

UN Special Rapporteur on the human rights of migrants concludes second country visit in his regional study on the human rights of migrants at the borders of the European Union: Visit to Turkey

ANKARA (29 June 2012):

Following an invitation by the Government, I conducted a visit to Turkey from 25 to 29 June 2012. During my 5-day visit, I visited Ankara, Istanbul and Edirne province at the Greek border, and met with Government representatives, civil society and international organisations, as well as migrants in detention centers.

I would like to express my appreciation for the support and cooperation the Government provided in planning and coordinating the visit. I would also like to sincerely thank the United Nations Country Team, including the Office of the Resident Coordinator and the International Organisation for Migration, for their support and assistance.

My mission has been carried out in the context of my year-long study on the human rights of migrants at the borders of the European Union. I visited European Union (EU) institutions in Brussels, as well as Tunisia earlier this year, and later this year shall be visiting Italy and Greece. I shall develop a thematic study on the issue which will be presented to the UN Human Rights Council in June 2013. I trust that it help the Governments of each of the countries visited, as well as the EU itself, develops durable solutions for migrants in the region, including on the important issue of the management of borders, and adopt a rights-based approach in accordance with the fundamental principles of international human rights law.

Turkey is one of the key bridges to Europe. Its unique geographical location makes it as a hub for migrants from all over the world including Sub-Saharan and North Africa, the Middle East, and Asia. Many of those migrants are in an irregular situation and some are transiting through Turkey with the wish to enter the EU. Indeed, the Turkish-Greek border remains one of the key points of entry for irregular crossings to Europe. In recent years however, because of its economic strength, coupled with the difficulty many people face in reaching EU territory due to strict migration controls, Turkey itself has increasingly shifted from being solely transit country to also becoming a destination country for migrants worldwide.

Given this reality, and combined with the fact that migration management is one of the key issues negotiated in view of Turkey's possible accession to the EU, and the pending readmission agreement with the EU, it is clear that the issue of migration, including the related matter of border management, will remain firmly on both Turkey's and the Turkish-European agendas in the years to come.

While the EU and Turkey have developed a close cooperation on migration issues, which has led to some notable positive developments, the assistance offered to Turkey regarding migration management appears to focus largely on securitising the borders and decreasing irregular migration to the European common territory through focusing on projects related to the detention and removal of migrants in Turkey and the increased monitoring of the Turkish border. Often neglected from the equation, is an equivalent emphasis on the human rights of those most vulnerable and most affected by the migration process: the migrants themselves.

In this context, I am pleased to have been able to visit Turkey as Special Rapporteur at this opportune time, and make some preliminary observations on the human rights aspects of Turkey's migration and border management policies and practices, including its relation to the EU.

Firstly, I congratulate Turkey on having developed a new *Law on Foreigners and International Protection*, which I have learnt will very likely be adopted during the next session of Parliament. I am pleased to have learnt that this law was developed after widespread consultation with a range of stakeholders, including the EU, and has received bipartisan support. I urge the swift enactment of the law without amendments that would weaken its provisions.

The law, developed to implement the EU *acquis* in the area of migration, and reportedly in line with the standards enunciated by the European Court of Human Rights, has potential to assist migrants and asylum seekers in Turkey in securing their rights. Nevertheless, it will require a strong and concerted effort by multiple ministries and agencies to ensure its full implementation. In this regard, I urge Turkey to start developing, in consultation with the necessary stakeholders, the relevant secondary legislation that ensures the law's practical implementation in conformity with international human rights standards. The EU should continue to support this process by providing the relevant support, including training and expertise focusing on human rights standards.

The law envisages a number of significant changes to the way Turkey manages its migration, most significantly including the creation of a new General Directorate on Migration and Asylum within the Ministry of Interior. It is essential that the authorities ensure that this new Directorate receive adequate resources and training to become fully operational, and that human rights be integrated throughout its operations.

I was also pleased to hear that a new Law on Border Management will be developed, ensuring the replacement of the multiple corps in charge of monitoring borders by a new civilian national border guard agency.

Turkey is also in the process of instigating a number of other important changes to its legislative and institutional landscape which could have significant impacts on the human rights of migrants.

In the context of Constitutional reform, I have been told that human rights will be guaranteed for all, including non-citizens, without discrimination of any kind. I urge the government to ensure this be the case.

Moreover, a new Ombudsperson has recently been established. Government must ensure that this important institution has jurisdiction to intervene on all administrative decisions relating to migration – including arrest, detention, decisions on migration status and deportation, and has the power to investigate all complaints made by migrants, including those in an irregular situation.

However, in contrast to the consultative process relating to the law on Foreigners and International Protection, I was disappointed to hear that the law establishing a national human rights institution (NHRI) was not drafted in consultation with civil society and international organisations. I encourage the Turkish authorities to ensure that this new body is independent in compliance with the *Paris Principles* and is invested with the authority to investigate all issues relating to human rights, including those of non-citizens, regardless of their administrative status.

The pending conclusion of the EU-Turkish readmission agreement has also been flagged as a relevant issue regarding EU-Turkish migration dealings. I urge both parties to ensure that the implementation of this agreement is not conducted at the expense of human rights of migrants. In particular, efforts should be made to ensure individual case assessment to avoid the removal or readmission of vulnerable categories of persons in line with international human rights standards.

I would also like to congratulate the government for welcoming persons fleeing the violence in Syria. Granted ‘guest’ status, the “open border policy” and the material investments made by Turkish authorities appear to be ensuring the well being of these vulnerable persons. This humanitarian response to a complex situation is an example of how flexible migration policies may actively promote and protect human rights. I encourage Turkey to continue adopting measures that contribute to fostering a public discourse which is supportive of foreigners on its territory.

Similarly, I encourage all stakeholders, including the government, but also international and regional organizations, including the EU, and civil society organisations and the media, to take great care in the terminology used when speaking about migration. Stereotypes are easily developed, which can fuel xenophobic discourses and violence against migrants, which, to date, Turkey has generally avoided. Using incorrect terminology such as the expression “illegal migrant” negatively depicts individuals as outlaws and further reinforces negative stereotypes against migrants, thus contributing to xenophobic discourses on migration. Moreover, such language legitimates a discourse of the criminalization of migration, which in turn, contributes to the further alienation, discrimination and ill treatment of these persons on a daily basis. The Government of Turkey and other relevant stakeholders, including the EU, not only in its own migration policymaking, but also in its engagement on migration matters with Turkey, must be vigilant in this regard.

In this connection, I remain highly concerned about the situation of migrants in an irregular situation in Turkey. While irregular migration may be an administrative infraction, it is not a crime and should not be criminalized in domestic law. I thus welcome the new Law which will abolish all criminal infractions and penalties related to irregular entry or stay by foreigners on Turkish territory.

However, I remain troubled about the detention in ‘removal centers’ of some apprehended migrants in an irregular situation, including families and children. Alternatives to detention must always be explored, especially when families and children are concerned. I have observed that the EU focus on heightening border security has led to an increased prioritization of detention as a solution, including plans for the funding of new detention centers in Turkey by the EU.

Moreover, for those irregular migrants not detained but residing in Turkey, often for long periods of time, I am equally concerned about the exercise of their basic rights in Turkey. Access to basic services is dependent on obtaining a foreigner ID number which migrants in an irregular situation are unable to obtain. I thus encourage the Turkish authorities to provide access to such services, including healthcare, to everyone living in the Turkish territory, regardless of their immigration status. In particular, the requirement of the ID number should not be a bar for children to being admitted to the mandatory public school system or to the health care they require.

I also recommend that Turkish authorities develop systems for collection of and public access to reliable disaggregated data regarding migration and migrants, including irregular migrants, in order to be able to develop sound policy in this field.

On the issue of detention, and having visited both the Kumkapi and Edirne removal centers, I am particularly concerned at the lack of safeguards that these centers provide: detainees have insufficient access to basic rights, including limited ability to contact their families, virtually no access to legal assistance or consular services, little to no professional interpretation services, restricted ability to lodge an asylum application, and insufficient access to medical care. Some persons also seem to be detained for prolonged periods of time. I also remain disturbed about

the conditions in these removal centers: detainees, including children, are often locked in their rooms or wards, and are given little or no access to outdoor areas. Overcrowding and unclean conditions, including inadequate food, are also significant concerns. When apprehended with their mothers, boys over the age of 12 are separated from their mothers and placed in orphanages.

Overall, there is a need for the development of a streamlined policy which ensures the human rights of migrants in detention, and which is common to all removal centers. This should be developed at the policy level, implemented with adequate resources and monitored on a regular basis

Whilst it appears that the aim of these centers is to remove migrants in an irregular situation from Turkey, there seems to be a particular problem for irregular migrants from specific countries whose nationality cannot be verified, or who cannot be returned: For example, I met with a large number of Afghani and Iranian nationals who were detained for lengthy periods, as these two countries do not currently accept the return of their nationals. As there appears to be no reasonable prospect for removing these persons, they therefore should either be granted humanitarian status in Turkey or resettled in a third country. Currently, there is virtually no EU resettlement of these nationals. The EU should therefore provide for an increased number of resettlement opportunities for these more difficult nationality groups, to share this responsibility.

I visited the Edirne Province at the Greek border. While I welcome the efforts deployed to rescue numerous persons attempting to cross the river into Greece by the local authorities, I regret that these people, including those who are in a regular situation in Turkey, are automatically detained. This appears to be in response to increasing pressure from the EU to secure the border.

Moreover, while appreciating that the material conditions at the Edirne Removal Center may be better than at the former Tunca center, I still remain concerned about the conditions, and would warn that this not necessarily be treated as a model for future removal centers given the restrictions on the rights and freedoms of detainees. All future centers should be developed with the utmost concern for ensuring the rights and freedoms of detainees.

I also visited the transit zone at Istanbul Airport, which is an important border crossing point, where migrants may be arrested and detained. The fact that Turkish authorities claim that the transit zone at Istanbul airport is under the authority of a private company, and not within the jurisdiction of Turkish authorities is of concern: this transit zone, despite its name, is a place of detention. Moreover, it is Turkish territory for which Turkish authorities are responsible. I am further alarmed at reports of persons being detained for lengthy periods of time in this zone, including for periods of a month or more. I am troubled that authorities do not appear to be monitoring effectively how migrants are treated in the transit zone, as the persons placed there are not free to leave. Other groups, including civil society and international organisations appear to have limited access to this area. Again, I insist that all centers of detention uphold human rights standards and are effectively monitored.

I observe that it remains very difficult for persons to seek asylum in Turkey. I met with many migrants in an irregular situation in detention centers who may have had valid refugee claims, but who were unable to file an asylum application or communicate with UNHCR and civil society organisations. Moreover, Turkey maintains its geographical limitation to the 1951 Convention relating to the Status of Refugees, and will thus only accept nationals of a Council of Europe member state for refugee status. For nationals of other countries, resettlement is the only possibility to obtain a durable solution, and they often must wait several years to be resettled, particularly as the EU does not accept a large number of such refugees for resettlement. I thus urge the EU to increase the number of refugees resettled from Turkey on its territory as an important mechanism for responsibility sharing.

Up until now, very few asylum seekers are given work permits. Moreover, the ‘satellite city’ system, obliges asylum seekers to reside in a designated city while their claims are being processed. This inability to work, coupled with the slow processing time, and the restriction of their movement to a city where they may have no connections, networks, opportunities, and the lack of social services in those city, including lack of housing, often leads asylum seekers to leave the satellite cities for other places, including crossing irregularly to Europe. If apprehended outside the designated satellite city, they may then be detained.

I thus encourage the Turkish authorities to abolish the system of restricting asylum seekers to live in satellite cities and allow all asylum seekers and refugees to establish themselves where they wish, thus respecting the freedom of movement of all persons. I also welcome the fact that the new law may allow asylum seekers to work. The ability to gain access to these permits should be ensured in practice, as this will allow them to sustain themselves and live a life in dignity.

Preliminary Recommendations to the Turkish government:

- Ensure the swift enactment of the *Law on Foreigners and International Protection* without amendments that would weaken its provisions, as well as the development of the relevant secondary legislation in a consultative manner.

- Ensure the protection of all human rights for everyone, including migrants, regardless of their status, in the new Constitution.
- Establish an independent national human rights institution in accordance with the Paris Principles, and an office of the Ombudsperson, with effective mandates to monitor the human rights of everyone, including migrants.
- Ensure that an independent National Preventive Mechanism, which Turkey is required to establish by September 2012 (within one year of the ratification of the Optional Protocol to the Convention against Torture), is mandated to visit all places where migrants may be deprived of their liberty.
- Lift the geographic limitations to the 1951 Convention relating to the Status of Refugees
- Exercise caution before detaining individuals for the sole purpose of their irregular migration, explore alternative measures to detention and ensure adequate monitoring access to all places where migrants are detained to lawyers, NGOs and UNHCR, including the transit zone of Istanbul Airport.
- Refrain from detaining children and families with children, in conformity with the principles of the best interests of the child and of family unity.
- Establish clear procedures to avoid prolonged detention of specific nationalities of migrant detainees.
- Facilitate, where possible, the voluntary return of migrants who are willing to return to their countries, as opposed to deportation proceedings, in accordance with all principles of international human rights law.
- Ensure that all migrants deprived of their liberty are able to promptly contact their family, consular services and a lawyer, which should be free of charge if necessary, seek asylum if requested, have access to a doctor and to an interpreter, and have the right to promptly challenge their detention.
- Abolish the satellite city system, allowing asylum seekers to choose their residence within the country.
- Submit its initial report under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is more than six years overdue. This will allow an assessment on the rights of migrant workers in Turkey, which in turn could lead to increased protection of their rights.
- Encourage and support independent NGOs that support migrants.
- Ensure access to social services, including education, health and housing, for all migrants including children, and those in an irregular situation.

Preliminary Recommendations to the European Union:

- Support Turkish efforts in managing the migration flow to the EU territory, and focus on the full protection of the human rights of all migrants, including in relation to the implementation of the recently initialed EU-Turkey Readmission Agreement.
- Collaborate with Turkish authorities with a view to increasing the number of refugees who are resettled on EU territory, including those nationalities who are difficult to resettle, in a spirit of partnership and responsibility sharing.
- Develop, in the context of the accession negotiations and the “positive agenda”, a more nuanced policy of migration cooperation with Turkey, which moves beyond security, containment and deterrence issues, to develop new initiatives in consultation and partnership with Turkish authorities, which place at their core the respect, protection and promotion of the human rights of migrants.
- Support, both technically and financially, civil society organisations and international organisations in Turkey which offer services and support to migrants, regardless of their status.

Preliminary Recommendations to International Organisations:

- Encourage **UNHCR** to develop projects with Turkish authorities with a view to visit on a regular basis all places where migrants are detained, in order to assist migrants who may have protection issues.
- Encourage **UNHCR** to further engage with EU countries with a view to accept resettlement of asylum seekers unable to remain in Turkey.
- Urge **IOM** to ensure that a human rights approach is adopted in all aspect of the important collaborative work that they accomplish with Turkish authorities, including in cases of assisted voluntary return, training of officials, and information dissemination.
- Encourage **UNICEF** to develop projects designed to foster the human rights of migrant children, in particular regarding access to school and health services by children who are, or whose parents are, irregular migrants.
- Request **UNICEF** to develop projects in order to support migrant children who are detained, whatever their status, either with or without their parents, with a view to obtaining their quick release together with their families, where appropriate.

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François Crépeau (Canada) was appointed Special Rapporteur on the human rights of migrants in June 2011 by the UN Human Rights Council, for an initial period of three years. As Special Rapporteur, he is independent from any government or organization and serves in his individual capacity. Mr. Crépeau is also Full Professor at the Faculty of Law of McGill University, in Montréal, where he holds the Hans and Tamar Oppenheimer Chair in

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