

ECRE INTERVIEW: HELSINKI CITIZENS' ASSEMBLY



ECRE interviews Oktay Durukan from the Helsinki Citizens' Assembly (HCA) in Istanbul, Turkey.

The interview explains what kind of organisation the HCA is and the kind of work they do. In addition, the interview focuses on the situation in Turkey regarding asylum and migration issues

ECRE: Can you tell us about the Helsinki Citizens' Assembly's (HCA) work in Turkey?

HCA: HCA is an Istanbul-based Turkish human rights organization, working on a wide diversity of issues. We are an essential part of Turkey's vibrant human rights community. Since 2004, protection of refugees and vulnerable migrants in Turkey became one of our priority areas of activity. We run a relatively extensive, specialised program to provide free legal counselling and assistance to individuals who want to seek asylum protection in Turkey. We litigate to intervene in situations involving prolonged arbitrary detention and risk of *refoulement*.

We also monitor state policies and practices, write reports on protection gaps. We work together with domestic and international partners to try to mobilise public awareness and political solidarity for refugees. We organise trainings for lawyers and other professionals. I think it's safe to say that we are the leading rights-based Turkish NGO stakeholder in the field.

ECRE: We heard there are plans to set up a Refugee Council of Turkey. Can you tell a little bit more about the plans and expectations for such a council?

HCA: Over the last five years, as migration and asylum became more of a public issue in Turkey for a variety of reasons, we have seen more and more NGO service providers, charities and human rights groups become interested to get involved.

At the same time, Turkey's refugee support and advocacy community as a movement is still at its early stages, mainly challenged by limitations in organizational capacity and extremely limited possibilities for funding. Nevertheless, we feel a growing need to coordinate activities and services, but also to find ways to join forces and get more effective in our advocacy work.

Partially in response to UNHCR Turkey's encouragement, we recently launched a conversation on the possibility of setting up a "Refugee Council of Turkey" as a way to optimize and enhance our capabilities. We are still at the stage where we are trying to find a common approach and draw inspiration and ideas from similar "council-type" organizations across Europe.

ECRE: Who are the asylum seekers present in Turkey?

HCA: Currently there are about 19.000 refugees and asylum seekers registered with UNHCR in Turkey. About half of them are Iraqis, 25% Iranians, 17% Afghans and 7% Somalis, to name the largest populations. We have seen a sharp increase in the number of new asylum applications from ca. 5.000 in 2006 and 8.000 in 2007 to 13.000 in 2008. This increase is largely due the growing numbers of Iraqis and Afghans who seek protection in Turkey.

While these are the figures relating to individuals who have actually entered the asylum system, we are extremely concerned that Turkey's increasingly aggressive and effective interception and border control activities result in the denials of a significant number of refugees from accessing the asylum system.

ECRE: Do you consider Turkey to be "a country producing refugees"? A "receiving country"? A "transit country"?

HCA: That's a very good question. In fact, Turkey is all of that, and that is the challenge we are dealing with. For European publics, Turkey is best known as a "country of origin" for migrants and refugees. Currently there are about 220.000 Turkish nationals worldwide, who either have some form of refugee status or waiting for a decision on their asylum applications. About 10.000 Turkish nationals seek asylum somewhere each year, with France, Germany and Italy among the leading countries of destination. I think these figures are a pretty good indication of Turkey's continuing human rights failures.

At the same time, Turkey is a well-known major "corridor to Europe", both for individuals who escape war and persecution and those who are displaced by extreme poverty and inequalities. Experts estimate the volume of these "mixed flows" over Turkey in hundreds of thousands each year. In our view, only a portion of the refugees who find their way to Turkey choose to apply for protection in Turkey or are given an opportunity to do so.

In this context, Turkey's role as a "receiving country" becomes more and more critical, as it becomes more and more difficult for refugees to circumvent Europe's formidable repertoire of migration control tools and policies, which sadly do not distinguish enough between those who have a legitimate need for international protection and those who left their countries for other reasons.

ECRE: What are the main characteristics of the asylum system in Turkey?

HCA: It is complicated. Turkey was one of the negotiators of the 1951 Convention, an original signatory. But it took advantage of a little-known caveat included in the Convention to adopt 1951 with a so-called "geographical limitation", committing itself to provide protection only to those who were displaced "as a result of events in Europe". This "geographical limitation" is still in place.

As a result, it is said that individuals who originate from Council of Europe member states are welcome to seek and obtain refugee protection in Turkey under the 1951 framework. However, all the others – i.e. the so-called "non-Europeans", which are the vast majority of people who seek asylum in Turkey – are not eligible to stay in Turkey long term as

refugees. Instead, the Turkish Government offers them a very inadequate domestic protection status referred as “temporary asylum”, which allows them to stay in Turkey until the UNHCR can find a “durable solution” for them elsewhere. This means that UNHCR is expected to make an effort to resettle these individuals in third countries, which proves a challenging task for the agency.

This means that asylum seekers make two “parallel” applications. They apply to Turkish Government to get “temporary asylum” status. And they have to apply to UNHCR Turkey to get “refugee” status and resettlement assistance. The two determination procedures are based on the same eligibility criteria and generally harmonized, but not necessarily always so, which does occasionally lead to the *refoulement* of UNHCR-recognized refugees.

Asylum seekers are dispersed around the country in 30 so-called “satellite cities”, where they spend an average of 2-3 years pending determinations on their asylum request and resettlement proceedings. They are supposed to find their own accommodation on their own devices. They get very little assistance in terms of subsistence or healthcare. Legal employment is hardly a prospect, where many of them are forced into exploitative informal work arrangements, including sex work. On top of that they are expected to pay a so-called “residence fee” in order to get a residence permit. Turkey is a tough place to survive for a “temporary asylum seeker”.

ECRE: Do asylum seekers risk *refoulement* in Turkey? How and Why?

HCA: They absolutely do. Our observation is that if a newly arrived asylum seeker manages to find her way to UNHCR and register, generally speaking she will not encounter problems registering a parallel “temporary asylum” request with the police. Once she’s in the system, she’ll be relatively safe from being sent back. That is true for legal entrants as well as irregular arrivals, although we occasionally see UNHCR-registered - even recognized - refugees fall through the cracks of the highly deficient Government procedure and find themselves at risk of being *refouled*.

The story is very different if you arrived irregularly and were intercepted by authorities upon arrival, in the border region to the east or on your way to the west, or you were arrested for irregular presence in one of the major cities, or apprehended while attempting to cross to Greece by land or by sea. If you are caught before you had a chance to approach the UNHCR and enter the asylum system, the authorities will deny you access to the asylum procedure. They will simply refuse to process your asylum request. Following a brief criminal procedure for illegal entry or attempted exit, you will find yourself locked up for deportation without being given an opportunity to argue your claims to be at risk of persecution.

In the rare case where you somehow manage to reach a legal assistance-provider and apply to domestic courts to challenge your deportation, the courts will fail to provide you a proper remedy. There’s a very good chance you shall be sent back to war or persecution. In this context, the Strasbourg Court, the ECtHR is currently the only effective remedy available to us to halt illegal deportations of individuals who express fear of persecution.

ECRE: Can increased training for border control officials be one short-term remedy to prevent the denials of asylum procedure, which you point out?

HCA: These arbitrary denials do not only mock Turkey’s international law obligations including those under ECHR, they are also in violation of domestic asylum rules. But this is not simply a matter of border control officials not doing what they are supposed to do. On the contrary, our observation based on countless cases that came to our attention, and the

knowledge we acquired over the course of our legal battles in refugee cases, is that this is a systematic policy instructed and endorsed by Turkey's Ministry of Interior.

Another issue of serious concern to us in this connection regards the way in which these illegal deportations are carried out. To give you just one example, last year in April, in a highly publicised case, 18 Syrian and Iranian nationals, including 5 UNHCR-recognized refugees, were forced to swim across an unpatrolled stretch of the river that separates Turkey and Iraq. This is an instance of unilateral, "black" deportation of people to a third country they have no relation to. 4 of them drowned, including one of the UNHCR-recognized Iranians. UNHCR condemned the incident in a press release, based on testimony provided by survivors. To date, there has not been a serious investigation on the incident.

ECRE: Does, in your view, the EU pre-accession process affect developments in Turkey in the field of asylum and migration? If so, how?

HCA: The EU accession agenda is the single most important driving force shaping the direction of Turkey's policies and practice in the area of asylum and migration. In 2005, the Government adopted a comprehensive National Action Plan, and pledged to undertake a series of measures to align asylum & migration policies and practice with EU standards, including administrative and technical capacity building, training of staff and changes in legislation. Currently, preparations are underway for a comprehensive asylum law to replace the existing framework, which is drastically inadequate. At the same time, there are two ongoing *twinning* projects for the establishment of six large-scale regional "Reception Centers for Asylum Seekers" and two more "Removal Centers", using mainly European money. On the critical issue of lifting the "geographical limitation", the Government emphasises "burden sharing" as a precondition and so far refrains from making a concrete time frame commitment.

While the EU-accession related reform process presents an opportunity for Turkey to improve its deficient asylum system and raise standards, we share the serious concerns of our ECRE partners regarding the direction of EU-level policies in this area, from matters related to the operation of Frontex, failures of the Dublin System, and widespread and indiscriminate use of accelerated procedures and administrative detention for asylum seekers and migrants.

We are also extremely concerned that civil society stakeholders, including the HCA, are being entirely excluded from the consultations and preparations regarding the ongoing reform process. In December last year, Turkey's 10 leading human rights organizations published a joint open letter to Ministry of Interior to denounce the "black listing" of HCA and several other critical NGOs from the ongoing supposed "NGO Consultation Meetings" organized by the Ministry. To date, there has been no change in the situation, and we continue to be excluded. As a result, the leading rights-based NGO stakeholders in the field collectively veto the process, until all of us are allowed to participate.

ECRE: We know that the Commission also wants to sign a "readmission agreement" with Turkey. What is the state of negotiations?

HCA: That is indeed a big issue on the Commission's agenda. So far, the Turkish Government has been stalling the negotiations on this one. Our impression is that Turkey will want to keep this one shelved, along with the "geographical limitation" question, until a time when they feel confident that EU accession is a realistic political prospect. Currently as you know, Turkey's place in Europe remains controversial among the European political leadership as well as public opinion across the EU.

On a final note, speaking of readmission and the question of migration control generally, I wish to refer back to my earlier comments regarding Turkey's extremely worrying interception practices. It is vital to understand that the EU accession process provides the context in which we observe Turkey getting more and more effective and aggressive in its pursuit to stop irregular migration flows to Europe. By that I do not only refer to the "bad example" effect of what's going on in Greece, Malta, Italy and so forth. I also refer to the ways in which Turkey as an accession country is being motivated and geared up to become a formidable partner in Europe's so-called "battle against illegal migration".

Links:

To know more about the situation of asylum seekers and refugees in Turkey, please consult April 2008 "Unwelcome Guests" report on the detention of refugees in Turkey:

<http://www.hyd.org.tr/?pid=610>

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