

Refugee protection in Turkey

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The provision of independent legal representation for asylum seekers in Turkey is proving a vital component in improving refugee status determination procedures.

Every year, thousands of people from over 40 countries come to Turkey seeking asylum. However, since Turkey imposes a 'geographic limitation' on the 1951 Refugee Convention, refugees from countries outside Europe are not eligible to receive international protection from the Turkish government. Instead, they must turn to UNHCR for protection. Refugees must also apply for 'temporary asylum' from the Turkish authorities for permission to remain in Turkey while UNHCR evaluates their claims. During that period, they are required to live in one of 30 'satellite cities' throughout Turkey, and need police permission to travel outside the city. When their cases are decided, either they are granted refugee status and resettled in another country (such as the US, Canada or Australia) or their application is denied and they must leave Turkey.

The parallel UNHCR and government asylum procedures are complex, and many applicants wait for months or years for their applications to be processed. While they wait, their difficult and dangerous conditions push many to risk their lives in an attempt to enter Europe illegally. Those who are detained while trying to leave the country are particularly vulnerable to *refoulement*¹ because of significant barriers to legal assistance.

While lawyers should in theory have access to the migrant detention facilities where refugees are held (known as 'foreigners' guesthouses'), not enough of them have training in refugee law or experience advocating for refugees. Moreover, the very limited state legal aid system does not cover legal assistance to refugees. Thus, the handful of qualified refugee lawyers either have to charge fees that most refugees cannot afford or they have to work for free – which inevitably limits the time and effort they can invest. Moreover, few Turkish lawyers are fluent in languages spoken by refugees and there is a dearth of available interpreters. As a result, few refugees

held in detention ever get access to any kind of legal assistance. To compound matters, NGOs are generally barred from entering detention facilities altogether. Even UNHCR must often wait weeks for permission to enter detention facilities to interview asylum seekers. Neither UNHCR nor local NGOs are given access to asylum seekers held in 'transit zones' in Turkey's airports.

Despite a government commitment to bring domestic asylum policy into compliance with European standards, Turkish legislators and policymakers have so far shown little willingness to implement a comprehensive asylum law that would be consistent with international standards. While plans move forward for the establishment of seven 'reception centres' for asylum seekers (a project funded by the European Commission and supported by Dutch and British government partners), progress has been very slow. In the meantime, instances of *refoulement* continue at an alarming rate and periodic riots erupt in the 'foreigners' guesthouses' in protest at indefinite detention and substandard conditions.

Legal aid

In 2004, Helsinki Citizens' Assembly - Turkey (HCA) established its Refugee Legal Aid Program to provide free legal assistance to refugees. Two years later the programme expanded and was renamed the Refugee Advocacy and Support Program (RASP). RASP continues to provide legal assistance to refugees (including those in detention) on both UNHCR and government asylum procedures. It also provides mental health counselling, conducts public legal education and training for local NGOs and lawyers, monitors government practice and engages in legal advocacy.² In 2009, RASP is initiating a three-year refugee law training and mentoring programme for lawyers across the country.

HCA's legal services for UNHCR procedures include: preparing refugees for and representing them during interviews; conducting country of origin research; drafting legal submissions and testimonies; communicating with UNHCR regarding clients' immediate protection concerns; and advocating for vulnerable clients.

In a September 2007 report evaluating UNHCR Turkey's compliance with UNHCR's 2005 RSD Procedural Standards³, RASP identified areas where UNHCR was in full compliance with the Standards, including access to legal counsel and the right to be interviewed and to appeal. However, it also highlighted deficiencies, the most significant of which were waiting periods as long as a year until the first RSD interview, up to two years or more until the first instance decision is issued, and similar delays in the evaluation of appeals and in re-opening requests. Other important gaps identified include intimidating questioning techniques by some interviewers, the failure to identify victims of torture consistently, and the lack of regularly available, trained interpreters.

Legal representation helps fill these gaps in a number of ways. After meeting with a legal advisor, refugees are often able to describe their experiences to UNHCR interviewers more coherently. During the UNHCR interview, legal representatives can help identify and clarify misunderstandings between the interviewer or the interpreter and the refugee. They can also identify and even prevent intimidating questioning by the interviewer. By identifying miscommunications during the first instance interviews, legal advocates can help eliminate the need for appeals.

Legal representatives can also help identify vulnerable refugees early on and can refer traumatised asylum seekers for psychiatric and medical evaluation, as well as provide medical reports in support of claims for refugee status. More generally, legal representation increases UNHCR's efficiency through the provision of regular, informal monitoring of its RSD system.⁴

HCA also plays a role in the appeal of rejected refugee claims. Generally, UNHCR sends rejected refugees a standard letter with a check mark next to the reason why refugee status was not granted. These letters typically do not give the applicant sufficient information to understand why his or her case was rejected or to prepare a meaningful appeal. Acknowledging this, in September 2006 UNHCR Turkey agreed to share with HCA copies of the more detailed internal UNHCR Assessment Forms for HCA's clients.

Knowing detailed reasons for rejection gives refugees a critical tool in assessing whether an appeal would be appropriate and, if so, what issues must be addressed. However, while this information gives them some of the understanding they need, it is not always sufficient, especially in more complex cases, and HCA, together with its SLRAN partners, is encouraging UNHCR to

release the full files (including interview transcripts) to refugee applicants or, at least, to refugee-assisting NGOs.

HCA and UNHCR Turkey cooperate to protect the rights of refugees throughout the Turkish 'temporary asylum' procedure. Most critically, the two organisations work closely to prevent instances of *refoulement* by seeking urgent interim measures from the European Court of Human Rights under Rule 39 of the Rules of Court. Through instances of cooperation such as this, together they hope to bring the government's practices in line with Turkey's international obligations to uphold refugees' basic human rights.

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1. The forced return of a person to a country where he or she faces persecution
2. See HCA 2008 report on detention conditions at <http://www.hyd.org.tr/?pid=610>. In 2009 HCA will publish reports on the situation of unaccompanied minor asylum seekers and on LGBT (lesbian, gay, bisexual and transgender) asylum seekers in Turkey.
3. <http://www.hyd.org.tr/?pid=554>
4. HCA's summary of the benefits of legal aid to refugees, UNHCR staff and the status determination procedure as a whole is online at <http://www.hyd.org.tr/?pid=711>



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