whose representative had observed a number of RSD interviews which took place at UNHCR (Ankara) a number of years previously. He described the scene of the interview. He told the mission that the legal officer conducting the interview sits in front of a computer screen. The officer asks questions and the interviewee is required to answer these specific questions. There is no opportunity for dialogue and the legal officer spends most of the time looking at the computer and spends little or no time observing the interviewee. This, he commented, results in the legal officer failing to observe the demeanour of the interviewee and hampering communication. In many cases he said that if an interviewee remembers something that s/he wants to say about a previous question they are not allowed to return to that issue at a later stage in the interview. He commented that in his experience applicants who have experienced severe trauma and in particular women who have experienced gender-based violence have particular difficulties in communicating the facts of their case. Concerns were expressed that little effort was being made to accommodate these vulnerable applicants and the interviewing techniques employed frequently fail to assist these individuals in getting the details of their claim across to the decision-maker.

Members of *İnsan Hakları Derneği* (Human Rights Association of Turkey, İHD) at its headquarters in Ankara told the mission that many applicants had asked them to attend their interviews at UNHCR as an observer. While İHD would be willing and able to send an observer they have been told by UNHCR that this is not possible.¹⁰⁰

The first of the applicants whose accounts are outlined in Annex 1 told the mission that she was not satisfied with how her interview with UNHCR went. She felt that she was unable to make the UNHCR officials understand her story. She said that she felt that the interviewer did not allow her to speak to explain what had happened and she was simply told to answer the questions which were put to her without any elaboration. The second applicant told the mission that her interview with UNHCR was 'horrendous', with the interviewer shouting at her. Despite the fact that she complained of a headache she was not offered a break in the questioning.

The mission heard complaints from a number of individuals that interviewees are not given an opportunity to check whether the notes taken in interview accurately record what was said. When asked by the mission, UNHCR confirmed that

99 FFM interview with Onder Beter (HRDF Ankara) 5 July 2006

100 Representatives of İHD (HQ Ankara) 6 July 2006

a transcript of the interview is not provided to the interviewee at any stage. An inability to confirm the accuracy of what is written in the interview notes creates a potential barrier to an effective appeal for any applicant who receives a negative RSD decision.

Refusal letters

The mission saw a number of refusal letters sent by UNHCR to applicants. These letters were all in English although some (not all) were accompanied by a translation. The letters were all brief (one page only) and none of them outlined the reasons for the decision in any detail. The letters which the mission saw were pro-forma letters which contained no details specific to the particular applicant's claim. The letters simply stated that the applicants did not satisfy the relevant criteria and thus was no longer of any concern to UNHCR. For example, the letter which was sent to the second applicant simply stated that she did not show she had suffered or should suffer treatment of such gravity as to amount to persecution under the 1951 Convention. The absence of any sufficiently detailed reasons coupled with the inability to confirm the notes at interview means that an individual is severely hampered in having any meaningful right of appeal. The mission spoke to numerous NGO representatives and affected individuals who echoed this concern.¹⁰¹

When asked about the lack of reasons in the RSD letter, UNHCR said that they are constantly discussing the changes to the letter but want to let the 'current system' run for a while and see how their current NGO partners react.¹⁰²

Unit 6 of the Procedural Standards outlines standards for notification of RSD decisions. These standards state that notification of negative RSD decisions should 'permit rejected Applicants to make an informed decision about whether an appeal is appropriate and to focus appeal submissions on relevant facts and issues.'¹⁰³ The Procedural Standards continue to state that UNHCR Offices 'should use the standard Notification of Negative RSD Decision letter'¹⁰⁴ when notifying Applicants of the reasons for negative RSD decisions. When using this form, Eligibility Officers should select each of the listed grounds for rejection that are relevant to the decision in the Applicant's claim. Additional comments may be included in the appropriate

101 FFM interviews with Volkan Görendag (Van Amnesty International), 2 July 2006, Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM) 5 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

102 FFM Interview with Roland Schilling of UNHCR, 6 July 2006

103 Unit 6.2, *Procedural Standards*

104 *ibid.* Annex 6.1,

spaces on the Notification of Negative RSD Decision letter where this would permit the Applicant to better understand how the reasons for rejection relate to the specific facts in the Applicant's claim.'

The Procedural Standards state that as a best practice the completed notification of negative RSD decision letter should include sufficient details to permit the Applicant to know the following¹⁰⁵:

- Evidence submitted by the applicant that was considered to be insufficient or was not accepted by the decision-maker, and a summary explanation of why evidence was rejected; and
- The reason why the accepted facts do not make the applicant eligible for refugee status.

The Procedural Standards state that '[w]here it is necessary to limit information relating to the basis of the negative decision in the written Notification of Negative RSD Decision letter, the rejected applicant should, wherever feasible and appropriate, have the opportunity to meet with a UNHCR staff member to receive more detailed reasons for the rejection of his/her claim.'¹⁰⁶

The mission is extremely concerned that the letters which they saw did not comply with these standards. The mission is also concerned that there does not appear to be sufficient impetus within UNHCR in Ankara to remedy this.

Counselling

UNHCR Procedural Standards stipulate that wherever possible, counselling on the reasons for an RSD decision should be provided by Eligibility Officers or other Protection staff members who are involved in RSD.¹⁰⁷ The mission is not aware whether or not such counselling is in fact made available to those receiving negative RSD decisions and is concerned that it is in fact not taking place to the extent envisaged by the Procedural Standards.

105 *ibid*, Unit 6.2,

106 *ibid*.

107 *ibid* Unit 6.1

Corruption

Mr. Engin from Mazlum-Der referred to allegations of bribery and corruption amongst some UNHCR officials. He told the mission that he is aware of cases where applicants have paid money to such officials in return for a positive RSD decision. He specifically referred to allegations regarding receipt of money in return for positive determinations by Erol Erdinç (a UNHCR employee). He told the mission that he has communicated these allegations to UNHCR officials in a recent meeting but he felt that instead of agreeing to investigate their validity his concerns were dismissed as being some kind of groundless attack on UNHCR.¹⁰⁸

Sexual harassment

The mission also heard allegations that young female applicants were being sexually harassed by UNHCR officials during RSD procedures. One NGO representative told the mission that the mother of a young asylum seeker woman working as an interpreter at UNHCR told him that she believes that their negative RSD decision was a result of her daughter's refusal to comply with the sexual advances of UNHCR staff.¹⁰⁹ Another NGO told the mission that it had recently received a complaint from an Iraqi woman who said that a UNHCR interviewer had told her that she would be better off "selling" her body.¹¹⁰

Problems with resettlement

The mission heard numerous allegations that resettlement of individuals with positive RSD decisions is dependent on the individual's political and ethnic origins. For example the mission was told numerous times that Iranian Baha'is or transsexuals were far more likely to be re-settled than young Muslim men from Iran, Iraq or Afghanistan.¹¹¹

108 FFM interview with Mr. Engin Mazlum-Der (Van branch) 4 July 2006

109 *ibid.*

110 FFM interview with representatives of İHD (HQ Ankara) 6 July 2006

111 FFM interviews with Volkan Görendağ (Van Amnesty International), 2 July 2006, Necip Bey (Van İHD) 3 July 2006, Mr. Engin Mazlum-Der (Van branch) 4 July 2006, Representatives of İHD (HQ Ankara) 6 July 2006

3. Social, Economic and Infrastructural Problems

a. Reception centres

The mission understands that Turkey currently does not have any reception centres to deal with individuals who arrive in the country seeking asylum or humanitarian protection. Such centres could provide shelter and basic medical assistance to newly arrived individuals. In addition to this, initial screening interviews could be conducted by the local authorities in order to commence the RSD procedures at these centres. Paragraph 4.4.3 of the National Action Plan states that the Turkish State “has the responsibility to provide shelter and physical reception conditions to asylum seekers according to EU Council directives on reception conditions. ... Asylum seeker reception and accommodation centres and guest houses for refugees shall be established and made operational primarily in the eastern and then central regions of Turkey in order to implement the asylum strategy and to provide effective and fair international protection to genuine refugees.” The notes on implementation for this undertaking state that the responsible bodies are the Ministry of Interior and the EU Commission and that the building and construction of such centres should take place between 2006 and 2010.¹¹² When the mission spoke to Bülent Kılıç chief of cabinet at the Ministry of Interior it was made clear that Turkey expects its European Partners to share the burden of building and running these centres.

b. Work permits

Individuals who are awaiting an RSD determination are required to apply for a work permit subject to the law No. 4817. Individuals who have had a positive determination of their application by the Ministry of the Interior and are waiting to be re-settled or those applicants from European countries who have been granted refugee status should be allowed to work in Turkey and be exempt from having to obtain a work permit provided that they do not work in professions in which foreigners are not entitled to work.¹¹³

The mission heard that obtaining a work permit is extremely difficult for non-European asylum seekers awaiting their RSD decision and that the norm was for those people to work illegally without such a permit. The mission was told that

112 Regulation 94/6169 as amended

113 *ibid* Article 18

one of the major stumbling blocks to obtaining a work permit was the fact that it was the prospective employer who needed to make the application and once such an application was successful then that employer was obliged to provide the employee with a minimum wage and other basic employment rights. Employers therefore prefer to engage individuals on the 'black market'. They consequently will not be protected by Turkish employment law and will be cheaper than their 'legal' counterparts. The mission was told that such 'illegals' are even employed in government and municipality buildings.¹¹⁴

c. Education

Children of individuals whose application is pending determination or those non-European applicants who are awaiting resettlement following a positive determination are entitled to enrol in schools without needing an education visa.¹¹⁵ The mission was not told of any instances where such eligible children are refused a school place.

d. Medical treatment

With regard to healthcare for non-European applicants who have had a positive determination and are awaiting re-settlement, the Implementation Directive provides that they should:

apply to the provincial or sub-provincial Security Directorates of the places where they reside together with their residence permit; the information on the residence permits (birth registry information and residence address) issued by the Governorates shall be checked; and provincial or sub-provincial Security Directorates (of the places where the refugees or the asylum seekers are residing) should write an official correspondence to the Directorate of Health or to the Directorate of Health Group Services of that place regarding the refugees or asylum seekers who get sick. The patient who goes to the Directorate of Health or to the Directorate of Health Group Services with the official correspondence should be referred to a primary public health institution and their treatment should begin. In case they apply with an official writing, residence card (residence permit),

¹¹⁴ FFM interview with Necip Bey (Van İHD) 3 July 2006. The account of the Fourth applicant in Annex 1 provides a good example of the difficult working conditions faced by asylum seekers.

¹¹⁵ Regulation 94/6169 as amended Article 19

prescription and health board report (for long term treatment), the drugs and the medical supplies that are prescribed following the outpatient treatment will be evaluated by the board of trustees of the local Social Solidarity Foundations.¹¹⁶

The Directive states that these provisions are only applicable to foreigners whose asylum or refugee claim is under review and who reside at Yozgat Refugee Guesthouse.¹¹⁷

The mission was told that mothers who are asylum seekers and their newborn babies are entitled to free medical treatment under the mother and baby scheme.¹¹⁸ The mission is unclear as to how widely this is actually implemented and heard of one case where an expectant mother had to borrow her neighbour's green card so that she could have her baby delivered in hospital. This woman explained that she is concerned that her child is abnormally weak, and suffers from malnutrition and a vitamin deficiency which is a direct result of their financial circumstances.¹¹⁹

The fourth applicant whose account is outlined in Annex 1 told the mission that following an accident which took place in the iron factory where he was working illegally, the bones in his hand were broken. He asked UNHCR to help him obtain medical treatment but this was not forthcoming. This meant that he had to pay a private doctor 60 YTL (€32 approximately) to have an x-ray and medical treatment. He told the mission however, that because he was not able to afford proper medical treatment his hand has never healed and he is no longer able to use that hand to work. He also told the mission that when one of his sons was very ill he did not receive any medical assistance.

It seemed to the mission that all of the applicants whose accounts are outlined in Annex 1 were suffering from depressive illnesses. For the women that the mission spoke to this had led to the breakdown of their marriages. Despite being clearly depressed and vulnerable neither the adults nor the children had received any social or psychological help. The mission spoke at length to Onder Beter (HRDF Ankara) and Ibrahim Vurgun Kavlak (ASAM)¹²⁰ who are very concerned about the lack of social and psychological assistance available to individuals seeking asylum.

116 Implementation Directive B.05.1.EGM.0.13.03.02 Paragraph 17. See Annex 2 below.

117 *ibid*, Paragraph 17.8

118 FFM Interview with Tracey Maulfair of UNHCR Van branch, 3 July 2006

119 Interview with Applicant three, 2 July 2006, see Annex 1 below.

120 5 July 2006

e. Housing

The mission heard numerous accounts of individuals who were unable to find safe and appropriate housing. The mission visited four households of families awaiting either final determination of their cases in Van, or awaiting deportation. The living conditions were extremely basic, essentially consisting of one small room where all members of the family sleep and eat. In all situations sanitation facilities were very limited. The first applicant whose account is outlined at Annex 1 told the mission that initially she had been able to pay her rent with the help of money sent by her sister. However once that money was no longer forthcoming she had to rely on assistance from a local NGO to find accommodation. She told the mission that she had no means of paying the rent and was in arrears.

4. Case Study: *D v. The Republic of Turkey*

On 22 June 2006, the ECtHR announced its judgment on the case of *D. and Others v. Turkey* [No. 24245/03]. The Court unanimously held that enforcement of the decision to deport the applicants to Iran would be a breach of Article 3 of the ECHR.

The applicants, D., his wife, S., and their daughter, P., Iranian asylum seekers since 1999, lodged their application with the Court on August 4, 2003 after Turkish authorities served them a deportation order. The order was issued upon notification by the Ankara Office of UNHCR that the agency had rejected and closed their refugee application.

Mr. D. and Mrs. S. are from Sunni Kurdish and Shiite Azeri families, respectively. Having been arrested, detained and tortured previously by Iranian authorities for political reasons, D. fled to Turkey illegally in 1999 when the authorities again suspected him of resuming political activity. S. too fled at the same time along with their child because she was imminently facing a cruel, inhuman, and in her case life-threatening, sentence of 100 lashes. In 1995, Iranian judicial authorities sentenced D. and S. to the punishment of 100 lashes a few days after they were married by a Sunni clergy. The court declared their marriage vows null and convicted them of committing fornication because S's father opposed the marriage and had not given his consent. D's sentence was administered subsequently. S's sentence was temporarily postponed initially due to pregnancy and then nursing P. Despite medical evidence stating that lashing would put S's life at risk because of her

poor health, judicial authorities insisted on carrying out the 100 lashes with a slight modification that it should be administered in two sessions rather than one.

In their application to the ECtHR, Mr. D. and Mrs. S. alleged that by deporting them to Iran, the Turkish Government would violate Article 3 of the ECHR by exposing D. to political persecution and S. to the punishment of 100 lashes, and by causing the permanent destruction of their family. They also submitted that the government had violated Article 13 of ECHR (right to an effective remedy) by not providing them a fair asylum determination procedure and by not providing an effective and accessible remedy to challenge their deportation order. They also argued that Turkey was in violation of Article 14 of ECHR (freedom from discrimination) because it implements a discriminatory asylum system whereby non-European asylum seekers' applications are not properly investigated and, unless they find resettlement in a third country, they are deported to their country of persecution.

In its ruling on the applicants' Article 3 complaints, the ECtHR, limiting its examination to Mrs. S.'s impending sentence of 100 lashes, held that her deportation to Iran would constitute a violation of Article 3. The Court dismissed UNHCR's reasoning for rejecting the applicants' refugee claim. While the applicants had lodged their refugee application with the UNHCR in November 1999, UNHCR's rejection reasons were for the first time revealed six years later at the last stages of the Court's proceedings in the form of a short letter to the authorities dated 9 September 2005. Agreeing with the applicants, the ECtHR stated that neither the postponement of Mrs. S.'s lashing sentence for several years, nor its slightly modified implementation for health reasons or that she had fled her country with a valid passport are valid reasons to reject Mrs. S.'s request for asylum.

The ECtHR criticised UNHCR's unsubstantiated assertion that 'in view of her state of health' Mrs. S.'s sentence had been 'reduced' to a 'symbolic' punishment of a single stroke administered with a bundle of 100 lashes. The ECtHR found it not only factually incorrect, but also a misqualification of such punishment's inherent 'inhuman' character. The Court said that even if UNHCR's allegation were true, although the applicant would be spared more grievous injury, her punishment (whereby she would be treated as an object in the power of the authorities) still constitutes an assault on precisely that which is one of the main purposes of Article 3 to protect, namely her personal dignity and her mental and physical integrity.

With respect to the applicants' other complaints, the ECtHR rejected the Government's preliminary objection that the applicants could have contested their deportation order in the administrative court and agreed with the applicants that such a remedy would not be effective. However, it held without any reasoning that its finding under Article 3 made it unnecessary to examine the case under Article

13 and Article 14. The applicants' complaints under Articles 13 and 14 included the authorities':

- failure to inform them of their rejection reasons,
- failure to conduct even an appearance of an examination of their application throughout the asylum procedures and even before the Court,
- failure to provide legal assistance, proper information and adequate translation
- failure to set up an effective appeal system, and
- 'no-questions-asked' reliance on UNHCR's decision without any scrutiny of its substance or its fairness.

The mission is very concerned about the flaws in RSD procedures, both of the Ministry of Interior and of UNHCR, that this case highlights. The mission submits that the findings of fact in this case by the ECtHR provide corroboration for the accounts that the mission has heard regarding the quality of decision making and the lack of adequate reasons for decisions. It is further noted that the ECtHR found that although in theory the applicants were able to contest their deportation order in the administrative court such a remedy would not be effective.

Conclusion: The National Action Plan And Progress Towards EU Accession

Turkey's aspiration to join the European Union has important implications for the management of refugee and asylum matters in the country. The European Union accession process has required legislative and administrative reforms in the area of asylum as Turkey must implement the extensive European Union *acquis* on asylum and related areas, such as migration, border management, human rights and administrative and judicial reform.

The General Directorate of Security prepared the Turkish National Action Plan for the Adoption of the EU *acquis* in the field of Asylum and Migration (The National Action Plan) with the support of a European Commission funded 'twinning' project, UNHCR and a range of non-governmental actors. This plan was endorsed by Prime Minister Erdoğan in early 2005. The National Action Plan maps out the development of a comprehensive national asylum system, including a specialised agency for refugee status determination, a regional network of reception centres and other measures for meeting the protection, care and long-term needs of refugees.

The National Action Plan makes a commitment to lifting the 'geographical limitation' referred to at page 20 above by 2012. This, however, is a qualified agreement referring to the need for burden-sharing by EU countries and the implementation of necessary amendments to the legislation and infrastructure in order to prevent the direct influx of refugees to Turkey during the accession phase.

A number of directives set out provisions to reform the RSD process to bring it into line with EU and international standards.

Specifically within the context of the lifting of the geographical limitation, the National Action Plan envisages, among other things, that a country of origin and asylum information system be established, that premises for the asylum unit be obtained, that reception and accommodation centres for asylum seekers be created, that a personnel training academy be established and that return centres be established. The target dates for the completion of these projects range from 2006 to 2012. The National Action Plan envisages a study to be conducted which

would investigate the expected increase in refugees arriving in Turkey following the lifting of the geographical limitation, cost projections for the creation of reception and accommodation centres, cost projections for the establishment of a personnel training academy and cost projections for the financing of integration of migrants and refugees into Turkey.

It was not clear to the mission to what extent Turkey is committed to this process, nor how much impetus there is within the EU to push Turkey on the issue. The mission welcomes any efforts that have been made to improve procedures however it was clear that these reforms are not being implemented properly at a local level. Indeed, when the mission spoke to Bülent Kiliç at the Ministry of Interior, he could offer little information or guidance as to current and future steps being taken by the Government to meet its obligations and enact the Plan, indicative perhaps of Turkey's reluctance to introduce the necessary reforms¹²¹. Although the EU accession process may provide the requisite motivation for enactment of the National Action Plan, with accession talks now suspended in eight of the 35 negotiating areas, the extent to which Turkey will afford refugees the necessary protection in the future remains to be seen.

121 FFM interview with Bülent Kiliç, 7 July 2006

Recommendations

In order to clarify the parallel procedures of the UN and the Turkish State in Refugee Status Determination, the mission recommends the following:

In the area of initial RSD procedure all parties involved are urged to:

- Comply with international standards for RSD procedures;
- Ensure that RSD and appeals procedures are completed within a reasonable amount of time;
- Ensure that interviews are conducted in a way which will assist the applicant to put forward his/her case and fully explain his/her opinions and feelings;
- Ensure that interview techniques are not intimidating and that interviewers are dressed in civilian clothes;
- Implement necessary training for all individuals involved in RSD and appeals;
- Consider applications by members of NGOs to accompany individuals to their RSD interviews;
- Ensure appropriate investigation of allegations of inappropriate behaviour, corruption, bribery and sexual harassment amongst officials during RSD procedures;
- Ensure that applicants are given an opportunity to confirm the accuracy of interview notes.

In the area of RSD appeals all parties involved are urged to:

- Inform applicants of reasons for negative decisions in order to facilitate effective appeals.

In the area of return/resettlement all parties involved are urged to:

- Ensure that re-settlement procedures are fair;
- Ensure that no one group of recognised refugees is discriminated against during the re-settlement process;
- Ensure that there is an effective system to identify potential cases where deportation would be a violation of an individual's rights under the ECHR;
- Ensure that the principle of *non-refoulement* is complied with;
- Ensure effective information sharing between all involved in RSD to prevent deportation of individuals where such deportation would be a violation of the ECHR;

In its unique capacity & role, the Turkish Government is urged to:

- Create reception centres for individuals who arrive in Turkey seeking protection;
- Comply with Implementation Directive B. 05.1.EGM.0.12.03.02, in particular provisions relating to the conduct of the RSD interviews;
- Ensure that interpreters used for RSD interviews are not asylum seekers who are awaiting a final RSD decision;
- Provide free legal assistance to individuals seeking asylum throughout the RSD and appeals procedures;
- Create specialist government bodies and courts for the effective and impartial determination of RSD decisions and appeals;

- Ensure that the programme for training of individuals concerned in RSD procedures continues and that once individuals have benefited from such training every effort is made to place them in jobs which where that training will be relevant;
- Encourage dialogue with civil society;
- Implement plans to lift the geographical limitation;
- Provide social and medical assistance to individuals in need;
- Take steps to ensure that asylum seekers are not left destitute pending determination of their applications;
- Provide exit visas for all of the remaining Iranian Kurds who entered Turkey through Iraq;
- Provide a solution for those Chechen asylum seekers who remain in Turkey;
- Suspend the fees normally payable by individuals who are awaiting a final RSD decision for residence permits;
- Ensure that work permits are easily obtainable for individuals pending a final RSD decision;
- Ensure implementation of the National Action Plan and in particular the lifting of the geographical limitation by 2012 if not sooner.

In its unique capacity & role, the UNHCR is urged to:

- Ensure that internal procedural guidelines are complied with in particular that all aspects of RSD procedure are consistent with established UNHCR policies, relating to confidentiality, standards of treatment of vulnerable asylum seekers and gender and age sensitivity;
- Ensure that the counselling envisaged by the UNHCR procedural standards is provided to those individuals who receive negative RSD decisions;
- Continue to lobby the Turkish government for a resolution to the situation of the remaining Iranian Kurds who entered Turkey through Iraq;
- Continue to lobby the Turkish government for a resolution to the situation of

those Chechen asylum seekers who remain in Turkey;

- Continue to assist with the implementation of the National Action Plan.

The European Union is urged to:

- Aid Turkey in the adoption of the EU *acquis* in the field of Asylum and Migration through its National Action Plan, in particular to lift the geographical limitation reservation;
- And, in this connection, to devise an effective EU-wide strategy to deal with the inevitable asylum and migration issues that arise from expansion of the Union to the borders of the Middle East.

Other Countries are urged to:

- Ensure that the criteria for re-settlement of recognised refugees from Turkey are fair and do not discriminate against any one body of persons;
- Speed up resettlement procedures;
- Ensure equality in resettlement.

For other NGOs

- Continue dialogue with UNHCR and Ministry of Interior.

Annex 1

Accounts of Applicants who met with the Mission, Van, 2 July 2006¹²²

First applicant

This Farsi woman left Iran with her two sons (aged 13 and 14 at date of interview) in 2004. Subsequently her husband joined them in Turkey. In Iran, she was a nurse, was studying at university, worked as a teacher and had a private clinic. She was elected to the municipal city parliament. She was outspoken and tried to represent the students, however she was warned about her actions by the Iranian authorities. She went on hunger strike because of her treatment by the authorities. She was supported by other members of the parliament during this time and continued to hold secret meetings with the students in the clinic. The authorities then closed the clinic in order to prevent her from carrying on with her activities. The Iranian army (SEPAH) raided the clinic when she was not there. The 25 people working there lost their jobs and the medical supplies were confiscated. Thereafter it was no longer safe for her to stay in Iran and so she left and came to Turkey.

She entered Turkey at Hakkari on the Iranian-Turkish border. She used her passport to enter the country, having paid 800 US Dollars to Iranian immigration. She had to wait for eight days and nights at UNHCR, Van branch, before they would open a file for her. She then had an interview with UNHCR but was not satisfied with how it went. She felt that although she tried to explain her problems and concerns about living in Iran, the officials at UNHCR were unable to understand her. She became very stressed at this inability to communicate. She felt that the interviewer did not allow her to speak to explain her situation. She was simply told to answer the questions that were put to her. The final deportation decision came from the Ministry of Interior two years after she first made her application to UNHCR. When asked by the mission what will happen to her if she is returned to Iran, she became very upset and said that she would most certainly be imprisoned and tortured.

122 Names withheld for reasons of confidentiality.

As a result of the stresses of her exile and asylum application, her marriage broke down and her husband left her. After their separation, she believes that her husband went back to Iran and was tortured by the intelligence services. She also believes that he was forced to provide information about her to the Iranian authorities. She fears that she will be imprisoned and tortured if deported to Iran. She was concerned that in those circumstances her sons would have nobody to look after them.

The family lives in cramped conditions: a two-room, barely furnished house. Initially she received €100 per month from her sister in Iran but now her sister is no longer able to send her any money. She has no other means of supporting herself. She approached UNHCR to seek financial assistance and she was provided with accommodation for one month. After that she did not receive any other assistance from UNHCR or the state authorities. Eventually, she was assisted by the Van branch of the İHD to find the house which she is living in now but she is unable to pay the rent and she is in arrears. She has had some assistance from Van Gölü and the Red Crescent Society. Despite being clearly depressed and vulnerable she has had no social or psychological help. Her two sons attend the local school and are clearly affected by the situation.

Second applicant

This Kurdish Iranian woman came to Turkey with her husband and two small children in 2001. Her husband had to leave Iran for political reasons. She was her husband's second wife. Since she did not want the children to be at the mercy of her husband's first wife, who would have been in charge after her husband left, she came to Turkey with her husband. Her husband's other wives erroneously believe that she was the reason why her husband left to go to Turkey without them.

Since coming to Turkey, her husband has left the family to fend for themselves. With the assistance of İHD (Van) she filed for divorce and that case is still pending. In April 2005 her application was severed from that of her husband's because of the divorce proceedings. Her husband's asylum application has since been negatively determined. Her file has now also been closed and she has been refused refugee status. She has received two deportation letters and appealed against each of the decisions. She wrote her appeal herself, three weeks ago and is waiting for a response. She is aware that this can take a long time.

She complained about the UNHCR interview stating that it was 'horrendous'. It lasted three hours and there was no break in the questioning. The interviewer was shouting at her. The shouting upset her and she told the interviewer that she had a headache but she was not offered a break.

She has received a new residence permit which is valid for six months but after that expires she does not know what will happen – either she will be permitted to renew her permit or she will be deported. She is terrified about what will happen to her if she is returned to Iran. Neither her own family nor the family of her husband will accept her because of the divorce. In the past her husband has threatened to kill her and take her children.

She lives on her own in a two room house with her two small children (six and twelve). Her children attend the local school. She receives no money or assistance from her relatives or family in Iran. She used to work illegally as a cleaner but she is no longer working and has not paid the rent for months. The rent was recently increased from €80 to €100 per month. As a result the landlord wants to evict her.

She has received no financial, social or psychological assistance. The mission believed that she displayed clear symptoms of being depressed and distressed at the situation in which she finds herself.

She showed the mission a copy of the refusal letter which she received from UNHCR in March 2006. The letter was one page long and in English, with an accompanying Farsi translation. It stated that she did not show she had suffered or should suffer treatment of such gravity as to amount to persecution under the 1951 Convention. It also says at the bottom that ‘this does not affect your application for temporary asylum with the Turkish authorities – which is a separate procedure.’ No other reasons for the decision were provided.

Third applicant

This 36 year-old Iraqi Shia Arab from Baghdad came with her brother to Turkey in 2000. She fled because her father was forcing her to marry someone much older than her.

Two years after she came to Turkey, she married an Iranian asylum seeker. The marriage lasted for four months. She has a son from that marriage who is now four years old.

When she arrived in Turkey she lodged an application with UNHCR for asylum. This application was refused. She re-applied in 2004 and was given an interview one and a half years later, in 2005. Her application is still pending. She is concerned that if she is returned to Iraq she will suffer problems because of her refusal to marry in accordance with her father’s wishes and now because she is a single parent.

Her brother has the same status as she does. He works illegally and supports her and her son. They all live in a two room house with an outside toilet. When her baby was born she did not receive any medical assistance. She receives no other money or support either from state authorities or from NGOs. She borrowed her neighbour's green card¹²³ so that she could have the baby delivered in hospital. She expressed concern at the health of her child. He suffers from a vitamin deficiency due to malnutrition and is very weak. She stated that she would go back to Iraq if she could – she does not want to live in these conditions.

Fourth applicant

This Iranian man, his wife and two sons arrived in Turkey for the first time seven years ago. He is a member of the *Ahlihaq* (Faithful to the Truth) sect, which is predominantly found in the Kurdish regions of Iran. People from this sect are viewed with suspicion in Iran. In 1983 he was living in the Kurdish part of Iran and joined the Iranian air-force. In order to avoid problems for himself and his family he lied about his religion and said that he was Muslim.

He remained in the air-force for ten years before the truth was revealed. Once his true religion became known he says that he 'suffered continual psychological torture.' He was demoted and his salary was reduced. He was posted to a smaller less desirable city. When his colleagues received bonuses he did not. When his wife was pregnant with their second child he was not paid for six months. He offered his resignation but this was refused. He was then posted to Tabriz, a fundamentalist area. The constant pressure of the treatment that he was facing affected his family. His wife felt unable to leave their house and did so only two or three times in two years. The Iranian secret service intimidated him because of his religion.

In 1986, he gave shelter for one cold winter's night to an Iraqi Muhajid Kurd (the brother of a friend of his) who had just been released from prison. He then risked serious criminal charges of treason as a result. He was accused of having connections to the Mujahideen.

In 1999, he realised that for his own safety and for the safety of his family he had to leave Iran and come to Turkey. He paid for travel documents to be forged. His first application was refused by UNHCR in 2002. He appealed the decision and he

123 The Green Card system was established in 1992 and is directly funded by the Government. Poor people earning less than a minimum level of income which is defined by the law are provided a special card giving free access to outpatient and inpatient care at the state and some university hospitals, and covering their inpatient medical drug expenses but excluding the cost of outpatient drugs. Only the Ministry of Health is authorised to issue Green Cards.

was asked for new documents but was not told what kind of new documents they wanted. He had given all of his documentation (ID card, pay roll details etc) to UNHCR with his original application.

In 2004, he received a request to leave the country. Instead of being deported and risking the consequences of being handed over to Iranian officials at the border, he and his family decided to flee to Iraq. They went to Erbil but his son became ill. They went to the UNHCR office in Erbil but it was not equipped to deal with their problems. Eventually because they could not get treatment he felt that he had no choice but to send his wife and sons to Iran while he stayed in Iraq. A man from the Democrat Party found a job for him but kept him under constant supervision. The job was in a factory where he was also forced to sleep. He was not even allowed to leave the factory to telephone his family.

Some time later he heard that his wife had been taken from her home by the Iranian secret service for questioning about his activities. She was tortured but did not tell the secret service anything and was released but forbidden from leaving the city where she was staying. His children could no longer go to school. His wife and children were constantly being questioned by the intelligence services. Eventually, his wife could no longer stand the harassment and walked with her sons for two and a half days along an extremely dangerous road to reach the Iraqi border.

The applicant was reunited with his family in Iraq and together they re-entered Turkey. It was Newroz (Kurdish New Year) when they crossed the border illegally on foot. Because of this, there was a strong Turkish military presence in the border provinces. One night, in order to avoid the attentions of the Turkish soldiers the family hid in a sewer. Another night they broke into a house and slept there. The applicant was awoken by the owner of the house holding a Kalashnikov rifle to his head. At one point during the journey, they got separated from one of the children in the dark. It was only because his son had a lighter on his person that he was able to find him again. The applicant came back to Van because he felt that it was not safe for him anywhere else.

Following these events, he lodged another application with UNHCR and the Turkish authorities. The family's situation in Van was desperate. He complained that the interview at UNHCR was nonsensical. He felt that the questions that he was asked were not designed to establish his case. He and his wife felt that they were not given an opportunity to tell their story. Instead they were asked for the name of the smuggler who helped them cross the border, which villages they passed through and the brand of the car in which they travelled. He wanted to tell the interviewer about the details of the treatment that he had experienced in Iraq and Iran and that he was an army deserter. He was told by the interviewer to 'be quiet' and to 'hurry up.' His wife could have provided medical evidence of the torture that she had

experienced when she returned to Iran but the interviewer was not interested. In fact his wife was only given ten or fifteen minutes to tell her story.

He says that he lied to UNHCR in this second application and did not tell them that he and his family had entered Turkey from Iraq. He says that he was terrified of being sent back to either Iran or Iraq and was worried that if he said that he had entered from Iraq he would be told to make an application there. He could not stay in Iraq because the Iranian intelligence services are active there and as an army deserter he was worried that if he was discovered by them he would be sent back to Iran and tortured. He realises now that it was a mistake to lie but he did it because he was scared. He wants to tell UNHCR that he lied and explain why he did so.

While he was waiting for UNHCR, to make their decision he was harassed by the police. They were always asking him questions about the Muhajid. In July 2005, he heard that his file had been closed. He received a letter in English with no accompanying translation (he does not speak English: the mission spoke to him through a translator). This letter was very similar to the one referred to by the second applicant above. It was a one page pro-forma letter with no reasons for the refusal included. He was so upset by the decision that he went on hunger strike for 12 days. He now feels hopeless and terrified. He is no longer afraid of death as he 'is already dead' but he does not want his wife and sons to have to go back to Iran. He says that the situation makes him feel very depressed, particularly when he looks at his children. He says that somebody is sending him threats by e-mail and once he received a video clip showing someone being cut up with the accompanying text 'end of the traitor.' He has appealed the final decision of the Ministry of Interior and the appeal is still pending.

The family have very limited finances. The applicant used to work illegally in an iron factory in Van but he had an accident and now he works in an internet café earning 5 YTL per day (at the time of writing this was equivalent to approximately €2.70). They live in a two room house with no furniture for which they pay monthly rent of 50 YTL (€27 approximately). When he had the accident in the iron factory, his hand was crushed and the bones broken by a machine. He went to UNHCR for some medical assistance but they did not believe that he had sustained such an injury. He then went to a private doctor and paid 60 YTL (€32 approximately) to have an x-ray (which he showed to the mission and on which the broken bones were clearly visible) and to have his hand treated. However because he had very little money, the treatment that he received was very basic and he is no longer able to work with that hand. Neither his wife nor sons have been able to find employment. When his son was very ill he did not receive any health care. The only assistance that he received was from İHD (Van). Although his sons go to school their work suffers because the trauma that they have and are still experiencing.

Annex 2

**Ministry of Interior Implementation Directive, B.05.1.EGM.0.13.03.02
(UNOFFICIAL TRANSLATION)¹²⁴**

**Republic of Turkey
MINISTRY OF INTERIOR
General Directorate of Security
Number : B.05.1.EGM.0.13.03.02
71810-12/Gnl.D.6
Subject : Implementation Directive**

Reference:

- a) Decision of the Council of Ministers dated 24 July 2003 and numbered 25178.
- b) 1951 Geneva Convention Relating to the Status of Refugees
- c) 1967 New York Protocol
- d) Regulation numbered 94/6169 published on the Official Gazette dated 30.11.1994 and numbered 22127
- e) Consolidated Service Circular dated 12.06.2002 and numbered 126701

Within the framework of Turkey's full membership process, under the *Priority* numbered 24.1 and titled "*Alignment with the EU Acquis and Capacity Building in the Field of Asylum*" of the National Programme, it was stated that in the 2003 Accession Partnership, harmonization with the EU *acquis* in the area of asylum was listed as a priority and developing accommodation facilities and social support mechanisms primarily for refugees and enhancing administrative and technical capacities in this field were envisaged.

"I. and II. Turkish National Programmes for the Adoption of the EU Acquis" and the "Decision on the Implementation, Co-ordination and Monitoring of the National

124 This is an unofficial translation of the implementation directive, reproduced as received by the mission.

Programme for the Adoption of the Acquis” published in the Official Gazette dated 24 July 2003 No. 25178 and drafted within the framework of the 2000 and 2003 Accession Partnership Documents prepared by the European Union Commission were adopted with the decision of the Council of Ministers.

During the EU accession process, within the framework of our commitments in the field of Justice and Home Affairs section of the EU Acquis; in order to complete the adjustments in the field of asylum the following arrangements were deemed as necessary.

The terms “**application or applicant**” mentioned in this circular includes persons who apply for refuge or asylum in Turkey, coming from both the European countries and the non-European countries.

Within this scope:

1. Recruitment of Personnel and Training Activities

1.1. In the European Council Directives on ‘Minimum Standards for Procedures for Granting and Withdrawing Refugee Status’ of the EU Acquis; attention was drawn to the fact that personnel who have received training and who are specialized in human rights issues and especially in refugee law shall be recruited for the examination of the asylum applications and the interviews of the applicants for asylum.

Because of this reason, during the interviews of the applicants who applied to the Governorates, it is compulsory to assign the officers in the provinces who have attended the ‘Refugee Law and/or Advanced RSD’ workshops held under the scope of the co-operation framework between our Ministry and UNHCR and the EU High Level Working Group (HLWG) Project.

From among the staff who attended the above-mentioned trainings, those who are deemed eligible by the Governorates will be assigned to interview the applicants and decide on their cases.

Furthermore, the officers who participated in those workshops will share the experience and information they gained during the workshops with the other personnel working in the Foreigners units and ensure that the other personnel working in this field are also trained.

1.2. An officer who attended the relevant courses on asylum issues shall be recruited at the Border Gates.

2. Application Authorities

2.1. Aliens who entered into Turkey legally claiming that they were exposed to persecution and oppression due to the reasons stated in the Article 1 of the 1951 Geneva Convention relating to the Status of Refugees shall lodge an application personally to the border gate located at their point of entry or to any Governorate or to the General Directorate of Security - Foreigners/ Passport Branch in that

province.

2.1.1. Aliens who entered into Turkey illegally, shall apply personally to the Governorate of the province where they entered the country or to the Foreigners/ Passport Foreigners Branch of the Provincial Security Directorate.

2.1.2. The Governorates which receive the applications shall refer the applicants to the Foreigners Branch and Passport and Foreigners Branch.

2.1.3. When the above-mentioned Branch receives the application, the language that the applicant understands shall be identified. It shall be asked whether the applicant has any preference as to the sex of the interviewer and interpreter.

2.2 Application at Border Gates

2.2.1. At the border gates, the procedures regarding the application of the applicant could be performed by the officers at the border gates, as well as the staff from the Foreigners/ Passport Foreigners Branch of the province in case there is no trained staff at the border gate.

2.2.2. During the evaluation of the application, the applicant shall be accommodated at the transit lounge. The decision on the application shall be made within 2 days and notified to the applicant in writing.

2.2.3. If the decision-maker concludes that the applicant may meet the necessary criteria to qualify for the refugee status, the application shall be referred to the Foreigners or Foreigners and Passport Branches for detailed examination of the application in Regular Procedure as stated under Article 10.

2.2.4 If the decision-maker concludes that the applicant does not meet the necessary criteria for the status, the applicant shall be notified about the decision in writing. If there is no appeal against the decision, exit of the foreigner from the country shall be ensured.

If there is an appeal against the decision, the documents prepared shall be sent to our Ministry (MOI) the day following the date of notification and actions will be taken based on the instruction to be received. Appeal will suspend the act of deportation.

2.3. All the applications shall be received by the Governorates. Regardless of whether the applicant had arrived in Turkey legally or illegally, and regardless of whether the applicant had lodged the application within the time period, the application petition shall be processed in accordance with the principles included Implementation Directive.

2.4. It will be identified whether the applicants had presented themselves within the shortest reasonable time in accordance with the provisions of the 1951 Convention. Accordingly, the date of entry on the passports of those who entered legally and the identity and the date of illegal entry declared by the persons who entered illegally will be identified.

Having received the applications of persons who have not applied within the legal period, the reasons of delay shall be examined.

2.5. When starting the asylum procedures, the first day which the applicant had entered into Turkey will not be taken into consideration. The next day (*the day after the entry*) will be the first day for the starting of the procedures.

2.6. Under the current practice, in accordance with the reference (e), the Governorates shall convey the full identity information of the applicants to MOI.

This procedure causes an increase in the red tape and the workload and it is a loss of time. Because of this reason, the first announcement forms sent in accordance with the above-mentioned circulars will not be sent henceforth.

However, our Ministry (MOI) shall be informed on the phone about the applications of persons who were high ranking military officers, intelligence officers or politicians in their country, those who were well-known by the public, those who are popular owing to their position or events and those who may cause political problems between our country and another country and the applications of such persons' families (~~deleted~~), then as in the past, MOI will also be immediately informed by using the required format.

2.7. The applicant will be notified of the facts included in the written notice (Annex-1) verbally and in writing in a language that she/he will understand. She will be informed that all the information that she/he will give would be kept confidential, she will be informed of the stages of the evaluation of her/his application and her/his rights during the period of her/his stay in Turkey.

The Municipality, Red Crescent Society, Foundations and Associations which give financial and in-kind assistance such as food, cloth, furniture, fuel for heating, scholarship for education in the provinces shall be identified and from among the applicants those who are allowed to reside shall be informed of the full address and the type of assistance given by such institutions.

Within this framework, in order to allow the country present its resources to those foreigners who are in a difficult situation, the applicants and the foreigners who are granted refugee or asylum seeker status shall be notified about the assistance given via POLNET every month within the framework of the forms shared as ANNEX 2/a and ANNEX 2/b.

2.8. The written notice will be prepared in three copies, one copy will be given to the applicant, the other copy will be kept in her/his file kept by the Governorate and the other copy will be sent to the Ministry of Interior along with the other documents in accordance with Article 12 after the procedure regarding the application is completed.

3. Identification

All the details regarding the ID of the applicant will be gathered taking into consideration the fact that the applicant may apply for residence permit in the future for a different reason or that it could be necessary to return her/him to her/his country of origin upon rejection.

3.1. The person shall be identified based on the information on the passport, ID document, any official document with the name or photograph of the applicant on it and according to the statement of a person, accompanying the applicant, who had proved her/his identity.

3.2. Furthermore, the names, telephone numbers and addresses of the applicant's family members and relatives in the country of origin will be taken.

3.3. All the documents that the applicant has with her/him (ID card, Marriage Certificate, Driving License, Passport etc.) are used to identify the person and the plane and/or bus, train, travel tickets showing the route she/he followed when coming to Turkey and the documents she/he presented during the application which constitute a proof (such as a school diploma, the ID card he used at her/his work in his country of origin, a payroll, a document showing the credit card expenses, an envelope with a mail address and the name of the applicant on it etc.) will be taken.

3.4. To identify whether the applicant had committed a crime in Turkey before or not, the records on restriction and the criminal records will be checked.

4. Taking and Examining the Fingerprints

4.1. After the petition for refuge-asylum is taken, the fingerprints of the applicant are taken and the fingerprint forms shall be examined by the Governorates or the Regional Criminal Laboratories.

4.2. In case it is understood that the applicant had come to Turkey before, using the same name or another name, then the GDS Foreigners, Border and Asylum Department will be informed through the relevant Governorate.

4.3. If it is understood that the ID information and fingerprints taken are different as a result of the analysis conducted; the reasons of the applicant for hiding information or the reasons for entering in the country using a different name, and the information on the genuine identity of the person will be investigated in detail.

5. Preliminary Interview

5.1. Following the identification, a preliminary interview will be conducted and an Application Form (Annex-3), including the questions asked by the officer conducting the interview and the answers received, will be prepared.

During the Preliminary Interview;

5.1.1. The countries that the mentioned person transited through and the routes that he had followed (provinces he passed through, for how long he had stayed there,

which documents he had used, whether he had applied for asylum in those countries, whether he or the persons from his country were exposed to any kind of oppression in the countries he transited through while coming to Turkey will be examined in detail) will be identified,

5.1.2. Passport with which he had entered Turkey and his travel ticket will be identified,

5.1.3. It will be identified where and with whom he had stayed in Turkey since the date of entry in Turkey, whether he knows anyone (*whether he has any acquaintance*) in Turkey, if so the information on the IDs and addresses of these persons.

5.1.4. If the applicant had entered with a false passport/visa or without a passport; the date of entry will be taken into consideration and information will be taken on the route he used while coming to Turkey, how he came to Turkey and the information on the persons who helped him, if any. About this issue the relevant units will be given information.

5.2. The relevant information on the reasons for the asylum application (information on why he had to leave his country and apply for asylum and what will happen to him if he returns to his country) will be filled in, in compliance with the Application Form.

5.3. A declaration on reasons of the asylum application written in handwriting by the applicant will be taken and attached to the Application Form.

5.4. The language which the applicant understands and in which he can express himself shall be identified.

5.5. The applicants who declare that they have close relatives in Turkey will be asked in which province they would like to reside in (except for the metropolitan provinces such as Ankara, Istanbul, Izmir etc).

5.6. During the preliminary interview the applicant shall be asked if he would you prefer a male or a female interviewer and interpreter during the main interview.

5.7. After the preliminary interview, all the information recorded on the Application Form will be read to the applicant explicitly, he will be asked whether he would like to add anything to the information he had given, and whether he understood everything clearly or not. The answers received will certainly be recorded on the Application Form and the Preliminary Interview will be completed.

5.8. After the Preliminary Interview is completed, the "Identity Document" - in the Annex-4 - given to the applicant and his family members, if any, valid within the borders of the province will be reproduced and given to the foreigners free of charge.

5.9. The interview shall be conducted within 30 days at the latest, provided that the applicant is informed about the date and time of the interview beforehand.

The applicant shall be reminded that failure on his/ her side to be present at the time of the interview without any justifications may have an effect on a negative decision on his application.

5.10. The unaccompanied children or children in need of protection will be accommodated in the Child Protection Agency (SHCEK) after the completion of the procedure of his/her application. When deemed necessary, an officer from this institution will accompany the child during the interview.

5.11. Bone age of the applicants who do not possess any ID documents but claim to be minors shall be determined at an equipped hospital if their appearance does not correspond with the claimed age.

5.12. Vulnerable persons will be accommodated in the reception centers upon the instruction of the Ministry. Appointment of a guardian to such children by UNHCR will be demanded by our Ministry.

6. Getting Ready for the Interview

Information on the grounds for the application of the applicant will be gathered and that information will be assessed in a sound manner.

In order to assess the credibility of the grounds for the application, the interviewer will do the following before the interview.

Accordingly, the interviewer will:

6.1. Examine all the information on the application form filled in during the preliminary interview.

6.2. By making a passenger exit-entry inquiry, it will be examined whether the applicant had entered Turkey before or not. In case a record of former entry-exit is found, a print out will be taken. The reason for not having applied at the first entry will be examined.

6.3. Entry-exit part in the applicant's passport will be checked and it will be identified whether she/he had transited through third countries before coming to Turkey. If identified, the reasons for not having applied at those countries will be examined.

6.4. The questions on the current Interview Forms will be taken as a basis and according to the information on the Application Form, the country of origin information will be scrutinized (Country of Origin Information can be found on page <http://egm1ydbmmb01> of the Pol-net) and a draft of possible questions to be asked to the applicant will be prepared.

Not being limited to these questions, the details of the claim will be examined with the new questions raised in line with the course of the interview.

6.5. The preparations mentioned above will be used during the interview to find out whether the grounds mentioned in the claim of the applicant reflect the truth

or not.

6.6. As far as possible, a female applicant will be interviewed by a female interviewer and interpreter and a male applicant will be interviewed by a male interviewer and interpreter.

6.7. The interpreter who will attend the interview shall be a person among the staff. If this is not possible, other public officials or the aliens granted refugee status by our Ministry and pending resettlement to a third country shall be used as interpreters.

Before the interview, the interpreter shall be informed about the interview by the interviewer and the expectations from him/ her shall be explained.

6.8. In case the applicant states that he knows the interpreter, then that interpreter will not be used and another interpreter in accordance with the conditions given in Article 6.7. will attend the interview.

7. Interview Room

7.1. The interview room shall be equipped with technical equipment and other tools.

7.2. Based on the lessons learned in the advanced RSD workshops, efforts will be taken to create the appropriate interview environment.

8. Conducting the Interview

Since each claim has its own specific characteristics, each interview shall be handled separately and the interview shall be conducted in an objective and neutral manner. Accordingly:

1. The file of the applicant shall be ready in the interview room. As soon as the interview begins, the photograph included in the file shall be checked and it shall be identified and verified whether the person interviewed is the person in the photograph.
2. The interview shall be conducted in compliance with the Refugee Law and the Advanced RSD techniques.
3. The interviewer shall introduce himself, the interpreter and the other persons, if there are any. The interviewer shall explain his duty and position.
4. The applicant shall be reminded of the asylum procedure and his rights and obligations again. Besides, it will be asked whether the applicant understands the interpretation of the interpreter and his answer to that question shall be recorded in the minutes of the interview.

5. Unaccompanied children under 18 shall be interviewed in presence of a legal companion (a person shall accompany them during the interview).
6. Applicants above 18, who applied together with the head of household, shall be interviewed separately.
7. For each member of the family who reached the age of discretion (above 18), a separate file shall be opened and their cases shall be assessed separately as an individual case.
8. The applicant may reject the interpreter assigned provided that he explains the reasons why. In case those reasons are deemed reasonable by the interviewer, the interview is ceased.
9. Throughout the interview it shall be kept in mind that this is not an interrogation but an interview and an environment of confidence for the applicant shall be created.

In order to create an environment of confidence;

1. The applicant shall be reminded of the information he had given during the preliminary interview.
2. All kinds of behaviour and conduct that would hinder the applicant to give information shall be avoided. (e.g. behaviour and conduct which suggest that the interviewer and the interpreter are sincere)
3. All information and documents regarding the applicant shall be kept confidential (including the rough drafts kept by the interpreter and the interviewer).
4. During the interview, the interviewer shall always remain patient. (interviewer shall stay away from the personal feelings, these feelings shall not interfere in the interview). Upon the request from the applicant and if deemed appropriate by the interviewer, a break can be given.
5. Communication with the applicant shall be established taking the culture of the country of origin into consideration.

6. It will be observed whether the applicant and the interpreter understand each other well.
7. No opportunity will be given to the interpreter to comment on or add to the speech of the applicant or the interviewer. (*Interpreter's Note: This sentence is misconstrued*)

10. The interviewer shall take the questions in the Interview Form (Annex-5) as a basis, and under the light of the information obtained during the course of the interview and the questions he prepared during the preliminary interview, the interviewer himself will identify the questions to be asked and make up the interview form in a written format.

8.11. The interview will begin with the questions aimed at gathering general information (family background, education, full ID information etc.). Then specific questions will be asked and the applicant will be asked what his problem is and he will be given the opportunity to tell in his own words what had happened (what he had experienced) and to prove that the information he had given is true.

12. Leading questions shall not be asked to the applicant.

13. The interviewer shall pay attention to asking open or close-ended questions when necessary. In other words, the questions which can be answered with the words yes or no shall be avoided.

8.14. All behaviours of the applicant, especially his body language and general behaviours shall be observed. The issues (matters) on which the applicant hesitated shall be noted in the interview report.

8.15. Questions on details shall be asked to assess the credibility of the claim of the applicant.

16. Taking into consideration the fact that the applicant may be suffering from trauma owing to sexual violence; fear from the authorities; not being able to find the appropriate words, to help the applicant feel comfortable and to help him gather his thoughts, questions aimed at helping her/him shall be asked. If it is considered that the person shall not continue the interview due to the trauma, an official report shall be prepared to suspend the interview and refer the applicant to an expert.

17. In the following cases, in addition to the questions in the interview form, detailed questions shall be asked based on the principles

given below;

1. In case it is understood that the applicant had gone to some other countries prior to the interview date; within the framework of the matters mentioned in the Annex-6 detailed questions shall be asked,
 2. In case it is understood that the applicant had come to Turkey in transit through a third country and/or countries prior to the interview date; within the framework of the matters mentioned in the Annex-7 detailed questions shall be asked,
 3. In case it is understood that the applicant entered-exited from the country recurrently prior to the interview date and had applied for asylum following his recent entry into the country; within the framework of the matters mentioned in the Annex-8 detailed questions shall be asked,
18. After all the questions are asked, the applicant shall be informed of the information received from him in summary, he shall be asked whether he would like to add anything. The changes asked by the applicant shall be made and the interview will be completed.
 19. All the questions asked and answers received shall be recorded on the interview form.
 20. According to the information received, the interview form shall be arranged by the interviewer and the interview notes shall be read to the applicant by the help of the interpreter on the same day. If the applicant raises an objection to the notes or wants to add anything, the changes to the text shall be made and the notes shall be undersigned by the interviewer, interpreter and the applicant.
 21. The applicant's statement that, he understood the whole interview completely shall be written down by the interviewer at the end of the application form and undersigned by the applicant, interviewer and the interpreter.

9. Preparing the Interview Report

9.1. A detailed report on the interview shall be prepared by the interviewer as a form separate from the interview form.

9.2. The story told by the applicant during the interview shall be assessed by the interviewer with a statement of reasons taking into consideration the information given by the applicant, country of origin information and the credibility of the applicant.

The interviewer shall mention in his/her report that the applicant had understood the interpretation during the interview

9.3. The interviewer shall include his opinion in the report and write a conclusion. The conclusion, based on the country of origin information, shall include the opinion of the interviewer about the authenticity and credibility of the statements.

9.4. After the report is completed, the report and the interview forms shall be submitted to the head of unit. If the head of unit deems appropriate, she/he will approve the report. Otherwise, she/he shall mention the missing parts of the report and return it to the interviewer for him to complete the missing parts. All of those actions shall be mentioned in the new report.

10. Cases where Residence Permit can be Granted Ex-Officio (Regular Procedure)

10.1. The applications of the persons who are not under the scope of the Article 11 of the Implementation Directive shall be considered under the regular procedure.

For those coming from the European countries as having “foreigner whose claim for refuge is under review” status, and

For those coming from the non-European countries as having “foreigner whose claim for asylum is under review” status will be granted a six (6)-month-residence permit granted ex-officio shall be given and residence permit shall be issued.

2.2. When an ex-officio residence permit is issued;

The applicants who come legally to our country and who present themselves within the shortest reasonable time shall be given residence permit beginning from the expiry date of their visa or visa exemption, and

the applicants who come illegally and directly to our country and who present themselves within the shortest reasonable time shall be given residence permit starting from the date of their illegal entry in the country.

Their “Identification Documents” issued previously will be seized and cancelled and these documents shall be kept in their files.

10.3. When extending the residence permit of those who are granted ex-officio residence permit, if no instruction on the contrary is received from our Ministry, the permit shall be extended ex-officio every 6 (six) months for a period of three years, beginning from the expiry date of the first 6-month residence permit.

10.4. Each time the residence permits of the applicants, mentioned in Article 10.1.2. [foreigner whose claim for refuge is under review who are granted residence permit ex-officio and whose residence permits are extended periodically] are extended, MFA and MOI shall be informed.

10.5. Each time the residence permits of the applicants mentioned in Article 10.1.1. [having the status of foreigner whose asylum claim is under review who are granted residence permit ex-officio and whose residence permits are extended periodically] are extended, MFA, MOI and UNHCR shall be informed.

Updated contact numbers of MFA, MOI and UNHCR can be found on page <http://egm1ydbmmb01> of Pol-net.

10.6. Whenever this information is received, MFA and UNHCR shall inform MOI on the most recent situation (stage) of the file without waiting for another correspondence from MOI.

10.7. When the residence permit is extended for another 6 months for the last time, the information on the date of asylum application, for how long he has been staying in the province shall be notified and the written opinion of MOI on whether the residence permit will continue to be extended or not shall be asked. Action will be taken according to the instruction that will be received from MOI. When a written opinion is asked, UNHCR shall also be informed.

11. Cases where Residence Permit cannot be Granted Ex-Officio (Scope of Accelerated Procedure)

As known according to Article 6 of the regulation mentioned in reference (d), decision on the claims of foreigners who individually claim refuge or asylum in Turkey is made by MOI. However, during the EU harmonization process, in order to prevent the abuse of international protection and to identify those who are really in need of international protection and to distinguish them from the illegal migrants; the First Instance Decision shall be made by the Governorates and the procedure shall be accelerated.

Accordingly;

11.1. The following cases shall be evaluated under the scope of the cases to be handled under the accelerated procedures:

The following persons will not be granted Ex-officio Residence Permit;

11.1.1. Those who were residing in Turkey legally but who lodged an application although they should have left the country since the reason for their residence had ceased to exist (those whose work permit had expired, those who completed their education, those whose visa exemption period had expired etc.),

11.1.2. Those who lodged an application after the deportation decision is taken for

committing a crime during legal residence period,

11.1.3. Those who have not lodged an application within the shortest reasonable time after entering into Turkey (this period will be accepted as 10 working days, the first day of entry and official holidays are not be included in that period) without a convincing justification,

11.1.4. Those who have not applied within the shortest reasonable time after entering into Turkey illegally, but applied after being caught by the security forces,

11.1.5. Those who have applied after being caught while trying to leave Turkey illegally,

11.1.6. Those who have applied after being released from prison or when being kept in prison owing to a crime she/he committed,

11.1.7. Those whose identities cannot be determined,

11.1.8. Those who apply again without presenting new elements, following the negative decision on the application lodged before in Turkey,

11.1.9. Those who apply again, who have been deported due to committing crime or engagement in illegal migration in Turkey.

11.1.10. Those who have not applied although having entered to and departed from Turkey for several times before.

11.1.11. Those who have been identified to report contradictory and misleading information on identity, travel route and country of origin.

11.1.12. Those who do not cooperate with officials on eliciting the reasons of application.

11.1.13. Those who went to the safe third countries, returned to their country of origin then came to Turkey and lodged an application.

11.1.14 Those who did not come directly to Turkey, but via the safe third countries, after leaving their country of origin and who lodged an application in Turkey.

11.2. The procedure regarding the applicants under the accelerated procedure shall be carried out within the framework of the provisions given in the directive hereby. They shall not be issued "Identity Documents" in accordance with the Article 5.8. Until the completion of the procedure they shall be accommodated in the guesthouse. If there is no vacant place in the guesthouse, they shall be issued 'Identity Documents' and accommodated in an appropriate place and they shall be monitored (under control).

However, those mentioned under 11.1.2, 11.1.4, 11.1.5 and 11.1.6 shall be accommodated in the guesthouse unless a contrary instruction is issued by the Ministry.

11.3. The actions regarding the accelerated procedure will be completed within 5 working days by the Governorates.

11.3.1. The applicant shall be notified of the decision (result of the assessment) in written form.

11.3.2. As a result of the assessment if it is understood that the applicants under the Accelerated Procedure may fulfill the refugee criteria mentioned in 1951 Geneva Convention; the application of the foreigner shall be included in the Regular Procedure, mentioned in Article 10, and examined in accordance to it. The applicant shall be granted ex-officio residence permit.

11.3.3. As a result of the assessment, if it is understood that the applicants under the Accelerated Procedure do not fulfill the refugee criteria mentioned in 1951 Geneva Convention (NEGATIVE);

1. If there is no appeal against the negative decision, the foreigner will be deported.
2. If there is an appeal against the negative decision, the foreigner will not be deported and the documents prepared shall be conveyed to our Ministry one day after the date of notification and actions will be taken according to the instruction to be received.

During this period, the applicant shall be issued 'Identity Document' and the applicant's contacts and situation shall be monitored at an address deemed appropriate.

11.4. After the evaluation of our Ministry, if it is found proper to give residence permit to the applicant under the accelerated procedure, an instruction will be sent to the relevant Governorate. Residence permits will be issued by the Governorates according to Article 10 to those whose are deemed eligible to reside in Turkey by the Ministry of Interior.

Applicants whose appeals are not deemed appropriate, will be notified the rejection decision and they shall be informed that they might appeal to the Administrative Courts. If no decision on the contrary is taken, such foreigners shall be deported from Turkey.

12. Sending and Evaluation of Documents belonging to the Applicant

12.1. The documents in the file of the applicant who is given ex-officio residence permit (the application form, interview records and report, declaration, notification letters etc.) shall be prepared in 2 copies. One copy should be sent to Ministry of Interior within 45 days following the application and the other copy should be kept in the file.

12.2. Synchronously, the asylum applications of those who are permitted to reside under the foreigner whose asylum claim is under review status (non-European asylum seekers from Iran, Iraq, Syria, Afghanistan, Pakistan, Somalia, Ethiopia, Tunisia, Sudan, China, Algeria etc.) will be declared to UNHCR.

12.3. No declaration will be provided by the Governorates to UNHCR about the applicants coming from the European countries.

13. Requests of the Applicants for Transfer to Another Province and their Distribution

13.1. The decision on transfer to provinces shall be assessed by MOI taking into consideration the statistics on the asylum-seeker population density in the satellite cities and the request of the applicant during the pre-interview on where he would like to be accommodated in. The relevant Governorates shall be notified of the outcome of that assessment.

13.2. The governorates which receive the notification shall send a written notification to those who are deemed eligible for transfer by MOI. In the notification it shall be stated that the person shall apply to the Foreigners Branch or Passport and Foreigners Branch in the province within 15 days where he is transferred to and that his file would be closed and he would be deported from Turkey in case he does not approach those branches. One copy of the notification will be given to the applicant, one copy to MOI and the other copy will be sent to the province where he is transferred to and the transfer procedure will be completed.

13.3. Following the completion of the transfer procedure, the Governorates which carry out the transfer procedure and where the applicants are accommodated shall inform MOI and UNHCR.

13.4. In case the applicant does not approach the Governorate of the province where she/he is transferred to, if she/he escapes or in case she/he could not be transferred for another reason; MOI and UNHCR shall be informed immediately.

13.5. In case an applicant who is transferred to a province wishes transfer to another province claiming that he has relatives in that province, the Governorate of the province where he resides shall ask the Governorate of the province where he would like to be transferred to make an ex-officio investigation on the credibility and accuracy of the claim (whether or not he has relatives in that province). A copy of the request for investigation shall be sent to MOI.

13.6. As a result of the ex-officio investigation, in case it is understood that the relatives are immediate family members (mother, father, spouse, child); within the framework of family reunification principle ex-officio transfer shall be made and MOI shall be given information.

13.7. As a result of the ex-officio investigation, in case it is understood that the relatives are not immediate family members, the Governorate which requested the

ex-officio investigation shall inform MOI of the case along with its opinion and shall take action in accordance with the instruction to be received.

13.8. For applicants who request transfer to another province for treatment purposes since they cannot undergo treatment in the province they reside;

A report, from a full equipped State Hospital, certifying that the applicant could not be treated in the province he resides, shall be taken.

That report shall be examined by the Provincial Directorate for Health and it shall be determined in which provinces the applicant could undergo treatment. The Governorate shall also make an assessment. Except for the metropolitan provinces, the governorate of the province where the applicant resides in shall ensure the ex-officio transfer of the applicant to one of the identified provinces and MOI shall be informed of the case.

14. Applicants who Renounce Their Application

14.1. In case an applicant under the accelerated procedure renounces his claim for asylum after he is rejected, he shall be accompanied to the border gate where he will be deported from.

Information shall be given to MOI about the persons who are deported from Turkey that are accompanied to the border gate. A copy of the petition where he stated that he would like to renounce his claim and a copy of the printout of the document stating that his exit from the country is ensured shall also be sent to MOI.

14.2. In case those who are under regular procedure renounce their claim at a stage prior to the appeal stage, their passport and ID cards in their file, if any, shall be returned and they shall be given 15-day ex-officio residence permit and notified that they shall leave the country on their own.

By the end of that period (15 days) it shall be checked from the passenger entry-exit program whether the applicant had exited from the country or not. As a result of the inquiry if it is understood that the person did not exit, data will be entered in the restriction program (with V 72 code) for the continuation of the investigation until he is apprehended and his exit from the country, in the accompaniment of an officer, is ensured.

In case it is understood that the applicant had left the country, a copy of his petition where he mentioned that he would like to renounce his application voluntarily and a printout of the passenger entry-exit program shall be sent to MOI.

15. Granting of Ex-officio Permit by the Governorates

15.1. If the applicants given residence permit asks for permission to travel to other cities for reasons of health, visiting relatives, bank operations, UNHCR interviews etc.; the request will be evaluated by the Governorates and they would be given ex-officio permit up to 15 days upon issue of a travel document.

If the request exceeds fifteen (15) days, then the reasons for the request, the opinion of the Governorate and the opinion of the Ministry of Interior will be asked and actions will be taken according to the instruction received.

Those foreigners who do not return to the provinces they have resided will be searched after V 71 code is entered in the restriction program.

16. Applicants who Leave the Residence Province Without Permission (Whereabouts Unknown)

16.1. In the present procedure, the telex of the foreigners who have disappeared while the procedure was under way is sent to the Governorates. This increases the bureaucracy.

From now on, instead of sending telex to the Governorates regarding the foreigners who have disappeared while the procedure was under way; V 71 code shall be entered in the restriction program and our Ministry shall be informed.

Forms at ANNEX 2/C shall be filled and sent to our Ministry via POLNET every month.

16.2. In case the mentioned persons return to their residence province on their own or in case they are captured in another province and returned to their province of residence, then the mentioned person shall be interviewed on what she/he had done when she/he was an escapee. A legal procedure will be initiated against these persons in accordance with the Articles 17 and 25 of the Law on Residence and Travel of Foreigners (Law 5683).

The interview notes and the result of the legal procedure shall be sent to our Ministry in three (3) days.

16.2. In case the foreigner does not return to the province of residence by being captured or by herself/himself within 10 days, data for restriction with Code V-68 will be entered.

17. Healthcare of Applicants

In case the foreigners who are allowed to reside with refugee or asylum-seeker status by the Ministry of Interior apply to the Provincial or Sub-provincial Security Directorates of the places where they reside together with their residence permit; the information on the residence permits (birth registry information and residence address) issued by the Governorates shall be checked; and

17.1. Provincial or Sub-provincial Security Directorates (of the places where the refugees or the asylum-seekers are residing) should write an official correspondence to the Directorate of Health or to the Directorate of Health Group Services (Sa*lk Grup Ba*kanl***) of that place regarding the refugees or asylum-seekers who get sick.

17.2. The patient who goes to the Directorate of Health or to the Directorate of Health Group Services with the official correspondence should be referred to a primary public health institution and their treatment should begin.

17.3. In case they apply with an official writing, residence card (residence permit), prescription and health board report (for long-term treatment), the drugs and the medical supplies that are prescribed following the outpatient treatment will be evaluated by the board of trustees of the local Social Solidarity Foundations. *(Translator's Note: this sentence is ambiguous)*

17.4. The in-patient treatment should be definitely performed after the application in accordance with the referral chain (Sub-provincial State Hospital, Provincial State Hospital, University Hospital depending on the medical obligation) and the payment should be covered by the Advance System which is transferred to the Ministry of Health by the Social Assistance and Solidarity Fund upon the demand of the State Hospital that conducted the treatment or that referred the patient to the University Hospital.

17.5. Similar to the procedure applied to the patients who cannot enjoy social security benefits in a University Hospital, the referral from a State Hospital to a University Hospital, in the cases of a necessity, should be made upon the written decision of the specialized physician conducting the treatment or the approval of the Office of the Head Physician. The State Hospital which referred the patient to the University hospital shall check the relevant documents, enter the treatment costs on the "information sheet" and ask the Ministry of Health to pay the University (from the Advance System). *(Translator's Note: This paragraph is ambiguous)*

17.6. The problems arising out of the implementation of those provisions (relating to health), shall be solved in coordination with the Directorate of Health or the Directorate of Health Group Services.

17.7. Information on the costs of the asylum-seekers and refugees undergoing treatments shall be filled in the ANNEX 2/ A forms and sent to the MOI via POLNET.

17.8. Only the foreigners who are accommodated in Yozgat Refugee Guesthouse with status of "foreigner whose asylum claim is under review" or "foreigner whose refuge claim is under review" can enjoy the above-mentioned provisions.

Those foreigners staying at Yozgat Guesthouse shall be notified that their treatment will be covered only for the period of their accommodation at the guesthouse and not when they are escapees.

18. Granting of the Work Permit to the Applicants

According to Article 17 of the 1951 Geneva Convention Relating to the Status of Refugees adopted in 1961 with the Law numbered 359;

1. “The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labor market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three year residence in the country,

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse,

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labor recruitment or under immigration schemes.”

Within this scope, the foreigners who are granted refugee or asylum-seeker status in accordance with the 1951 Convention Relating to the Status of Refugees and the Asylum Regulation numbered 6169 after being assessed by the Ministry of Interior, will be allowed to work in Turkey exempt from the work permit mentioned in the Law No. 4817 on Law On The Work Permit For Foreigners provided that they do not work in professions in which the foreigners won't be entitled to work.

The applicants are notified by MOI that they are granted Refugee or Asylum-seeker status. In order to eliminate the problems that they may encounter while working and to fulfill our international obligations, a stamp reading “REFUGEE” or “ASYLUM SEEKER” shall be marked on the Residence Permit as well as a statement reading “This permit grants the right to work in the borders of ...Governorate as long as it is valid”.

19. Education of the Children of the Applicants

Children of the foreigners who reside in Turkey with “asylum-seeker whose asylum claim is under review” or “refugee whose refuge claim is under review” shall enroll to schools without requirement of education visa.

In order to prevent an unjust treatment against the children of the foreigners - who did not obtain a residence permit since they had just applied for asylum-refuge - a six-month ex-officio residence permit shall be issued for the families who will be assessed under Regular Procedure.

The fact that the children of the applicants are continuing their education and attending trainings does not prevent the execution of a deportation order.

20. Role of UNHCR

20.1. According to Article 35 of the Geneva Convention UNHCR can inform MOI about its opinion on the individual asylum claims.

20.2. MOI can co-operate with UNHCR both as regards to the individual applications and to strengthen the asylum procedure.

20.3 It shall be ensured that the applicants who are accommodated at the Guesthouses under the Accelerated Procedure (mentioned under Article 11) would meet with UNHCR officials upon the request from UNHCR and approval from our Ministry.

20.3. UNHCR shall notify its opinion within 5 (five) working days about the illegal migrants who did not lodge an application in Turkey, who are apprehended while trying to leave Turkey illegally, and who lodge an asylum application to UNHCR .

20.4. In Mass Population Movements, regardless of where the foreigners are coming from, UNHCR shall be notified

21. Monitoring Process

The officials of the Ministry who deal with the process of inclusion into asylum and refuge procedure shall monitor whether the implementation is performed or not as far as possible.

Regarding the provisions stipulated in this Directive, Governorates where asylum-seekers and refugees reside, shall start their preparations and initiate the implementation as of 1 April 2005. I request that the provisions stipulated in this Implementation Directive be notified to all staff, followed by the chiefs, necessary actions be taken by Governorates to prevent any problems that may occur,

I kindly ask all the Institutions and Organizations included in the distribution part be informed.

Abdulkadir AKSU
Minister of Interior

ISBN 190559206X



9 781905 592067