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Refugees at heightened risk of refoulement under Turkey's state of emergency

Amnesty International is concerned that Turkey has become an even less safe space for refugees and asylum-seekers since the coup attempt on 15 July 2016. Safeguards against being sent to other countries where they face a risk of serious human rights violations have been drastically reduced as part of the measures adopted under the state of emergency in place following the failed coup. The state of emergency has been extended three times following the initial three-month period announced on 20 July 2016. It is currently due to run until 19 October 2017. Government spokespeople have indicated that it will be extended further beyond this date.

Amnesty International's research prior to the coup attempt concluded that Turkey could not be considered a safe country for asylum-seekers and refugees on a number of counts. Non-Syrian asylum-seekers in Turkey do not have access to fair and efficient procedures for the determination of their status. Neither do they have timely or adequate access to integration or resettlement, two of the three durable solutions applicable to people in need of asylum.¹ The conditions in Turkey also do not represent an environment where asylum-seekers and refugees, both Syrian and non-Syrian, can be assured of the ability to live in dignity through access to their economic and social rights.²

In late 2015 and early 2016, Amnesty International documented instances where Turkish authorities sent asylum-seekers and refugees back to face a risk of serious human rights violations in Afghanistan, Iraq and Syria.³ In May and June 2017 the following new cases emerged:

Refoulement to Syria of F.⁴

F., a Syrian Kurdish woman aged 52, escaped violence in Syria during the first half of 2014 and sought protection in Turkey. She was registered as a Syrian refugee under the temporary protection regime in Turkey⁵ in 2015 and was living with her children and grandchildren in the town of Mersin in south east Turkey.

In early 2017, F. moved with her children to Izmir, on the western coast of Turkey as some of her children found jobs in some textile workshops there. On 21 March 2017, F. was out with her three daughters, her son and her three-year-old granddaughter, when she was drawn to a crowd of women celebrating Nowruz, considered as the first day of spring by Kurds and other groups in the Middle East. On the way home, F. was detained by the Turkish police due to a scarf that had been given to the family at the gathering. Police said that the scarf was in the colours of the Kurdish flag and accused F. of propagandizing for the armed Kurdistan Workers' Party (PKK), while the rest of the family was let go.

After six days in detention, F. was brought to court and a judge ordered her release on condition that she sign in at the nearest police station once every two weeks while the investigation continued. Despite her release on remand, police took F. directly from the court house to Harmandali Removal Centre, outside Izmir.

The Izmir governorship issued an order for her removal on 28 March 2017. According to her removal order, the Izmir governorship found that F. fell under the terms of paragraphs (b) and (d); the first one referring to leaders, members, or supporters of a terrorist organisation or a benefit oriented criminal organisation' and the second one referring to those who pose a threat to public order, security and health under Article 54(1) of the Law on Foreigners and International Protection, which lists grounds for removal orders.

¹ The third durable solution, repatriation, is only feasible under certain conditions, including that there has been a fundamental change of circumstances in the country of origin of a refugee, making it safe for them to return. This applies only when the person is no longer in need of international protection.

² Amnesty International, "No Safe Refugee: Asylum-seekers and refugees denied effective protection in Turkey," June 2016 (Index: EUR/44/3825/2016).

³ Amnesty International, "Europe's Gatekeeper: unlawful detention and deportation of refugees from Turkey," December 2015 (Index: EUR 44/3022/2015), Amnesty International, "Turkey 'safe country' sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal," 23 March 2016, Amnesty International, "Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal," 1 April 2016,

⁴ Information on this case was collected through face-to-face and phone interviews with a family member of F., phone interviews with her lawyer and review of court documents.

⁵ In Turkey, refugees from Syria are provided with "Temporary Protection" as a group. (*Law on Foreigners and International Protection* [LFIP], Article 91; Republic of Turkey, *Temporary Protection Regulation*, 22 October 2014, available at http://www.goc.gov.tr/files/_dokuman28.pdf [TPR]). Temporary protection status does not lead to a more permanent one, and can be terminated unilaterally by a Council of Ministers' decision, after which Syrians would be required to leave the country (TPR Articles 11, 14).

As such, although F. was never convicted of any crime and the allegations against her were still being investigated, the Izmir governorship - an administrative body – effectively found her guilty of crimes listed under Article 54(1) paragraphs (b) and (d) and ruled that she should be forcibly returned to Syria.

F.'s lawyer appealed the removal order based on the fact that her return to Syria would put her life and physical integrity at risk and would amount to refoulement, proscribed under Turkish and international law. Her lawyer also applied to the Constitutional Court to obtain a suspension order against her removal, which was granted first on 3 April until 24 April 2017 and then again on 12 April valid until another decision by the Constitutional Court. In this second decision, the Court reiterated that the arguments and documents submitted by the lawyer indicated that the appellant may face a serious threat against her life or her physical and psychological integrity if she was deported.

F.'s relatives told Amnesty International that on 9 May 2017, when they went to Harmandali Removal Centre to visit her, they saw her being put on a bus. They learned from the police at the Removal Centre that she was being transferred to another removal centre in the city of Gaziantep at the border with Syria, around 15 hours away from Izmir by bus. They were informally told that she had signed voluntary return documents and would, therefore, be sent back to Syria.

F.'s lawyer immediately appealed to the governorship of Izmir with the suspension order of the Constitutional Court reminding the Turkish authorities of her fragile health (F. suffers from high blood pressure and a chronic disease of the digestive system) and of the irreparable harm F.'s deportation to Syria would cause. The lawyer refuted the claim that F. could have sought voluntary return to Syria, as F. did not inform either her lawyer or any of her relatives that she decided to return to Syria. Additionally, the lawyer claimed that, as F. is illiterate and in poor health, she could not have signed a voluntary return document knowingly or willingly.

F.'s relatives tried to visit her at the Removal Centre in Gaziantep, but they were not allowed in despite an explicit provision in the Law on Foreigners and International Protection safeguarding the right of family members to visit detainees (Article 59). Fifteen days later, F.'s relatives received a phone call from her. She was in tears and told them that she had been transferred to the Syrian side of the border from Kilis, a Turkish town bordering Syria. F. denied accepting voluntary return and said that the only document she signed was a document police told her to sign to receive her medication.

F. reported to her family that she had managed to reach her village in Kobane. However, she has no relatives left there and is unable to get the medical attention she needs. She fears for her life in Syria both due to the armed conflict and because of her health and general lack of any means to survive.

Collective expulsions to Syria disguised as “voluntary returns”

In early June 2017, Amnesty International was contacted by two Syrian refugees living in Turkey. Independently from one another, these individuals stated that members of their families had been forcibly returned to Syria. The refugees told Amnesty International that their relatives had crossed into the Hakkari Province of Turkey from Iraq in the early days of May 2017 and were held in Van Removal Centre before being taken back across the border together with hundreds of other Syrians in series of transfers that began on 30 May 2017 and lasted a number of days.

Amnesty International talked to a mother and a daughter and to a third Syrian woman⁶ on the phone. They provided detailed testimonies demonstrating that they were amongst the Syrians returned as part of this group. According to their accounts, they were all held in some empty buildings in an area guarded by the Turkish Armed Forces, for around two weeks, in the Derecik region of Semdinli town, in the south east city of Hakkari at the border with Iraq, following their entry into Turkey. One of the women said:

This place was run by the army. It was awful. Even animals would not stay there. They made us pay for bed and food. But there was no bed. We were given disgustingly dirty blankets and we put them on the floor to sleep on them. By day, we would take the blankets outside and sit on them. There were frequent electricity cuts and no hot water at all. There wasn't even cold water all the time. The toilets were so dirty. The smell made me throw up every morning. Also, you could not close the door of the toilet.

Later, they were all transferred by bus to Van Removal Centre, including around 200 Iraqis and 300 Syrians. They were held in the Van Removal Centre for another two weeks. From 30 May onwards, the Syrians were taken out of the Van Removal Centre in groups of around 100 people and taken by bus to the city of Hatay at the border with Syria. They were then sent back to Syria through Cilvegözü (Bab al Hawa) border gate.

The third Syrian woman interviewed by Amnesty International, mother of four young children including a baby said:⁷

They took us out of Van prison [Van Removal Centre] in groups and put us in busses. On the bus, we asked for our documents. Police said they need to finalize some documents before releasing us. [...] But when we saw a sign to Aleppo, we understood they are taking us to Syria. Then we arrived at Bab al Hawa border gate. [...] Police said we have to cross over to Syria to have some documents stamped at the border and then come back into Turkey. We all refused this. [...] We said we are afraid, afraid that if we cross into Syria

⁶ She is related to one of the Syrian man who initially alerted Amnesty International in Turkey about the deportations of Syrians.

⁷ Phone interview on 4 July 2017.

from here, we cannot come back. There is DAESH [Islamic State] there. Women, children, elderly all cried. We were stuck there for hours. Some people fainted. [...] They forced men into the bus. There was chaos. [...] My four year old's clothes got ripped off. [...] At the end they put us all back into the bus and took us in to Syria.

All three women Amnesty International interviewed said that they were forced by the Turkish police to sign or fingerprint papers while in Van Removal Centre and threatened to be kept in detention for months if they refused. One of the women said that one of the papers had writing in Arabic which stated "I agree to go back to Syria." She said she was pressured into signing the paper also on behalf of her 17-year-old brother.

On 14 June 2017, Amnesty International wrote to Turkey's Ministry of Interior to request information about these expulsions, but has not received a response as of 20 September 2017.

On 3 July 2017 an opposition member of the Turkish Parliament from Van, Bedia Oztokce Ertan, submitted a written parliamentary question on the incident.⁸ The Member of Parliament referred to the statements of a Syrian refugee, who had travelled to Turkey from Germany to help his daughter-in-law apply for family reunification at the German Embassy in Turkey. According to his statement reported in the parliamentary question and media, he travelled to Semdinli town, where his daughter-in-law was held among other refugees before being transferred to Van Removal Centre. Details provided in the parliamentary question closely match many of the details in the testimonies of the three Syrian women interviewed by Amnesty International. As of 20 September 2017, the government had not responded to the question, although the internal regulations of the Turkish Parliament require that written parliamentary questions are responded to within 15 days.⁹ However, the Member of Parliament told Amnesty International that a government representative verbally confirmed to her that the removal of a group of Syrians via the Cilvegözü border gate in early June 2017 had occurred, although no details on the number of those returned and the grounds on which they were returned was offered.

Refugees and asylum-seekers at risk of refoulement under Turkey's state of emergency

Since its initial enactment in July 2016, the Turkish government has widened the scope of the state of emergency from its focus on those connected with the coup attempt to "combating terrorist organizations" more broadly. The state of emergency involves derogations from a list of articles in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Since the coup attempt, the government has adopted a series of executive decrees¹⁰ that have failed to respect even the reduced guarantees left in place under the state of emergency.

One of these executive decrees, Executive Decree 676, issued on 29 October 2016, has removed significant safeguards against refoulement from the international protection regime in Turkey.¹¹ The categories of foreigners against whom Turkish authorities can issue removal orders have been extended. The decree has abolished the automatic suspensive effect of an appeal against removal orders for individuals considered to constitute a "threat to public order, security and health" or regarded as somehow associated with "terrorist organizations." In such cases, removal orders can be issued even when the person concerned is a recognized refugee or a registered asylum-seeker. These changes introduced under Turkey's state of emergency put asylum-seekers and refugees at serious risk of return to countries where they may face persecution or other serious human rights violations.

Executive Decree 676 in detail: Removing safeguards against refoulement from the Turkish protection regime

The procedures and principles concerning foreigners' entry into, stay in, and exit from Turkey and the international protection regime in the country are codified under Turkey's Law on Foreigners and International Protection (Law 6458) adopted in April 2013. Executive Decree 676 introduced three fundamental changes to the fourth section of this Law that regulates how and when removal orders can be issued and the administrative and judicial mechanisms to appeal against them.

First, Article 36 of the Decree expanded the basis on which Turkish authorities can issue removal orders by adding a sub-paragraph to Article 54(1) of Law 6458. The new sub-paragraph (k) now includes "people considered to be associated with terrorist organisations defined as such by international institutions and organisations" amongst those who can be subjected to a removal order. Secondly, Article 36 also amended the second paragraph of Article 54 of Law 6458 to allow removal orders to be issued at any stage of the international protection proceedings, both for applicants and international protection beneficiaries if they are considered to fall under the newly added sub-paragraph (k) or two other pre-existing sub-paragraphs:

Article 54(1) (b) referring to leaders, members, or supporters of a terrorist organisation or a benefit oriented criminal organisation; and Article 54(1) (d) referring to those who pose a threat to public order, security and health.

The third change introduced to Law 6458 by Decree 676 regards the abolition of the suspensive effect of appeals against removal orders. According to Article 53 of Law 6458, removal orders are issued by governorates either ex officio or following an instruction from the Migration Directorate. They can be appealed by the foreigner in question, their legal representative or lawyers at Administrative

⁸ Written Parliamentary question is available at (Turkish): https://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=213741

⁹ See Article 99 of the internal regulation: <https://www.tbmm.gov.tr/ictuzuk/ictuzuk.pdf>

¹⁰ Under the state of emergency, the government has the power to issue executive decrees with force of law and which are subject to little effective scrutiny by the parliament or the courts.

¹¹ Executive Decree 676, 29 October 2016, available at: <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>.

Courts within 15 days of the notification of the order. The removal cannot be executed until the expiry of the 15 days unless the foreigner requests to return voluntarily. In line with European Court of Human Rights jurisprudence, to ensure that a remedy against removal orders is effective, once an appeal is submitted to the Administrative Court, the execution of the removal order is automatically suspended until the decision of the court, which is final.

Since the adoption of the Decree 676 however, the appeals against removal orders no longer have a suspensive effect in cases where Turkish authorities decide that the foreigner falls under any of the three sub-paragraphs of Article 54 listed above, (b), (d) and (k).¹² In such cases, foreigners no longer have access to an effective remedy against their deportation.

In cases in which an appeal to an administrative court is possible, the court may not be willing to consider the risk of refoulement on substantial grounds. Amnesty International is aware of administrative court decisions in relation to appeals against removal orders, where the court failed to assess the alleged risk of serious harm upon return and dismissed the appeal on procedural grounds. Amnesty International, for example, reviewed the Administrative Court decision in relation to the appeal of a Syrian asylum-seeker, who was issued a removal order on the basis of Article 54(1) (d) of the Law on Foreigners and International Protection because he was found with a false passport. The applicant argued in his appeal that he would face torture or other degrading and inhuman treatment if returned to Syria. However, the court dismissed his appeal on 3 November 2016 on the ground that he failed to file his appeal with the court within the 15 day deadline of the receipt of his removal order. The court failed to give any assessment of the risk he would face upon return to Syria and of whether his return could amount to refoulement.¹³

Lawyers and legal aid organisations assisting refugees and asylum-seekers in Turkey told Amnesty International that they now directly appeal to the Constitutional Court, when they are approached by a foreigner at risk of refoulement. In the meantime, they also request the Constitutional Court to issue an interim measure to suspend the return order until the Constitutional Court's final decision. However, this cannot be considered an effective remedy either, as not even appeals to the Constitutional Court have an automatic suspensive effect. While lawyers, who have expertise in responding to potential refoulement cases, report that they have prevented most of the returns that came to their attention by obtaining interim measures from the Constitutional Court, they also report that it is extremely difficult for foreigners in detention to access lawyers. As such, it is likely that many cases never reach the courts because many refugees and asylum-seekers in detention do not have access to lawyers and are not properly informed of their rights.

Non-governmental organisations do not have access to removal centres and lawyers can only visit their clients if they have power of attorney, which is very difficult to obtain for asylum-seekers and refugees who lack identity documents from their countries of origin and for those who are in detention.¹⁴ In removal centres, detainees receive a one page leaflet listing their rights and obligations but they are not provided with information on how to reach UNHCR, non-governmental organisations or lawyers. They cannot receive calls from outside, and have to use public phones to make calls themselves to which they have limited access and without any privacy. As a result, only a minority of people at risk of forcible return can appeal a return order.

Conclusions and recommendations

Legislative changes introduced through Executive Decree 676 under the state of emergency have increased the risk of refoulement for asylum-seekers and refugees in Turkey. Recent cases of refoulement examined by Amnesty International demonstrate that this risk is not theoretical, but very real. Turkey should annul the changes introduced by Executive Decree 676 to the Law on Foreigners and International Protection and reinstate the automatic suspensive effect of appeals against removal orders. Greece and other EU countries should not return asylum-seekers back to Turkey as provided under the EU-Turkey deal of 18 March 2016¹⁵ under the pretence that the country is safe: Turkey is not a safe country for refugees and asylum-seekers.

¹² Article 54(1)(d) of Law on Foreigners and International Protection.

¹³ Aydın First Administrative Court, File No: 2016/1493, Decision No: 2016/950.

¹⁴ Refugee Rights Turkey, *Barriers to the Right to Effective Legal Remedy: the Problem faced by refugees in Turkey in granting power of attorney*, February 2016, available at: http://mhd.org.tr/assets/vekalet_eng.pdf

¹⁵ On 18 March 2016, Turkey agreed to take back all "irregular migrants" who cross into the Greek islands after 20 March in exchange of up to €6 billion as well as political concessions from the European Union. According to the deal, formally a statement, returnees were to include not only migrants, but also those in need of international protection. The justification for this is the assumption that Turkey is a safe place to which asylum-seekers and refugees can be returned. No asylum-seeker has been returned to Turkey from Greece on the basis the country is safe yet. However, the Greek Asylum Service has already decided that Turkey is safe in the case of hundreds of Syrian refugees. They are now waiting in limbo for the result of their appeals against these decisions and are at risk of being forcibly returned to Turkey.¹⁵ Additionally, the expectation that all asylum-seekers would be returned under the EU-Turkey deal condemns many to extended asylum procedures stuck on overcrowded Greek islands.