



## **Report on the asylum and migration part peer-based mission to Turkey, December 2010**

This review contains findings from the EU-Turkey peer-based mission, which took place in Turkey from 6 – 10 December 2010, with the aim to observe the development and progress of the steps taken by Turkey in the direction of the establishment of a Turkish asylum and migration system aligned with the relevant parts of the EU-acquis. The report describes the observation of the situation at the ground more than being a legal analysis and leads to a number of recommendations in Turkey's further alignment to the relevant parts of the EU-acquis.

The mission teams were made up of 5 practitioners from different EU-member states accompanied by representatives from Turkish authorities and EU Commission staff from Ankara and Brussels. The three mission teams in border protection and the two teams in asylum and migration visited each a number of locations around Turkey to learn how relevant border-, asylum- and migration issues were dealt with at these places. The mission was an opportunity to share experiences between practitioners in the field of asylum and migration.

The focus of the team I was a part of was especially how legal and administrative changes are being implemented and interpreted in a structured and uniform way in the different places. Furthermore the aim was to learn about the level of the facilities - and the involved

staffs routines for handling issues like, detention, management and interception of irregular migrants, asylum seekers and refugees at well as at the border as inside the country. Other important topics for the visit was to identify how the work and cooperation of the different authorities, agencies and NGO's involved in the field from the first contact to the final integration, resettlement or readmission was dealt with. Finally topics like human resource, IT-systems international cooperation, etc were touched upon.

During the mission I met professional and enthusiastic Turkish officials, EC staff, a range of Turkish NGOs as well as representatives from International Organization for Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR), who were all open and frank to discuss the Turkish asylum- and migration system as well as immediately providing me with all relevant and necessary information. The observations, findings and recommendations do not necessarily reflect those of the European Commission or the Danish Government.

### **Legal Framework concerning asylum, migration and Visa**

Granting and withdrawing refugee status, the residence of refugees and other provisions on asylum are regulated in:

- Convention on the Status of Refugees (Geneva Convention) of 1951
- Additional Protocol to the Geneva Convention of 1967
- Law No. 2510 on Settlement
- Law No: 5683 on Residence and Travel of Aliens in Turkey
- Passport Law No: 5682
- Law No: 4817 on Work Permits of Aliens
- Asylum Regulation No: 6169 of 1994 amended by Council of Ministers' Decision No: 9908 in 2006 (Regulation on the Procedures and Principles related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum Either From Turkey or Requesting Residence Permits in order to Seek Asylum from Another Country)
- Circular on residence permits fees for asylum seekers (Ikamet) March 2010
- Circular on data protection, social and general health insurance, access to premises by UNHCR.
- Draft law on asylum as announced March 2010 (expected in Parliament early 2011)

There are a number of separate pieces of current legislation that underpin ongoing work in the crosscutting area of migration. In addition to specific legislation there are also directives, regulations and some local guidance (instructions) available that deal with those seeking asylum; those found to be illegally in the country and those in Turkey legally and with the necessary permission, but wishing to extend their stay for legitimate purposes.

Granting and withdrawing of residence permits for migrants and other provisions on residence are regulated in:

- Turkish Citizenship Act No 403
- Law No 2922 on Foreign Students Studying in Turkey
- Labor Law No 1475
- Law No 4422 on Combat Against Interest-Oriented Criminal Organizations
- Turkish Penal Code
- Criminal Procedure Law
- Law on work permit for asylum seekers amended January 2010
- Draft Law on illegal migration as announced March 2010 (expected in Parliament early 2011)

### **The Turkish geographical limitation on provisions of the Geneva Convention**

Turkey has a geographical limitation on provisions of the Geneva Convention therefore the Convention only applies to those would be refugees who arrive into the Turkish territory from the “European countries”.

According to the current practice, following countries are considered to be “European”: Estonia, Latvia, Lithuania, Moldova, Belorussia, Ukraine, Russian Federation (including the Asian part), Georgia, Armenia and Azerbaijan. Other countries located farther West on the European continent are also considered as European countries.

Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan are regarded as “non-European.”

Those applicants coming from non-European countries are qualified as asylum-seekers (called Third Country Nationals (3CN)). Responsibilities such as international protection as well as other types of protection, non refoulement principle and other liabilities towards refugees in terms of social assistance, education, employment etc. are assumed and extended by Turkey to asylum-seekers as well.

Due to the geographic limitation, however, asylum-seekers qualified as refugees are in many cases resettled into third countries by UNHCR in collaboration with the International Organization for Migration (IOM).

### **National Action Plan on Asylum and Migration**

On 25 March 2005 the Prime Minister signed and brought into force the “National Action Plan on Asylum and Migration”. An Implementation Directive was introduced 22 June 2006.

The main points in the Directive:

- Fulfil the commitments undertaken in the National Action Plan

- Bring Turkey's practices in line with the EU acquis
- Reinforce the legal ground of the current and newly introduced practices
- Lay the ground work for the prospective Asylum Law

The Action Plan includes establishment of a separate Asylum and Migration authority. It foresees the lifting of "the geographic limitation", in conjunction with the realization of necessary legislative amendments and infrastructural improvements, such as:

- Legal arrangements to be transposed into Turkish legislation,
- Administrative capacity building in order to achieve the administrative restructuring and improvement of physical infrastructure,
- Investment projects required for implementing the acquis.

Since June 2006 changes were made in various Ministry of Interior (MoI) instructions, implementing directives as well as in administrative practice in order to ensure alignment with the EU-acquis. In 2009 and 2010 things have taken speed. EU-readmission agreement has been concluded for countries in the region, as Pakistan, Azerbaijan, Bangladesh, etc.

At the same time Turkey in an open dialogue with relevant counter parts, such as UNHCR, IOM and NGOs has drafted: Law on Foreigners and International Protection. The draft has recently been submitted from the Minister of Interior to the Prime Minister

It should be stressed, that during the last years a new openness and very cooperate approach at all levels in the Authorities' handling the Immigration issues has improved the cooperation in the area. Inclusion of partners and a clear eye for handling of humanitarian questions have improved the immigration system in Turkey.

## **Statistics**

### **Asylum seekers**

The overall number of persons applying for asylum or asylum seeker status in Turkey from 2005 to 2010 was 62.760, of those were 33.441 persons recognised as refugees and 15.408 persons were resettled.

During the most recent years the number of asylum seekers has climbed from 6743 persons applying in 2009 to a total of 8190 persons applying in 2010. The top four nationalities are:

Iraq	3008 persons
Iran	2604 persons
Afghanistan	1456 persons
Somalia	341 persons
Others	781 persons from 46 different countries

For 2011 UNHCR expects that 8000 persons from 40 countries will apply for asylum with UNHCR in Turkey.

According to MoI as of 31. December 2010, 23.064 applications for asylum are currently under process. While the number of applications for asylum was 2.024 in 2008, this figure was 6.428 in 2009 and 5008 in 2010.

In 2010 5008 persons were resettled to USA, Canada, and Australia in general. The persons resettled during the years were 7767 Iraqis, 6979 Iranians, 4844 Afghans, 1548 Somalis and 1926 others.

### **Irregular/Illegal migrants**

The number of irregular migrants has fluctuated during the years. In 1995 the number of irregular migrants apprehended was 11.362, this number stood at 65.737 in 2008, 34.345 in 2009, and 32.667 in 2010. The persons apprehended were 5958 Palestinians, 4531 Burmese, 2725 Afghans, 2383 Somalis and others containing Iraqis, Russians, Iranians and Afghans. A number of observers pointed to the fact, that these irregular migrants are heading towards the EU countries. Several stakeholders found that cooperation on building an efficient Assisted Voluntary Return program would be of benefit for all involved partners. To have a strong effect the program ought also to contain a involuntary component for the few not accepting to return as a part of the AVR.

In the fight against illegal migration 4943 migrant smugglers have been apprehended in the last five years.

### **Migration and Visa**

The number of foreigners entering or exiting Turkey has increased significantly as the number of foreigners entering Turkey in 1995 was 6.762.956, this number increased to 37.956.840 in the year 2010. While 84.727 residence permits were issued in 1995, this number rose to 179.944 in 2010.

The issue of regular migration was only touched upon very briefly. As seen in the numbers there is a very high number of regular migrants in Turkey and that the number has risen.

There are several categories of regular migration, as temporary resident to Turkey – those married to Turkish nationals; those seeking employment and those studying; or those who want a longer stay and are able to support themselves. Employing illegal migrants is an offence. According to Turkish legislation it is necessary for a person to hold both the residence card and a work permit where applicable. I consider this to be a practical example of inter department co-operation and information sharing and exchange. It was clear from our very short time at the Department that this is a multi agency exercise that worked well. The vast majority of information exchange is carried out by routine correspondence, phone calls; emails etc – which is the usual standard for such exchanges. POLNET is used where

appropriate to verify information. Any negative (refused) decisions are given to the applicant personally. There is an appeal to the regional governor.

Irregular migrants are being apprehended all over Turkey and of course often close to the border areas. The rule is that irregular migrants should be handed over to the foreigner's police, but when the migrants are being apprehended it could be by the border authorities, the Customs, the Jandarma, local police and foreigner's police. According to an agreement with Iran concerning illegal border crossing the person should be presented before a judge and expelled. This agreement is not fully in accordance with newer legal regulations. The situation for illegal migrants (and maybe others in the field of asylum and migration) deriving from a high number of authorities and NGO's involved leads to insecurity concerning competences. This should be examined in details.

With regard to visas, effort has been made to approximate, as much as possible, relevant provisions of the draft Law with the EU Visa code dated 05. April 2010, thereby leading to a visa policy that is in harmony with that of the EU.

To a certain extent Turkey is aligning towards the EU negative/positive list, but for the moment Turkey still has visa exemptions towards a few neighboring countries on the EU negative list. Citizens from some of these countries arrive in Turkey in high numbers and persons from those countries are at the same time seeking asylum in the rest of Europe in significant numbers. Citizens of neighboring countries are within the top 5 to 20 of the asylum seeker population in the EU. Also the border visa system allowing citizens from a number of countries to have visas issued upon arrival in Turkey without an efficient screening is still in place.

According to the 2005 Turkish National Action Plan on Asylum and Migration (NAP) and the Twinning on Visa policy and Practice Turkey should align to the EU visa acquis by 2012.

### **General information on the local Foreigners Departments**

In the National Action Plan Turkey has made a commitment to bring its asylum law in line with EU standards. Accordingly a domestic asylum procedure including procedural safeguards will be developed, replacing the current challenging mix of UNHCR and domestic procedures. The responsibility for the domestic system is being developed in the MoI through its Foreigners Department (FD), Borders and Asylum.

During the review I had the opportunity to visit four different regional branches of MoI, Foreigners Departments, in Ankara, Tatvan, Van and Gürbulak all located as a part of the regional Police HQ. One expectation while visiting the branches was to learn about the standard and the coping with the different challenges while processing the asylum claims in various conditions. Thereby learn about the stage of uniformity of the administrative practices to get an idea of the overall quality of the work in the branches.

It has to be mentioned that a range of partners in the field of asylum and migration all

appreciated the positive developments that have taken place within the foreigners department into an authority with concern for the rights of the applicants and a true commitment in the work.

Concerning the meeting with the FD the focus was on the removal centres, applicant's access to Lawyers and UNHCR in the asylum procedure, (exemption of) the burden full fee for foreigners stay in Turkey (Ikamet), housing, access to health care, -schools, -education, -work, etc.

The establishment of an efficient, fast, and modern migration and asylum system, institutional structure and legislation operating in international and EU standards is considered a necessity for Turkey which has lead to the creation of The Asylum and Migration Bureau established under the Ministry of Interior. In order to meet the above-mentioned needs, the Bureau has prepared the Draft Law on Foreigners and International Protection.

### **Ankara Migrant Removal Centre**

The centre is situated in a police headquarter in Ankara, where regular migrants are having their stay admitted and prolonged as well as apprehended illegal migrants are detained.

The removal centre has two detention facility rooms divided in a separate women and men's facility and the rooms were divided in an area with 40 beds and another area with sofas dining table and chairs for the detainees. Both rooms had separate showers, a kitchen and a shared phone. The two sections were quite populated and there were no windows to daylight. The detainees had no access to fresh air, but the staff informed that the detainees occasionally were taken outside for some fresh air.

In the area outside the two detentions facilities were offices for the detention staff and a separate room for meeting with lawyers, etc.

According to the staff the intention with the centre is to detain persons recently apprehended who have no legal stay while an investigation of identity and nationality takes place, normally only for a couple of days to arrange the return to the country of origin. A very common reason for a prolonged stay up to 30 days or even more is a sometime very slow cooperation from a number of embassies in the region issuing the necessary documents.

### **Tatvan removal centre**

The removal centre in Tatvan is a 5 – 6 store building serving as domicile of the Tatvan Foreign Department. The building was surrounded of a wall and secured with barbed wire. Until recently the compound worked as a military barrack but was under reconstruction into a multipurpose headquarters for TFD. In the building were facilities like offices for interviews, meetings, detention, etc.

Foreigners apprehended for being undocumented or for seeking asylum were kept in a number of detention rooms, each of estimated 35 sqm, containing 16 – 20 persons. Each room had its own toilet and shower with hot water.

Among the detainees was one boy claiming to be 15 years old. The staff informed that they were investigating the case and expecting that the boy would have to stay in the removal centre for a few days. However it should be noticed that according to Standard Minimum Rules for Treatment of Prisoners: "...men and women should be allowed an hour of fresh air as well as minor prisoners should be kept separate from adults...".

The detention facilities seemed under development and should be improved to reach international standards as it seemed that the detained had no immediate access to fresh air or exercise and were according to the staff taken outside if the officers had time.

### **Van removal centre**

The centre in Van was as other centers a FD headquarters. Two rooms were dedicated for detaining illegal migrants. For the moment there were no detainees.

### **Identification, processing and return**

Asylum seekers and unaccompanied minors are occasionally mixed with illegal migrants until they are identified and admitted into normal procedure and moved to housing outside. The officers estimated that asylum seekers only stay in the detention for a couple of days while illegal's stay for 2 – 3 weeks, while the officers obtain documents and permission to return to their country of Origin. They found the cooperation with certain embassies difficult and extremely time consuming

### **Asylum procedures**

#### **Registration**

Before asylum seekers are registered by FD in Ankara, Tatvan and Van, UNHCR Van and UNHCR Ankara registers them. Should they not have been registered by UNHCR, they are issued a travel permit to travel to Ankara and FD provides money for travel expenses, should they not themselves have sufficient means for it. The funds for this purpose are allocated from the MoI HQ.

Some applicants are sent to other regions. Even if they have entered or applied for asylum somewhere else in Turkey, MoI distributes some of the applicants to those Foreign Departments, which have less workload or which are more efficient and therefore have the capacity to process more cases.

Since UNHCR has an office in Van, applicants do not have to go to Ankara for the UNHCR registration. As a consequence of this, asylum seekers are first registered either by **Van FD**, or UNHCR or vice versa. Any paper or documents that asylum seekers present are filed. Same case/file number system as in the other Foreign Departments is used.

## **Interview by the Foreigners Department**

Asylum seekers are given a schedule for the first interview, which in average takes place within 2 – 3 weeks. The asylum seeker receives an ID (with photo and bio data) within a week after the registration as a temporary “permit to stay”. This permit allows the asylum seeker to move within the boundaries of the specific municipality.

One trained officer from FD is conducting the interview. As a policy the officer is always wearing plain clothes when interviewing. The interviews take place in a separate room in the police headquarters.

The officer tells the interpreter to make sure that the applicant understands the translator. Before the interview begins, female applicants are asked if they prefer a male or female interviewer, and then the officer explains the applicant the entire procedure, rights (e.g. school for the children) and obligations. The interview is conducted with one person at a time. The applicant is given a leaflet, which contains a wide range of information on the procedure, practical information and social services.

The applicant is requested to tell the truth and is informed that the interview is confidential and also the officer asks if they feel comfortable with the interpreter. The interview normally follows more or less the order of the standard outline of questions, which during the years has been developed among the partners. The interviewer pose questions on bio-data, whether the applicant has been in Turkey before, been in other countries, religious background, has any supporting documents, where family members are, the motive for applying for asylum, reasons for applying for asylum, persecutions, political affiliation, etc?

Interpretation is done with freelance interpreters covering English, Arab and Farsi. Should the applicant speak any other language, interpreters are requested from Ankara via Mol.

During the interview, the officer writes the information directly on the computer. The interview lasts 2-3 hours on average.

After the interview is finalized the officer reads the text from the screen and corrects it if there are mistakes in the text. When the applicant has agreed to the content, all present during the interview (officer, interpreter, applicant and any other person) signs each page of the printout of the interview. The applicant is encouraged to provide a written statement on his motives for his asylum claim before conducting the second interview.

After the first interview, applicants are informed that they will be scheduled for a second interview and that the applicants can expect to have information of the date within three days. An official deadline of 45 days between the two interviews is normally kept, but there have been situations with a backlog of cases, where the deadline could not be met.

The same officer usually conducts the second interview. The same types of questions are asked as in the first interview though in a rephrased manner. The purpose of the second

interview is to clarify specific aspects of the applicants' testimony and to detect potential inconsistencies.

An interviewer has 10-15 interviews per month. Occasionally the local Foreigners Department can be flexible if needed. In some cases they receive advice from the MoI on how to conduct the interviews faster and more effective manner.

A fast track procedure has been considered in the National Action Plan and is also part of the draft law.

### **Fingerprints and photographs**

After the first interview the asylum seekers receive a written form and are informed to go to another police department to have their fingerprints and photo taken. After fingerprints have been taken, a check is run against the national fingerprint database, to detect if the applicant has a criminal record or has applied for asylum in Turkey before.

### **Reporting**

Regardless of which status a person has, he or she has to report to the FD once a week. The person goes to the FD office and writes his signature in a book placed close to the counter. If an applicant has been there for long time or have other valid excuses, FD can allow less frequent reporting. Should an applicant fail to show up for reporting after a while, FD enters the information in POLNET and report the person missing. In principle, the person not reporting could be issued a fine, but in reality such fines have never been issued.

The asylum seeker comes once a week to the office and signs in, in a book in front of an officer.

### **Country of Origin Information**

The twinning project *"Support to the set up of an asylum and country of origin system"* was recently finalized. A country of origin information (COI) unit within MoI was established and an asylum and COI system was developed. The officers have access to the new COI system (to determine nationality) the COI is provided by MoI HQ and UN sources, furthermore FD also Google's for information themselves. The information from the interview is also checked against COI through a workstation where they have access to the internal network POLNET, they can search for information, e.g. COI.

### **Medical screening**

The medical screening and treatment in various places are being handled in different ways. In one FD, the applicants are sent to have a medical screening after the first interview, whereas in another FD Medical screening only takes place if there is a concrete suspicion that the applicant is ill or if the applicant wishes to be screened. Unaccompanied minors are always screened.

According to the Ministry of Health no national procedure for medical screening exists. If a province detects a need for screening in a public health threat situation, the Province can decide to introduce medical screening for all citizens in the province. A person under Refugee Status Determination or with a residence permit, who needs medical screening, will have to be paid for by the available public funds.

According to NGOs applicants are offered standard medical treatment by paying a modest amount and more complicated treatment has to be agreed upon. The situation is similar for Turkish citizens. If an asylum seeker is in need of more complicated treatment or has mental problems he or she would have access to a doctor, but if more specialized treatment is needed UNHCR or one of the NGOs assists the person to obtain access at the right level of care in the Turkish health system. Securing more complicated treatment e.g. in a university hospital or in a private clinic will be more challenging. However, this is also the case concerning Turkish nationals.

### **Treatment of women and unaccompanied minors**

Women applying with the FD have access to conduct the interview with a female officer.

Turkey recognizes the child's right to protection and asylum claims of unaccompanied children are carefully processed and the Institution provides them with legal guardianship for the Social Services and Child Protection, assisted by UNHCR. Furthermore children are provided social and psychological assistance.

### **Social services**

The FD coordinates the distribution of the social services to the asylum seekers and 3CN. The sources of the services are the Governor's Office (Housing and travel), the District authorities (coal etc.), the Social Solidarity Fund (SSF) and NGO's. The support itself is distributed according to a schedule by NGO's, which are responsible for the different houses accommodating the asylum seekers and 3CN.

FD informed that the applicants and 3CN, being obliged to pay for medical expenses, have to register at the social services register at the district authorities (some of the funding come from the SSF).

All 3CN children at school age have the right to attend the Turkish schools, but only a minority of the children do so. The children are being admitted to Turkish schools, which – as a main role - mean that generally only the pupils understanding some Turkish participate. FD encourages the parents to have the children learn Turkish and attend school.

Occasionally private business and private companies have donated clothes, toys, diapers, etc. The Social Service of one Province has provided; vocational training on computers and a craftsmanship course as also some of the women have taken a course on Women's Human Rights.

The asylum seekers and 3CN have to be registered with FD and UNHCR to be able to receive assistance. They apply at FD, which then send the request to the local branch of the SSF. Rent, coal and clothes (which also are donated by private companies) are subsidized.

Van-FD check the addresses of those who apply for social assistance and they also try to check if people really are under the required poverty line it requires to get the assistance.

### **Role of the NGO's**

The Red Crescent Society: Is supporting asylum seekers and has been active in Van approximately since the establishment of the UNHCR office in Van, with improved activity since 1999, works in cooperation with the police and provides aid like food, coal etc.

TEGEV: Turkish Human Rights Foundation is working in Van since 1 February 2010. Since then they have received around 850 applications of which 20-40% are on ikamet fees. They stated that there are still problems with the implementation of the ikamet fees, whereas 80% of asylum seekers were exempted, the criteria applied to those who are not exempted from paying ikamet fees is not clear, the matter is left to the discretion of the authorities. The circular issued in March 2010 provides a basis to request exemption from the fees.

The refugee/asylum request of illegal migrants apprehended is taken by the Gendarmerie and without performing procedural act; they are separated from other illegal migrants. The applications are evaluated by TNP and the applicants together with their documents are delivered to TNP Foreigners Department in province by the gendarmerie. It has been stated that apprehended persons have no access to Van and sometimes when a group of people is apprehended they are all treated the same. Turkish Human Rights Foundation (TİHV) has heard that there are push backs by the gendarmerie but this statement has been rejected and has not been verified.

Turkish Foundation for Voluntary Education is providing education to approximately 120 asylum seekers (60 adults, 30 minors and 25 smaller children) five days a week.

VAKAD: Van Women Association is one of the operational partners of UNHCR. The association runs a women's shelter and reports on abuses of female asylum seekers. In the last month they received 10 applications of this nature. Lack of access to the border has been mentioned as a problem to the associations work.

Van Bar Association: Support asylum seekers/refugees through voluntary legal advice. The representative pointed to the prolonged stay in Van and the fact that two separate procedures were conducted on RSD, one by the police and one by the UNHCR. This issue was consulted to Van Chief Public Prosecutor's Office, Doğubeyazıt Public Prosecution Office and Van Bar Association by an official letter. Van Chief Public Prosecutor's Office, Bar Commissions and Onur Varol from Human Rights Association of Turkey work together and there is a common effort to minimize the incompatibilities about the issue.

### **Asylum seeker Status Determination**

As touched upon, the officers in FD are not authorized to make an asylum seeker or refugee status determination decision on the case, accordingly the officer draft a recommendation on the outcome of the case and send the case including the recommendation to MoI for decision within 45 days after the first interview. The recommendation is not shared with the applicant (the applicant will only have access to the case, in case of appeal to the court). When MoI has decided on the case, FD informs the applicant of the outcome, when he or she reports routinely at the FD office. It takes on average six months before FD receive the decision from MoI including time for appeal. If the person is rejected, the person has 15 days to leave the country voluntarily. Some leave voluntarily, some disappear and others leave Turkey illegally. The presumption was that all aim at continuing to the west.

### **Appeal Procedure**

According to Article 125 of the Constitution an asylum applicant whose request has been denied and who has been ordered to be deported may complain to the administrative courts against the deportation order.

According to the draft law, the appeal procedure will be open to and accessible to all applicants.

### **Deportation**

Deportation of foreigners is carried out by TNP, in that respect, they are delivered to TNP Foreigners Department in province in line with the decisions of the judicial authority. The Gendarmerie does not have a right to deport foreigners.

So far the removal centers in Ankara, Tatvan and Van take care of the deportation as well as the voluntary return of illegal migrants. The process takes from a few days up to three months and even more due to some embassies being very slow recognizing their own citizen. Actually some embassies are not supporting the identification of their own citizen. When illegal migrants are rejecting to sign applications for travel documents, the embassies accordingly reject issuing the documents and refuse the person's entry into his country of citizenship.

In voluntary cases the FD cooperates with the embassies – as mentioned – but also local authorities from the neighboring countries in the region. They have regular meetings and also bring the deportees to airports and border post for return.

Under the project "TR 07 IB JH 05 Support to Turkey's Capacity in Combating Illegal Migration and Establishment of Removal Centres for Illegal Migrants" it is planned to build removal centres, which will be a part of the deportation framework and two removal centers will be constructed, locations are Ankara and Erzurum.

## **UNHCR Ankara**

UNHCR has four offices in Turkey, Ankara, Istanbul, Van and Silopi. RSD is conducted in Ankara and Van. The UNHCR Ankara office has 45 person employed.

The cooperation between UNHCR and MoI has recently undergone a very positive development and UNHCR applauded the work of MoI such as it has emerged during the last one to two years.

UNHCR Ankara – parallel to MoI, FD - registers asylum seekers and provides them with counselling about the Turkish asylum system, process their claims, prepare resettlement, make the status determination, etc. The RSD process of the FD and UNHCR are totally parallel.

It takes about eight months from the UNHCR registration and the first interview. In the meantime the asylum seekers are accommodated in the 51 satellite cities across Turkey. An UNHCR/MoI agreement on the distribution of applicants to the cities has been in place for about one year.

According to UNHCR it would be technically possible for Turkey to take over the full RSD processing. Staffs from MoI receive RSD training, and by improving its performance and in general playing a positive role and e.g. by means of implementing the National Action Plan the MoI is gradually developing into a civilian, professional authority. In March 2010 two working groups introduced draft laws on Asylum and Illegal Migration. The drafts have not yet been introduced for the Parliament. In fact Turkey is a model for the transition from UNHCR RSD to State RSD. The content and the timing is a political issue.

When UNHCR recognises an applicant as a refugee and eligible for resettlement, MoI is notified. 60 % of all resettlement cases are presented directly from UNHCR Ankara to the potential resettlement countries. A few cases are referred through UNHCR Geneva. For persons from Iraq, UNHCR aims at a quicker process if asylum seekers come from more “insecure” parts of Iraq. USA receives most of the Iraqis and it is expected that the programme will be extended. UNHCR noted that the programme might be a pull factor for Iraqis to come to Turkey. At the moment asylum claims from Iranian citizens are dominant.

UNHCR expressed some concern about the different ways the local Foreigners Departments are dealing with asylum seekers and refugees even after the circular concerning non payment of the handling fee for the six months residence permit (Ikamet). It is estimated that 80 % of the asylum seekers should be exempted from paying the Ikamet according to a recent circular from MoI. Nevertheless, this continues to creating problems, due to discretion still left for the police. UNHCR has recently become concerned that a growing number of single women or single women with children have been abused in the Van region.

The daily contact with Mol (through the Turkish Ministry of Foreign Affairs (MFA)) on individual cases works well and the same applies for transfer of knowhow on RSD from UNHCR to Mol. UNHCR has been delivering numerous trainings, seminars, workshops and internships to officers from Mol and FD's.

UNHCR has in cooperation with Mol and the International Catholic Migration Commission developed the handbook that is used in the FD's. Furthermore UNHCR has developed "Recommended standards on Reception Centres" and "UNHCR Remarks on the Selected Aspects of the Implementation of the Turkish Asylum Policy".

As regards to the coming reception centres UNHCR in cooperation with the UK, will train the future staff of the centres. UNHCR are well aware that they have to coordinate closely with the Twinning project, which is in the pipeline, at the same time they are concerned whether or not they will be involved in the planning of activities in the twinning project.

### **UNHCR Van**

The office of UNHCR in Van has in total 14 staffs. Apart from the Van office they have a small office in Silopi and they have one lawyer associated in both Agri and Hakkari.

UNHCR in Van deals with RSD, liaising with authorities and civil society and NGOs. Special attention is paid to cases with security concern, persons in detention and vulnerable cases. The cooperation with FD is excellent and they always have direct access to the head of Van FD, who responds directly or fast afterwards.

UNHCR registers asylum seekers and provides counselling (including information material). Asylum seekers are referred to Van FD and then after registration with Van FD, the asylum seekers return to UNHCR. UNHCR schedule them for an interview (which at present is up to four months, due to limited resources). The registration itself is important, since it gives the asylum seekers international protection.

The UNHCR staffs in Van decide on the RSD and if there is an appeal, it is decided in Ankara. The decision takes 2-3 weeks in the easy cases; more complex ones take up to a year.

The interviews done at UNHCR Van and the interview done at Van FD are completely separate. But on two-three occasions UNHCR in Van and the Van FD have been discussing certain cases, where there were some disagreements on whether or not the applicants had entered legally or illegally. Training and exchange of views on interviews have taken place and experience has shown that the UNHCR and the Van FD interviews are very similar. Exchange of staff between the two offices has also taken place.

The two main groups of asylum seekers and 3CN in Van are Iranians and Afghans. The Iranians have networks and are doing relatively well whereas the Afghans are a far more vulnerable group of asylum seekers. UNHCR considers the increasing number of Iranian applicants a clear trend.

The ratio of recommendations for resettlement is approximately 60%.

From time to time UNHCR are checking why some persons do not respond when they are called for interview i.e. become missing. The theory is that they use a Van FD registration form with the photo from the UNHCR form to travel onwards in Turkey.

UNHCR have contributed to shortening the procedure concerning social support: Previously the procedure involved eleven steps but today it involves only six steps.

### **Role of IOM**

IOM has been present in Turkey for a number of years and has been cooperating with MoI in 17 projects concerning Trafficking and more lately IOM is also involved in the working groups leading to the draft laws on Asylum and Illegal migrants. The level of the cooperation has been high and MoI has, according to IOM, followed advises from EU concerning outlining ambitions in details. IOM estimates that a new authority could be established very soon.

Certain improvements have still to be made. The return issue could be elaborated and developed (there is no follow up on rejected asylum seekers and no one knows about their whereabouts – except that are guessing, that the rejected asylum applicants are heading for EU). A number of other issues could be handled between the authorities, NGOs and international partners such as efficient AVR (and removal) in Turkey, guidelines for the handling of unaccompanied minors, health screening and treatment, policy for the use of detention, access to centres, etc.

### **Institutional framework**

Within MoI it has been discussed, how to shape the future of the procedure and institutional framework. Based on the National Action Plan, the questions have been raised:

- Should some of the steps in the RSD procedure in MoI framework and UNHCR somehow be merged?
- Should Turkey take over the entire RSD process from UNHCR?
- Should both migration and asylum be dealt with in the same entity?
- Should a new institution be established or should it be supported within the existing structure, but be autonomous?

Within these discussions, it has been discussed how to keep and maintain the knowledge that is acquired by the officers dealing with asylum and migration.

NAP section 4.1 deals with the question of establishing a new asylum and migration body. As regards an appeals body, NAP in section 4.6.3 states that a *“sound administrative or legal procedure of appeals should be established and practiced in order to ensure that those having been rejected make an appeal or [have] access to justice”*.

## **Training**

According to Mol 4240 personnel have been trained at international level assumingly corresponding to personnel that has received trainings from international organizations like UNHCR etc.) and 6925 personnel have received in-service training.

In the FD training of the interview officers are done as on-the-job training and as seminars given by the Police Directorate, the Mol and different courses by UNHCR and at Mol for one month (procedure). Added to this they have been participating in different conferences and seminars, some of which are part of EU Twinning Projects.

## **Work Permit**

The low number of work permits issued to asylum seekers and 3CN are according to the Ministry of Labour not because of difficulties in issuing them, but because the employers do not apply for the permits as they should.

According to Mol, the reason for the low number could be that the asylum seekers do not intend to work since they are expecting to be resettled. Another aspect is the fact that lack of documents etc. makes it difficult to apply and in addition some employers exploit asylum seekers and 3CN by hiring them illegally. Mol and the Ministry of Labour have initiated a project to look into the matter.

## **Geographical Limitation**

According to Mol officials, a clear expectation was raised between lifting the geographical limitation and international burden sharing on asylum and migration. Turkey hesitates to lift the geographical limitation without receiving guarantees that other countries will take a share of the asylum seekers, who apply in Turkey.

Turkey is playing a very positive and responsible role in the field of improving the management of the asylum- and migration area, by improving the legal framework, in close contact with UNHCR prepare the takeover of the refugee status determination, on a daily basis improving the cooperation with all actors in the field, etc. As being a genuine role model to other countries concerning improvement of the management of asylum and migration, Turkey should take initiative to lift the geographical limitation in a well-prepared cooperation with EU, UNHCR and neighboring countries.

## **Reception Centres**

Under the project "TR 07 IB JH 03 Establishment of a Reception, Screening and Accommodation System (Centres) for asylum seekers and refugees" it is planned to build six reception centres throughout Turkey and in both Kayseri and Van the Foreigners Departments informed, that the building sites already were identified.

## **NGO's**

From the meeting with representatives from NGOs working in the field of Asylum and migration and from the engagement of MoI and the officers from the FD it was clear that the daily contact between MoI and the NGOs has developed.

The NGOs are now involved with a number of tasks concerning the Asylum and Asylum Seekers. The NGOs, international organisations etc are involved in health care, providing information to applicants, education of children and vocational training of some adults.

A number of children do not have access to schools since they don't understand the teaching language.

### **Visit to the Gürbulak border control**

The border post Gürbulak at the far east of Turkey is the border crossing between Turkey and Iran close to Mount Ararat (Ari). The border is very important for transporting all kinds of goods. A number of authorities are involved in a number of important tasks, within Customs, Border Guards, Aliens Department, Police etc. They all have different tasks, but also have to cooperate on a number of related issues.

There are fences with barbed wire on both sides of the mountain border, and the border is monitored with surveillance cameras. Turkish and Iranian border posts are situated along the border area. The guards at the border posts have numerous kinds of specialised equipment for detection of smuggling, drugs, human beings, food, etc..

The Turkish guards presented the equipment and showed how it was able to detect drugs, arms and smuggled persons.

One issue concerning the way certain tasks are divided between several authorities seemed unclear, e.g. who have authority to return illegal migrants to the country of origin. *"This issue has later been clarified in a letter from Van Chief Public Prosecutor's Office, Doğubeyazıt Public Prosecution Office and Van Bar Association by an official letter. Van Chief Public Prosecutor's Office, Bar Commissions and Onur Varol from Human Rights Association of Turkey work together and there is a common effort to minimize the incompatibilities about the issue.*

*Besides, the region is problematic in terms of terror incidents and illegal migrants. There are lots of investigations carried out on the basis of the article 79 of Turkish Criminal Code in line with the instructions of Public Prosecution Office and with the guidance of security forces. In this context, the studies are carried out on the basis of national and international regulations such as Palermo Protocol, United Nations Convention Against Transnational Organized Crime, 1951 Convention relating to the status of Refugees, European Convention on Human Rights, jurisprudence of European Court of Human Rights and 1994 Regulation.*

*Moreover, Ministry of Interior and TNP is responsible from the deportation of illegal migrants. The Public Prosecution Office was responsible from giving administrative fine if the Passport Law is violated but as a result of the amendment on the Passport Law on 31 March 2011, this now falls under the competence of law enforcement agencies. In general, public prosecutors have no authority or responsibility regarding illegal migrants. The investigation is initiated when the illegal migrants possess fake passports. In practice, on the basis of 1951 Geneva Convention, asylum seekers are not sentenced for their illegal entrance. For the migrants who claim international protection, the decision of lack of jurisdiction is taken and they are delivered to local authorities with their belongings and documents”.*

The border is strictly controlled both by Turkish and Iranian officials. The military forces are equipped with thermal cameras. The customs authority has an advanced X-Ray machine for surveying trucks. Monthly meetings are held with the Iranian authorities during which relevant issues are discussed and necessary enforcement is planned. No asylum applications are received at the border gate. People that want to seek asylum are transferred to the Foreigners Police in Van. Every year approximately 1.5 million people enter and exit through the border gate.

In a meeting with all the different authorities it was stated that illegal crossings in the area around the border gate amount to approximately 350 persons per year, the majority being Iranians. To avoid exposure of asylum seekers in front of the Iranian authorities the applications are received in the city centre of Van instead of at the border gate.

Outside the border gate the terrain is very mountainous. At the Iranian side there are no measures that prevent illegal crossings. At the Turkish side there are in certain areas anti-personnel mines - that were placed in the 1980's as part of the fight against terrorism - as well as barbed wire. 80 % of the border is controlled through border stations placed directly at the border (point zero). Some 20 % of the border stations are placed in Turkish territory 1-2 km behind the border. Illegal crossings from Iran are mainly for smuggling of fuel, cigarettes and drugs.

Illegal migrants from Afghanistan, Pakistan, Bangladesh and Burma are crossing the border while their final destination is in Europe.

The representative stated that none of the apprehended so far requested asylum.

The representative of the land forces declared that their first purpose is to prevent illegal crossings. As the border units are equipped to fight against terrorism they are equipped with thermal cameras, radars, armored vehicles and night vision equipment. Unmanned air vehicles are used along the borders where necessary. In order to determine and prevent terrorist crossings in Turkish-Iraq border and to determine the crossings of asylum seekers in Turkish-Greece border, unmanned air vehicles are intensively used.

They act in line with the directives of the public prosecutor. As they are in breach of the passport law, their statement is taken and they are medically examined. The public prosecutor issues a decision of “non jurisdiction” and the persons are transferred to the foreigners’ police so as to be deported. The foreigners’ police is the only authority to conduct deportation procedures. In the course of the discussions the gendarmerie also mentioned that illegal migrants are returned to their country with the order of the public prosecutor.

According to Turkish legislation the land forces have authority of territory up to 10 km from the border. Currently this has been limited to six km but can be extended until 10 km if necessary and by law. Accordingly, after six km the jurisdiction of the gendarmerie begins e.g. the land forces cannot search a village for illegal migrants if the village is located 10 km from the border/inside the country.

The 16th article of Tehran Agreement dated 1937 signed between Iran and Turkey is related with the return of two countries’ citizens, not 3rd country citizens. This issue was also confirmed in the Van meeting in 1950 and Rızaiye meeting in 1955, Ankara meeting in 1970.

There is no visa requirement for citizens of Iran. For persons of other citizenship the border police is checking whether they have – in addition to a visa- enough money to sustain themselves (approximately 30 dollars per day) also whether they have a hotel reservation or not.

The border guides were convinced that their equipment was sufficient, but some believed that they might need some updates to be at Schengen border level.

## **Recommendations**

### **I. Fundamental Structural Changes**

- Lifting the geographical limitation according to The National Action Plan, 2012
  - Through research assess the consequences of lifting the geographical limitation to the 1951 Convention taking into consideration impacts of the readmission agreement between the EU and Turkey as well as the consequences of full alignment with the visa acquis. At the same time ensure that the asylum system can cope with the challenges arising from an actual lifting of the geographical limitation
- Take over the asylum procedure from UNHCR – 2012 (as intended in the NAP)
  - Fine tuning of the future asylum system – intensive training and cooperation

- concerning a full functioning RSD system
  - Ensure that sufficient screening mechanisms are in place to identify asylum seekers among apprehended illegal migrants and ensure UNHCR access to such applicants in line with article 21 of the Council Directive on asylum procedures. To make this possible EU should consider relevant funding to be able to:
    - monitor the procedure where needed.
    - train all involved staff, international organisations, NGO's
    - secure borders
- Establish a single civilian authority under the MoI for case processing and decision making in the 1<sup>st</sup> instance on asylum and migration cases. That would pave the way for more substantial capacity building focussing on that authority with close links to the top administrative level of the MoI, thereby making sure that asylum policy is also seen in a full migration context. Such a new civilian authority should establish close cooperation with relevant other authorities, i.e. the Turkish National Police, the MFA and the Ministry of Labour and Social Affairs as well as civil society groups, whose roles certainly will be important in Turkey's future asylum and migration system.

In the meantime MoI should look into ways of avoiding loss of knowledge that could occur as a result of rotation of officers to other parts of TNP.

- In order to speed up the asylum procedure, and thereby reduce the processing time for the applicants as well as reduce the costs involved in housing etc. of asylum applicants it is recommended to establish a single RSD procedure, whereby in one sole decision it will be decided
  - whether or not the applicant is a refugee,
  - and if not, whether the applicant qualifies for subsidiary protection,
  - and if not, before which deadline the applicant shall leave the country,
  - and if the applicant does not leave the country voluntarily, whether he or she can be returned by force to his or her home country.

This decision should be signed at a lower administrative level than presently to avoid bottlenecks.

## **II. General improvements**

- In order to establish an efficient asylum procedure and system, set up a handheld return system (i.e. continuously case flow with no or an absolutely minimum of processing halts) including
  - voluntary return to the country of origin (in safety and dignity on an informed basis, including some reintegration support)
  - involuntary return with necessary support
- As support to all officers, who deal with the asylum procedure, update the pocket manual handbook more often and make a uniform system for the electronic update of the manual on POLNET.

- Consider creating a pool of interpreters of non-common languages, which should be registered in POLNET. Furthermore ensure access to these interpreters through telephone.
- MoI officers, who are in direct contact with applicants, should be trained in detecting obvious signs on need for medical screening in order to protect the public health and the officers themselves. Furthermore it should be considered to introduce a clear procedure for medical screening, based on legal framework. Such a procedure should be included in the pocket format handbook.
- Secure the lift of the “ikamet” policy 6 months temporary permit for those in social need.
- Furthermore look into changing the system for obtaining work permits for 3CNs, making access to work less dependent on the employers.
- Streamline procedures for access to social services and at the same time make clear instructions to officers at the regional FD on their role in handling the social needs of asylum seekers and 3CN.
- Concerning the asylum seeker ID it should be considered to produce an ID that complies with the standards of the EU aquis on IDs issued to foreigners.
- Building on the uniform case number, an electronic case processing system should be established. By doing so uniformity in policy and practice can be ensured. Furthermore, use the information in the system to develop and enhance Turkey’s ability to produce timely, coherent and standardised statistics.
- In order to design future integration policies, which should cater for the possibility of managing the composition in nationality of persons receiving a residence permit in Turkey, it is recommended to draw on cooperation already in place and lessons learned. The future integration policies should be designed while taking into account the alignment process in the areas of economic and social rights.
- Establish a coordinated, integrated asylum and illegal migrants return program. Program partners being MoI, countries in the region (embassies), UNHCR and IOM supported by EU (as a target of the secondary movement).  
MoI working with neighboring countries should:
  - 1) Define the frames and conditions to implement the return agreements with neighboring countries
  - 2) Supporting this by establishing a work program for relevant skilled and unskilled labor force thus opening up the Turkish labor market for persons from specific countries in the region with desirable qualifications.

List of abbreviations

COI: Country of Origin Information

FD: Foreigners Department

IOM: International Organization for Migration

MFA: The Turkish Ministry of Foreign Affairs

Mol: The Turkish Ministry of Interior

NAP: The 2005 Turkish National Action Plan on Asylum and Migration

RSD: Refugee Status Determination

SSF: Social Security Fund

3CN: Third Country Nationals

TNP: The Turkish National Police

UNHCR: United Nations High Commissioner for Refugees