



Macedonia and Turkey
the return process and the situation of migrants
Fact-finding mission
2013.
National Judicial Office

EUROPEAN RETURN FUND



List of content

I. Introduction.....	3
I.1. EU level treaties on readmission	4
II. The Republic of Macedonia	5
II.1. The economy of Macedonia	6
III. Accession to the European Union	6
III. 1. Disputed issues.....	7
IV. Ethnic tensions	9
IV. 1. The Ohrid Framework Agreement	10
V. Illegal migration	12
V. 1. Organisational structure of the Border Guards.....	12
V. 2. Ohrid, Border Guards, Western Regional Centre	13
VI. Asylum procedure	16
VI. 1. Personal identification procedure	17
VII. Bilateral and regional contacts of the country.....	18
VIII. The Macedonian judicial system.....	18
VIII. 1. Rule of law and fundamental rights	20
IX. IOM Macedonia	22
X. UN High Commissioner for Refugees (UNHCR), Macedonian Representation.....	23
XI. European Progress report, 2012.....	23
Turkey	25
I. General background	25
I. 1. The Copenhagen criteria	28
II. The economic situation of Turkey.....	30
III. The Turkish judicial system.....	31
III. 1. Prison conditions	32
IV. Respect of human rights.....	34
IV. 1. Prohibition of torture.....	34
V. The Turkish refugee system	36
V. 1. The situation of Syrian refugees	38
V.2. Refugees in the mirror of numbers	39
V.3. Situation of migrants belonging to the LGBT group	40
VI. Freedom of expression and association	40
VII. Equal opportunities of genders.....	42
VII.1. Rights of women	43
VIII. Minority rights in Turkey.....	46
IX. Abolishment of death penalty	48
X. Human trafficking and human smuggling.....	49

I. Introduction

Since several decades, illegal migrants use the Balkan route which includes Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Albania, Kosovo and Macedonia. The classical Balkan route leads through Turkey and Bulgaria to Serbia.¹

Migrant coming from the Middle-East and Central Asia, cross the borders of the European Union at the Greek-Turkish section of the inland border.

According to the study of the **European Migration Network** dated in February 2012, admittance of the migrants to the territory of Hungary can be classified into 4 groups according to the following:

1. Illegal travel and stay alone, without facilitators (human smugglers);
2. Illegal border crossing with facilitator (human smuggler) escort and false documents, illegal stay and then continuation of the journey,
3. Illegal border crossing committed by means of being hidden in a vehicle, illegal stay and continuation of the journey;
4. Illegal border crossing at the border sections between the border crossing points with facilitator (human smuggler) escort.

The migrants are predominantly Serbian, Albanian from Kosovo and – coming from Greece across Macedonia and Serbia - Afghan, Pakistani, Palestinian, Algerian, Tunisian, Iraqi and Iranian nationals.

¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emnstudies/irregularmigration/12_hungary_national_report_practical_measures_for_reducing_irregular_migration_final_dec2012_en.pdf http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregularmigration/12_hungary_national_report_practical_measures_for_reducing_irregular_migration_final_dec2012_en.pdf

I.1 EU level treaties on readmission

In accordance with **Directive 2008/115/EC** the purpose is to facilitate for the citizens of third countries staying illegally to be expelled to their home country or to the third country located outside of the territory of the European Union, which shall be obliged to readmit thereof.

Based on the authorisation of the Council, the Commission held negotiations with 21 countries until the end of 2011. These countries are the following: Morocco, Sri Lanka, Russia, Pakistan, Hon-Kong, Macao, Ukraine, Albania, Algeria, China, Turkey, Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, Moldova, Georgia, Cape Verde Islands, Belorussia, Azerbaijan and Armenia. Of them, the Commission successfully finalised the negotiations with 13 countries. The EU-level readmission treaties concluded with Hong-Kong and Macao came into force in 2004, with Sri-Lanka in 2005, with Albania in 2006, with Russia in 2007, with the four West-Balkan countries - Bosnia-Herzegovina, **Macedonia**, Montenegro, Serbia -, and Ukraine and Moldova on the 1st of January 2008.

The treaty concluded with Pakistan came into force on the 1st of December 2010, while the treaty concluded with Georgia on the 1st of March 2011.

The negotiations on the readmission treaty have been finalised with **Turkey**, and the text of the treaty was initialled in June 2012.

According to the **Frontex** report² on the situation at the external borders of the Schengen area:

Between April and June 2012, altogether approx. 23 000 illegal border-crossing cases were detected. The composition of the illegal migrants was mixed. Compared to the same period of the previous year, which was determined by the events of the Arab spring, the number of illegal migrants shows a 44% decrease. As opposed to this, Greece reported a 29% increase in comparison to the previous year.

² COM (2013) 326 final

http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.ipex.eu%2FIPEXL-WEB%2Fdossier%2Ffiles%2Fdownload%2F082dbcc53eea9c03013ef9cc15e109c9.do&ei=AMyHUsqtIZT24QT55YCoDA&usg=AFQjCNFm2Twzt55ZgMu7ZeTUONLqIrEuTw&sig2=aPZWm_g3OYVBbuTHy38hAA&bv=56643336,d.bGE

The vast majority (56%) of the detected cases occurred at the inland border between Greece and Turkey, which means that this border section continues to be the most affected regarding illegal migration targeting the EU. At this border section, the majority of the detained persons were Afghani nationals, followed by Bangladeshi and Syrian nationals. The number of Syrians crossing the border legally and illegally has increased considerably.

II. The Republic of Macedonia



Originally, this photo was published on *Flickr.com*.

The Republic of Macedonia – in the UN, the name of the country is the former Yugoslav Republic of Macedonia (FYROM) – received the candidate status in the EU in 2005. Since 1991, Greece hinders the international acknowledgement of the country as the Republic of Macedonia, with reference to the fact that the name of a North-Greece province is also Makedonia. Greek nationalists fear that Macedonia may have territorial demands towards Greece due to this reason. As a consequence of the dispute over the name, Macedonia was not admitted to the NATO in 2008. As of 15 December 2012, Hungary has acknowledged the West-Balkan country as the Republic of Macedonia in bilateral relations.

The number of inhabitants in the country is around 2 106 000. The biggest minority groups are the Albanians (35%) and the Turks (4.5%). Furthermore Serbian, Greek, Roma and Vlach people live in the country. Since the 15th of July 2002, also the Albanian is an official language in the parliament. Of the population, 64.7% are Orthodox, 33.3% Muslim, Sunnite and 1% Roman Catholic.

II.1. The economy of Macedonia

In economic terms, currently Macedonia is one of the most disadvantaged countries of Europe. Unemployment is considerable, the majority of the population lives from agriculture, and black economy has a significant role. When Macedonia became independent in 1991, she was one of the most underdeveloped of the Yugoslav republics. She was deprived of the money from the central funds of the time, suffered from the lack of proper infrastructure, the UN sanctions against Yugoslavia and the Greek embargo against Macedonia. The economic growth which started after 1996 was again hindered by the Albanian uprising which broke out in early 2001. After the crisis was coped with, the economy also started to gain momentum, and before the financial crisis, the growth of the GDP exceeded 3 percent. In spite of macro-economic stability, Macedonia fails to attract foreign investors, and the low number of new job opportunities could not really improve the unemployment rate which exceeds 30 percent. The **growth of gross domestic product (GDP):** -0.7 percent (source: World Factbook); **unemployment rate:** 32.2 percent (source: World Factbook); **inflation rate:** -0.8 percent (source: World Factbook).³

III. Accession to the European Union

In 2009, the Commission examined whether the country adequately met the political criteria, and proposed that the negotiations shall be started. This recommendation was repeated by the Commission in 2010, 2011 and 2012.⁴

In its **communiqué the Commission** worded the following:

³ http://eu.mti.hu/orszagok/2742577/macedon_koztarsasag/orszagismerteto

⁴ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0600:FIN:HU:PDF_COM\(2012\)_600_final](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0600:FIN:HU:PDF_COM(2012)_600_final)

The Commission is firmly convinced that for the purpose to strengthen the space and sustainability of the reforms, with special emphasis on the state of law, and to strengthen the relations among the different ethnicities the country should enter into the next phase of the accession process, which would be of benefit for the whole region.

The country continues to meet the obligations stemming from the stability and accession agreement. The Commission continues to propose that the country should enter into the second phase of accession, and encourages the Council to act, without delay, for this purpose in accordance with the respective stipulations of the stability and accession agreement. The country continues to meet adequately the political criteria. The EU schedule is in the centre of the government's activities.

The high-level accession talks with the Commission served as catalysts for the acceleration of the reforms, and promoted significant steps forward in a number of crucial political areas.

The first review of the Ohrid Framework Agreement by the government proved to be a useful tool for the strengthening of intra-community dialogues.

III. 1. Disputed issues

As of this day, Macedonia failed to settle the dispute with Greece over the issue of the name. Under the egis of the UN, a dialogue has been going on since the 1990s, which is completed with bilateral talks since 2009, besides others also at ministerial level. However, they did not bring about positive results up until now. In December, the International Court of Justice concluded that Greece violated the temporary agreement concluded with Macedonia by opposing, at the Bucharest summit held in 2008 the accession of Macedonia to the NATO. Maintaining good neighbourly relations continues to be of utmost importance, including finding a mutually acceptable solution to the name dispute under the egis of the UN through negotiations. A solution to the problem shall be found without delay.

The official language of Macedonia is very similar to the Bulgarian language and this is the reason why the Bulgarian and Western linguists consider it a Bulgarian regional dialect. Bulgaria and Greece do not officially acknowledge

Macedonian is an independent language. According to both the countries, this is one of the three existing versions of the Bulgarian language.⁵

The dispute between Macedonia and Greece over the name is well-known. Athens opposes the Euro-Atlantic integration of Macedonia, or FYROM Macedonia in Greek. According to the arguments of Greece, if they accept the name, Macedonia, the state founded in the early 1990s may have territorial claims in the future with regard to North-Greek territories. Skopje does not accept the name 'former Yugoslav Republic of Macedonia', while Greece shall continue to block the accession of Macedonia to the NATO and the EU for this reason, until a common denominator is reached.

After the proclamation of independence, Bulgaria was the first state which acknowledged the Republic of Macedonia at her constitutional name in stead of the mosaic name (FYROM) claimed by the Greeks. In spite of this, there are disputes also with Bulgaria, since the Macedonian authorities erect monuments in Skopje for such Bulgarian heroes as, for example, Samuel tsar, who reigned in the Tsarist Bulgaria between 997 and 1014. The other interesting feature is conversion into Macedonian and Greek of the Bulgarian monk brothers, Saint Cyril and Saint Method. The two brothers, who lived in the 9th century and originated from Thessaloniki, created the Glagolitic alphabet, which is the predecessor of the current Cyrillic alphabet. Among the students of Cyril and Method we find Saint Clement of Ohrid, who is considered to be a national hero in Macedonia, while the friar used to spread the Word and strengthened Slav culture in the territory of the Bulgarian Kingdom all his life. Bulgaria is the most anciently founded (in 681) state of Europe bearing the same name even today. By the end of the 8th century, her borders reached the territory of the present Republic of Macedonia. The Slav tribes which lived there slowly melted into the local population, and Makedonia was part of the first Tsarist Bulgaria already in the 9th century.

After five hundred years of Turkish captivity, the peace treaty of San Stefano in 1878 temporarily gave back to Bulgaria the Macedonian territories, but as a consequence of the Berlin negotiations the Western forces attached them to the Ottoman Empire. The sanguinary revolt of 1903 in Ilinden is the most well-known event in Bulgarian history when an attempt was made to get the detached territories back. However, following this event, the anti-Turkish uprisings

⁵ http://kitekinto.hu/europa/2011/08/23/ha_nincs_tortenelmed_akkor_lopd_el_a_szomszedodet/#.Uog1CeLjXFI

did not stop until as late as the 1910s.

In the first Balkan War of 1912, Bulgaria, Serbia and Greece chased out the Turks from Makedonia, but did not manage to divide the territory among them and thus fought the second Balkan War in 1913 against each other. The Serbs, Greeks, Rumanians and Turks jointly attacked Bulgaria, but succeeded to defeat her only with great losses. After the two World Wars, Makedonia became under the supervision of the Yugoslav military forces.

Under the pressure of Belgrade and the Soviet Union, the Macedonian anti-fascist movement elaborated, within a short period of time, already in 1945, the Macedonian literary language and the alphabet as a combination of the Bulgarian and Serbian grammar. The Macedonian national conscious, which is originated from the Empire of Alexander the Great, started to be outlined during the middle of the 20th century.

IV. Ethnic tensions

When mentioning ethnic tensions in the Balkan region, we usually think of the conflict between Serbia and Kosovo, and are less familiar with the Macedonian-Albanian hostility.

In Macedonia, there are severe ethnic tensions between the majority Macedonians and the Albanian population already since 2001. Approximately a decade ago, members of the Albanian minority started an armed attack, lasting for more than eight months, against Macedonian law-enforcement forces. In the armed conflict starting at the end of the 2000s and resulting in about 70 victims, the National Liberation Army, the ONA-UCK wanted to force national self-governance based on the Kosovo pattern. As a consequence of the Albanian attacks which spread from village to village, the local Macedonian population had to escape to the East. For a couple of months, the Macedonian government passively observed the attacks against police forces, because in their interpretation of the news, the attacks were not conducted against the population.⁶

⁶ http://kitekinto.hu/europa/2012/02/02/etnikai_feszultsegek_macedoniaban/#.UoflP-LjXFI



Photo: Judit Pápai

ONA-UCK – which is not the same as the military organisation active in Kosovo – representing separatist ideas, wanted to attach the Western parts, inhabited by Albanians, to Albania. According to certain Macedonian opinions, the final goal was the annexation of Kumanovo, Debar and Gostivar to Kosovo. As a result of the events in 2001, the Macedonian government declared ONA-UCK a terrorist organisation and was also prepared for the possibility of war. Due to the development of a state of war, Macedonian masses demonstrated against ONA-UCK, and put on fire Albanian shops and a djami. Several, independent fronts developed, and the most memorable event of the time was the clash of Aračinovo, but the Macedonian forces quickly cleaned the affected area from the Albanian attackers. None of the big Albanian parties were supportive of ONA-UCK, thus a situation similar to the one in Kosovo could not take place. On the 13th of August 2001, the Ohrid Framework Agreement was signed and it defined the Albanian national powers and cultural autonomy in a wider sense.

IV. 1. The Ohrid Framework Agreement

The Ohrid Framework Agreement grants a lot of concessions and rights to the Albanian minority, besides others, in the area of representation in

administration, legislation and jurisdiction, and the delineation of municipality borders based on national belonging. Besides language, self-governance and cultural differences, one of the most severe conflicts between the two ethnic groups is religious belonging. The vast majority of Macedonians are Eastern Christians, while most of the Albanians are Sunnite Muslims. Though in Macedonia, the role of religion is by far less central than, for example, in the Arab and Islamic world, it was still definitely influenced by the conflict which broke out in January 2012. The incident occurred after the annual carnival organised in the village of Vevcani in January. At the masked and costume parade which attracted thousands of tourists, several Macedonian youngsters marched in black Burka, and made indecent comments on the Koran. It is not uncommon, that people dressed in provocative and satiric masks parade at the carnival. The act of the Macedonian marchers incited anger among the Muslim population, and for this reason, they put on fire the Saint Nicola church located near the town of Struga on the 30th of January. Thanks to the efficient intervention of the fire brigades, the icons of matchless value remained intact, but the roof beams of the church burned. Unknown persons have removed the Macedonian national flag from the flag post located before the Municipality of Struga and put on, in stead, the one coloured green Islamic flag. Muslim men threw stones on a bus on its way to Vevcani village and near the village of Labuništa unknown perpetrators broke down a cross.



Photo: Judit Pápai

The Ohrid Framework Agreement signed in August 2001 guarantees, at the highest level of current international norms, individual and minority rights of ethnic minorities.

The Macedonians consider it, by far exaggerated, while the Albanians think that their rights guaranteed in the Agreement are too little. The legislation phase of the Agreement's enforcement ended in October 2005. Macedonia entered in the political development phase of the post Ohrid Framework Agreement period, since the Agreement became an integral part of the state, political, and social development of the country and became part of its legislation and daily practice.

V. Illegal migration

The head of department of the Ministry for Home Affairs gave information about illegal migration.

Most of the illegal migrants cross the border with Greece. Identification of the persons entering the country illegally without documents causes problems because the lack of diplomatic representations in Macedonia hinders the establishment of contacts.

V. 1. Organisational structure of the Border Guards

In 2005, border surveillance, including the green border was taken over by the police from the army.

Currently the Border Police consists of 1950 members. Altogether 4 regional centres were set up. Their organisational structure is similar to that of the Ministry for Home Affairs.

The **Southern Regional Centre** was set up in 2004 - Bitola (in charge of the Greek border),

Eastern Regional Centre - (Bulgarian border);

Northern Regional Centre – Skopje (Serbia, Kosovo),

Western Regional Centre – Ohrid (Albania).

The country has two international airports. One of them is in Skopje, the other is in Ohrid. The country's border is not a Schengen border, but the requirements are the same as at the Schengen border. Joint training courses with **Frontex** are organised for the staff. Fight against crime is part of the training courses both at central and regional levels.

V. 2. Ohrid, Border Guards, Western Regional Centre

The head of the Centre explained that since visa liberalisation, the biggest task for the unit is represented by organised crime. The transit nature of Macedonia is significant not only due to the Greek border, but also in the direction of Greece. Three units operate at regional level:

- department in charge of alien policing,
- department in charge of illegal migration, and
- department responsible for readmission.

The **Ohrid Regional Centre** – which was established in 2006 – includes inspectorates. This Centre is practically responsible for the Albanian border.

After the initial steps, during the period between 2007 and 2009 it was typical that a large number of Albanian citizens arrived to Macedonia (approximately 3000 persons per year), who considered Macedonia a transit country which they left for either Greece or other countries of the European Union. There were some, actually very few, foreigners, who went to Macedonia to work on the black market. The investigators had the feeling that in the beginning, managing this “additional” problem (namely trafficking in human beings and organised crime) caused great difficulties for them, but the situation has improved thanks to the increase of severity of the Macedonian Penal Code and the strengthening of human resources. Currently, they are much more successful in identifying criminal activities.

As of 2011 (visa liberalisation, access of Albania to the NATO) **illegal migration has been declining, but as a new phenomenon, the border police is confronted with the problem of the very high number of false documents.** Typically, the citizens of Kosovo use these documents, because the travel documents of the young state are not accepted everywhere in Europe. From Kosovo, these people first go to Macedonia, then Albania, and finally towards the EU, or try to use the false passport at the Ohrid airport.

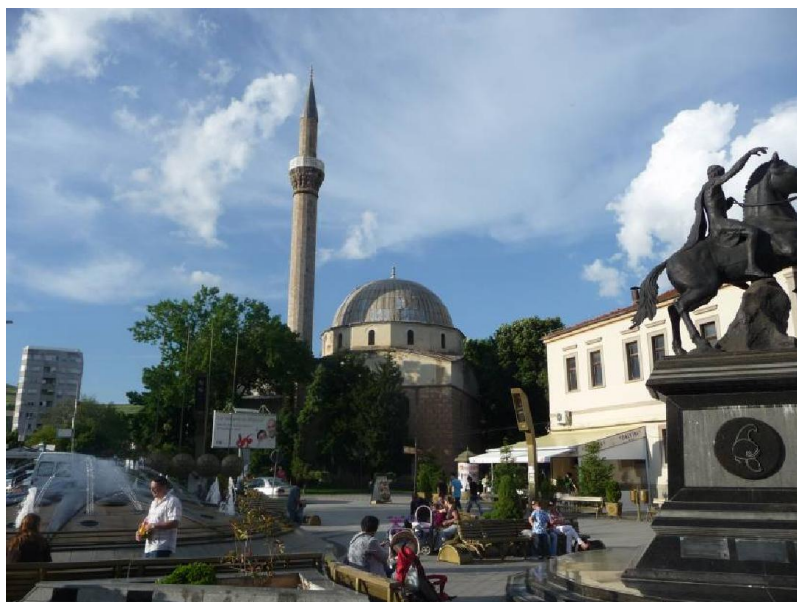


Photo: Judit Pápai

If the staff members of the border guards catch somebody, first they check whether legal or medical assistance is needed, or not. They offer the possibility for the detainee to contact their family members.

If, within 24 hours, the identity of the person can be verified, then he/she is sent to the court in charge of minor offenses, where, as a maximum, 500 euro fine can be levied for illegal border crossing. We have inquired whether this is not an uncollectable sum in their opinion, and the response was that they were on the same opinion, and for this reason, the judges' sentences against foreigners are often only court admonition or the obligation to pay the costs of court proceedings.

Naturally, members of organised criminal groups might even be held responsible – depending on the severity of the crime committed – before the criminal court. The most frequent types of crime are smuggling of drugs, facilitation of prostitution, and smuggling of excise goods.

In the case of countries neighbouring Macedonia, verification of identity is not difficult, because co-operation with these countries is good.

If, within 24 hours, the identity of the foreigner can not be verified, and it is also unknown where he/she comes from, then the person is sent to an open reception centre.

In practice, almost all the illegal migrants arrive across the green border. Often enough, they are captured during in-depth control. It is a cheaper solution, and the border guards are already familiar with the “routine” routes. The unanimous opinion is that at this border section, economic migrants do not represent such a big challenge as organised crime does.

V. 3. Bitola, Border Guards, Southern Regional Centre

Staff members of **the Centre** have emphasised that at the Gergilia border crossing point, typically Afghani migrants cross the border in large numbers, but they could not provide exact data about their number.

The employees of the Centre have supported the opinion of their colleagues working at the Western unit by saying that the foreigners have to be identified within 24 hours, because after 24 hours they are sent to a reception centre and, in the majority of the cases, leave for unknown destinations.

Illegal migrants can be sent back to Greece only if it can be **verified** that the named persons came from Greece – for example, has a hotel reservation –, because in other cases, Greece does not readmit them. Answering our question the investigators said that they had no information about what happens then in Greece, what the fate of the readmitted foreigners is.

Simple sketch drawings were found at a number of persons about different routes leading to Hungary and Austria, which were, presumably, drawn by human smugglers.

There are typical, periodical, migration waves: in the wintertime, less people arrive without money and documents, while in the summertime, for understandable reasons, the border guards have a lot more to do.

The number of migrants applying for refugee status was 93 in 2012 and 223 in 2013. Often enough, many of those who apply for refugee status do not wait until the end of the procedure, they escape from the reception centres, thus there is no possibility to continue and finalise the refugee procedures.

With regard to readmission, altogether **24 bilateral agreements** were concluded. These agreements are applicable to those Macedonian citizens and persons, who arrived to the member states of the European Union from

Macedonia, and also to the citizens of the former Yugoslavia and those persons who stayed in the territory of Macedonia prior to 1991.

The ministries for Home Affairs are in the process of negotiation with each other concerning readmission.

VI. Asylum procedure

The **State Secretary of the Ministry for Home Affairs** said that the process defining the legality of the application for asylum is in harmony with international treaties.

In the refugee procedure, the **administrative decision on the merits** shall be taken within **6 months**. Appeal against this decision can be made at court. **At first instance, the administrative court supervises the case, while at second instance it is done by the administrative court of appeal.** It is true though that practically all the applicants leave the reception centre before the decision on the merits is taken, consequently, up until now, only one – Afghani – applicant was granted international (subsidiary) protection for a term of 1 year. In 99 % of the cases, the procedures are stopped.

Currently, there are about 670 persons under subsidiary protection in Macedonia. They are from the RAE village of Kosovo.

The term of subsidiary protection is 1 year. After the expiration of 1 year, the application is re-examined.

Member states of the European Union are considered to be safe third countries by the Macedonian refugee authorities.

The number of those who apply for refugee status is constantly increasing: in 2009, there were 88, in 2010 156, in 2011 178, in 2012 527 and in January – March 2013 altogether 335 such persons.

The majority of them come from **Syria, Afghanistan, Pakistan, Somalia, Mali** and other African countries.

There is an open reception centre with the capacity to receive approximately 150 persons in **Vizbegovo**. The Ministry for Labour and Social Policy is in charge of this centre.

People constantly disappear from the centre. They do not wait until the procedure ends.

VI. 1. Personal identification procedure

If it turns out that a person is an illegal migrant, the next step is the personal identification procedure. This represents the biggest problem. The majority of illegal migrants arrive without documents. They protract the procedure and disappear from the open reception centres.

The assistance of the Interpol is also relied upon during the personal identification process.

According to the alien policing act, if the identification of the person is not verified by the deadline, he/she shall be transferred to a readmission camp, and the identification process continues.

In the course of readmission, the person is sent back to Greece; the largest number of illegal migrants arrives from Greece. **Only those persons are readmitted by Greece who was captured at the border.**

Under the egis of Frontex, a Macedonian-Serbian-Hungarian-Austrian co-operation is being organised in the area of migration with the objective to reduce illegal migration.

VI. 2. Visa liberalisation

As a result of the control mechanism following visa liberalisation for the West-Balkan countries, the **Commission** published, in August 2012, its **third report on control mechanisms following visa liberalisation** introduced with regard to Macedonia (Macedonia former Yugoslav Republic), Montenegro, Serbia, Albania and Bosnia-Herzegovina. In this report, the Commission defined the most recent activities, and proposed additional steps to be taken. The number of those who come from Serbia and Macedonia and apply for refugee status decreased in the first half of 2012 compared to the same period in 2011 (if we compare May 2011 to May 2012 the decrease was 13% in the case of Serbia, 48% in the case of Macedonia former Yugoslav Republic), but the number of refugee seekers coming from Albania, Bosnia-Herzegovina, and Montenegro showed a significant increase (725%; 14% and 77%, respectively).⁷ Most of the applications for refugee status turned out to be unfounded, and the approval rate of the applications for refugee status continues to be very low.

The most important target countries are still Belgium, Germany, Luxemburg and Sweden.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0686:FIN:HU:PDF>

VII. Bilateral and regional contacts of the country

In the area of **defence and security co-operation**, the country takes part in bilateral and regional initiatives. With regard to **home affairs and justice**, Macedonia co-operates in the border management with Albania, Serbia, Kosovo and Bulgaria; there are existing or planned ‘joint liaison offices’ for the purpose to co-operate in police and customs matters, regular, ‘mixed’ border guard patrols with Albania, Serbia, Kosovo and Bulgaria, joint border controls with the Serbian authorities, agreement on police co-operation with Croatia, Montenegro and Serbia, co-operation with Kosovo deserve mentioning besides regional obligations. The agreement concluded with Montenegro on mutual travel of the citizens entered into force in December 2012, which, similar to the agreements concluded with Albania and Serbia facilitate for the citizens to travel freely with biometric personal identification documents into these countries.⁸

VIII. The Macedonian judicial system

The deputy head of the **Macedonian Judicial Council** said that the establishment of the Judicial Council was part of the judicial reform. The operation of the Council was reregulated in 2010. The Council operates as an independent institution. Its core task is to guarantee the independence of the judiciary (courts). The Council consists of 15 members. Eight of the 15 members are elected by the courts from among their members, 3 members represent minority groups, and 3 members are elected by the parliament. Two members of the Council – of whom one has to come from a minority group – shall be proposed by the president of Macedonia, and they shall be approved by the parliament. Furthermore, the president of the Supreme Court and the Minister of Justice are also members of the Council. The president of the Supreme Court and the Minister of Justice may not be the president of the Council.

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0205:REV1:HU:HTML>

Members of the Council are assigned to this post for a term of 6 years and might be re-elected for another term. The Council is headed by the president, who is elected from among the members of the Council by the members for a term of 2 years with secret balloting.

The Council appoints and exempts the judges, and the presidents of the courts; appoints and terminates the assignment of the jurors; evaluates the work of the judges; decides upon disciplinary procedures; takes decisions about the exemption of judges due to lasting ineptitude; takes decisions about the immunity of the judges and taking the judges into custody; proposes two members of the Constitutional Court; supervises the reports issued by the Supreme Court on the applicability of certain laws; decides upon the temporary fulfilment of a given judicial function; defines the necessary staff number at the given courts; supervises and evaluates the reports of the courts; cares about the development and maintenance of the social prestige of judges and the courts; acts with regard to complaints about judges; and prepares reports about its activities for the parliament.

All the members of the Council considered that the prevalence of transparency was of primary importance. For this reason, the sessions of the Council are open for the public, and the meetings on examining the citizens' complaints are also transmitted by the television.

In Macedonia, there are 27 first-instance courts. First instance courts differ from each other in two ways. On the one hand, there are 15, so-called basic courts, which deal with criminal activities penalised with maximum 5 years of imprisonment and court proceedings pertaining to property rights up to the value of fifty thousand euro. Criminal activities penalised with more severe punishment and court cases pertaining to property rights exceeding fifty thousand euro belong to the first instance courts with extended power. There are 12 of them in the country. Besides the first instance courts, the 4 courts of appeal, the administrative court, the administrative court of appeal and the Supreme Court also form part of the judicial structure.

The Constitutional Court is not part of the judicial system.

Expressly for the purpose to respect and make respected Article 6 of the European Convention on Human Rights, in other words, for the purpose to enforce the right of individuals to a fair trial within a reasonable period of time, a section was set up at the Supreme Court to which any citizen may file petition. The section examines the reported case and should the unreasonable

delay of the case be verified, orders the court in question to finish the case within a certain period of time.

As to the workload of the individual judges it was explained that in **Macedonia, there are altogether 675 judges, which means that the number of judges per 100 thousand citizens is about 35**, which exceeds the EU average (22 judges/100 thousand inhabitants).

The Council examines the closure of court cases each month, and index numbers have been calculated for the purpose of this examination. The index numbers reflect the complexity of the cases, thus, besides others the number of persons involved in the case, and the nature of the proceeding are taken into account. The judges are evaluated each year in accordance with the index numbers (scores) of closed cases.

In summary the deputy president of the Council emphasised that the number of court cases decreased, in the first place due to the fact that in probate and payment summons cases, the notary publics act in stead of the courts. As to the workload of the individual judges, they could not provide us with exact numbers, but it was presented that approximately 250 cases are in progress at the smaller courts where 4-5 judges work.

VIII. Rule of law and fundamental rights

As to the efficiency of the judicial system, the courts at all levels showed positive case closing ratios in 2012, which means that the majority of them managed to process the cases received or even more than that. In the month of December 6 additional positions were fulfilled at the supreme and the administrative courts, which improved their case management capabilities. At the same time, however, no long-term strategy for the adequate distribution of human resources in the law enforcement system was prepared as yet. The new statistical software to be used for the judiciary is in the test phase. This will complete the existing automated administration system and will expectedly be introduced in June 2013.

The capacities of the prosecutor's office dealing with organised crime and corruption cases was improved with hiring three new prosecutors, and this way all the 13 jobs are taken. Furthermore, budgetary funds have been provided for the nomination of 7 additional state prosecutors and 16 judicial staff members in order to meet the obligations defined in the new law on criminal procedures.

As to the quality and independence of the judiciary, following the entering into force of the amendments of the act on judiciary, namely as of January 2013, all the newly appointed judges at the first instance courts shall be chosen from among those who finished the academy, strengthening this way the principle of professionalism and merit-based appointment. Since January 2009 up until now, 61 of the 80 graduates of the judicial (court and prosecution) academy were hired as judges and prosecutors.⁹

The **Commission concluded in its report**, that the current legislation on the dismissal and disciplinary procedure of the judges shall be made more precise and foreseeable and that the proportionate application of thereof by the judicial council shall be assured. As to the prevention of corruption, following the amendment in 2012 of the legal framework on systematic control by the state committee, set up to prevent corruption, of the conflict of interest declarations, altogether 483 declarations filed by MPs, ministers, deputy ministers and officials elected or nominated by the parliament were controlled. A large number of conflict of interest cases were identified and a number of conflicts were resolved. During the control, it was established in 123 cases that the officials failed to file a declaration, and in early 2013, procedures were initiated in 26 cases due to minor offenses. In November 2012, the amendments of the act on financing political parties were adopted for the purpose to strengthen the supervisory system, but no tangible, practical results can, as yet, be seen in the improvement of enforcement. Currently, the summary on the examinations, accusations, verification of culpability and judgements (including the judgements made in high-level corruption cases) is being compiled, together

⁹ http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0205:FIN:HU:HTML_COM/2013/0205
final

with the complete overview of the data reflecting fines levied for minor offenses, tax fines, and disciplinary sanctions during the past few years. Within the framework of this work, a number of different organisations and agencies co-operate with each other, including the police, board of customs and excise, office for budgetary revenue, state prosecutor's office, courts and the state committee set up to prevent corruption.

IX. IOM Macedonia

The head and staff members of the IOM provided detailed information about the activities of their organisation established in 1999. **The Organisation exclusively deals with voluntary returnees.** The most frequent reasons for return are: the parties do not wait until the procedure ends, or their application for refugee status is refused. The Organisation also supports illegal migrants coming to the country, but it is typical of these persons that they do not wait until the end of the procedure and continue their journey towards other European countries. The most frequent target countries are Belgium, Switzerland, Germany and Hungary.

Between 2003 and 2012, altogether 985-1000 persons returned. In 2013, until the month of April there were 79 returnees. The return of 16 Macedonian citizens, specifically asking for IOM support was promoted from Hungary.

The process:

- First, the returnees have to make a declaration about their intention to voluntarily return.
- The IOM representative of the country in question contacts the Macedonian office. The lack of documents in the case of a large number of persons represents a problem. The identification of the persons is always done by the Ministry for Home Affairs.
- The IOM keeps close contacts with the Ministry for Labour and Social Affairs and the Ministry for Home Affairs.

The term of the assistance may vary between 1 month and 7 months. In the case of persons under the age of 18, return is assisted in the form of family evaluation. It was emphasised that returnees may not get into a privileged situation as opposed to those who live at home. Returnees are assisted by

means of further training and retraining, and temporary accommodation, and in case of need for a lasting solution, returnees are placed in social welfare institutions. After registration, returnees have access to social services. Social security contribution and health-care contribution shall be paid by every citizen. At present, health-care services are adequate, and chronic diseases are properly dealt with.

X. UN High Commission for Refugees (UNHCR), Macedonian Representation

In 1999, 360 thousand people escaped from Kosovo. The contact with the Macedonian authorities is good. An act on refugees was approved in 2003. Based on legislation, the following are possible:

- recognised refugee – based on the Geneva Convention of 1951;
- may get subsidiary protection – based on the EU directive;
- may get temporary protection.

XI. European Progress report 2012 (Country Progress on Asylum 2012)

According to the findings of the report, access to social and health provisions of those who apply for refugee status (asylum seekers) has improved only to a minor extent in comparison to 2011.

During the refugee procedure, interpreting causes great difficulties, the process is slow and inadequate. In these issues, the capacities of the Ministry for Home Affairs are at low level. The courts judge the procedure based on formal aspects in stead of judgement of merit.

As to the refugee situation in Macedonia the conclusion drawn was that in spite of the adequacy of legislative and organisational frameworks, there is a lot to improve in the enforcement of legislation. No progress was made in the issuance of personal identification documents.

Organisational structure

		MINISTRY FOR HOME AFFAIRS		
BORDER GUARD		CIVIL CASES		
		REFUGEE CASES		
REGIONAL BORDER CENTRES: NORTHERN, EASTERN, WESTERN, SOUTHERN		CHIEF ADVISOR		
		ADVISOR		
		APPLICANT FOR REFUGEE STATUS		
	LEGAL RESIDENT		ILLEGAL RESIDENT	
		APPLICATION FOR REFUGEE STATUS		
		REFUGEE SECTION FIRST INSTANCE		VIZBEGOVO RECEPTION CENTRE/CAMP MINISTRY FOR LABOUR AND SOCIAL AFFAIRS
		DEFINITION OF REFUGEE INTERVIEW		
	NEGATIVE DECISION		POSITIVE DECISION	
	APPEAL	ACKNOWLEDGED		SUBSIDIARY
	ADMINISTRATIVE COURT		ACCEPTED APPEAL	TERMINATION
	NEGATIVE DECISION			
	APPEAL			
	ADMINISTRATIVE COURT, SECOND INSTANCE			
	NEGATIVE DECISION			VOLUNTARY

Turkey

I. General background

The smaller part of Turkey is located in Europe, the bigger in the South-Western part of Asia. The number of inhabitants is 72 million. From the North, Georgia, Armenia and Iran, from the South, Iraq and Syria, from the West, the islands of the Aegean-sea, Greece and Bulgaria border the country. The religion of the vast majority, 99.8% of the population is Islamic. Most of them are Sunnites, but the number of Alawis (Shias) is also significant.¹⁰

The following religious groups are also represented in smaller numbers: Orthodox (Greek Orthodox), Armenian Orthodox, Israelite, Roman Catholic and Protestant. The majority of the population (80%) in Turkey is of Turkish ethnicity.



Photo: Judit Pápai

In the country, the biggest minority group, which is predominantly located in the Eastern part of the country, is the Kurdish. They represent approximately 20% of the population. Due to its geographical location, Turkey is one of the most

¹⁰ http://elib.kkf.hu/edip/D_14903.pdf

significant ‘entry points’ for the migrants in Europe. A large number of human smuggling routes also cross the country.

Turkey has been a republic since the 29th of October 1923.¹¹ The foundations of its political system solidified during the 1920s and 1930s under the rule of Mustafa Kemal Ataturk. When Ataturk came into power, he initiated a series of radical reforms in the political, social and economic life of the country, with the objective to quickly transform the country.¹²



Photo: dr. Zoltán Németh

Mustafa Kemal worded the foundations of the Republic of Turkey in six basic principles, based on which he reformed the nation:

- * secularism, namely the separation of the state and religion, and the complete elimination of religion in public life;
- * republicanism, namely the introduction of republican system as opposed to the Sultanate of the Ottoman Empire;
- * etatisme, the state has a definite role in managing the economy;
- * populism, strengthening national feelings;

¹¹ <http://tedeinturkey.wordpress.com/2012/10/29/oktober-29-a-koztarsasag-napja-torokorszagban/>

¹² http://elib.kkf.hu/edip/D_15184.pdf

- * revolutionism (reformism), accomplishment of the changes prescribed in the reform programmes under the guidance of the state;
- * nationalism, development of a new nation conscious.¹³

After the Second World War, the country strengthened its advance to the Western world. Turkey is member of the Council of Europe since 1949.

The Constitution of 1982 defines a democratic, secular and parliamentary government, with strong presidential power and independent courts. It guarantees internationally acknowledged human rights, which, in the case of emergency, might be limited, and may not be used to violate the integrity of the state or for the establishment of a non-secular, non-democratic government.

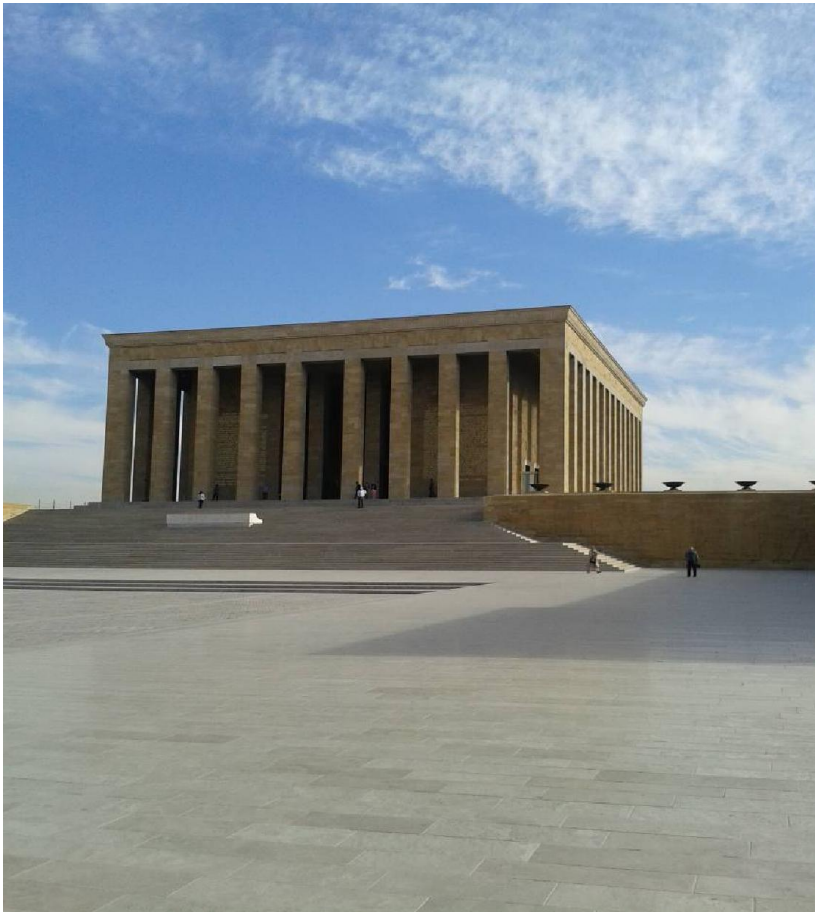


Photo: dr. Judit Pápai

¹³ http://elib.kkf.hu/edip/D_14995.pdf

Turkey has become member of all the important European organisations, and has been fighting, for more than three decades, for membership in the European Union. In 2004, in accordance with the recommendation of the European Commission, Turkey adequately met the conditions necessary to start the accession negotiations. After the European Council approved the recommendation of the Commission, the official accession talks started on the 3rd of October 2005.¹⁴

I. 1. The Copenhagen criteria

According to the Copenhagen criteria, Turkey also has to meet the following four accession criteria:

The first of them is the political criteria, which includes the maintenance of a system which is democratic and characterised with the rule of law, where human and minority rights are respected. The second group is represented by the economic criteria, the third is the introduction of community law, and finally, the fourth is that the EU also has to be capable to accept new members.

Whether Turkey belongs to Europe or not has always been an open issue. This question has again become timely with the possibility of Turkey's accession to the EU. There were many objections to the EU membership. Of them, the big cultural differences caused by Muslim religion should be mentioned in the first place. Furthermore, while on the one hand, the large and constantly increasing number of population, which is poor, would take away funds from the other member states and it would assure a strong say in the decision-making process. Thirdly, the Western countries fear the flow of Turkish labour. As an additional argument against Turkey the human rights situation was also mentioned.

¹⁴ http://www.mfa.gov.hu/NR/rdonlyres/B8BC8AE7-DA3B-4C2C-89A3-E6F2D16D9A3B/0/et_2008_05.pdf



Photo: dr. Zoltán Németh

The accession talks which started in October 2005 reached a standstill after the Spanish presidency, and not even a single chapter was opened since then. Up until now, 13 chapters were opened, and of them one was closed.

Since December 2006, 8 chapters could not be opened due to the lack of discrimination-free fulfilment of the supplementary protocol to the Ankara Agreement (indirectly, the lack of acknowledgement of the Republic of Cyprus), and chapters could not be closed for the same reason. Additional chapters are blocked by Cyprus and France.

The Hungarian-Turkish bilateral relations are extremely good, and it is in our fundamental economic and political interest to maintain and strengthen them. Hungary steadily supports Turkey's integration to the EU.

Until now, approximately 3 million Turkish citizens migrated to Western Europe, mainly to Germany. It is a typical data, that the German Federal Assembly has 12 Turkish members.

According to the information received from the Union of **Turkish Bar Associations** (Türkiye Barolar Birliği), East-West migration within the country also reaches a significant extent. The explanation to this is that population growth is significant (2.4%) in the communities living in the Eastern part of the country, there is terrorist threat and poverty is on the increase. There is a big difference in the economic situation of the Eastern and Western parts of Turkey.



Photo: dr. Zoltán Németh

II. The economic situation of Turkey

For the year 2013, the Turkish government forecasts a 4 percent GDP increase. According to Mehmet Simsek, minister of finance, Turkey shall meet this target number due to the strong banking sector, the financial policy of the government and the stable financial situation of the population.

The growth of the Turkish economy slowed down to 2.6 percent in 2012, but – according to the calculations of the International Monetary FUND (IMF) – the growth of the GDP might be 3.5 percent this year and 3.75 percent next year. **The GDP of Turkey is almost at the same level as that of Switzerland and Holland.** However, we should note that the previous calculations did not include the effects of the anti-government demonstrations taking place during the past one and a half weeks. The confidence of the investors was shaken due to the riots, the share index of the stock exchange decreased by 10 percent in June and the Turkish lira lost 6 percent of its value against the US dollar. At the same time, the yields expected by the investors increased in the case of Turkish government bonds. The yield of the bonds with ten years of expiration increased to 7.3 percent as opposed to the previous 6.2 percent. According to analysts, the most severe danger threatening growth in Turkey is the continuation of the demonstrations which will cause uncertainty among the investors and stop foreign capital influx.

The attraction of Turkey on the developing markets was its stability, which is being questioned right now.¹⁵

III. The Turkish judicial system

According to the information received from the **Ministry of Justice**, the number of **special courts** is high in the Turkish judicial system.

In civil court cases, there are separate courts for commercial, maritime, labour, property, consumer protection, property right and family related cases.

The military court is an independent organisation. According to the information provided by **IHD**, the human rights protection agency, sometimes it happens that a case started at the civil court is transferred to the military court. The Turkish human rights organisations fight for the termination of this separation.

The so-called **disagreement courts** decide upon the conflict between/among courts with regard to their power and competence.

The **High Council of Judges and Prosecutors**, established in 2010, which is in charge of the central management of courts, decides upon the nomination and transfer of judges, disciplinary matters and dismissals. This body consists of 22 members, of them 16 are elected from among the judges and prosecutors. The president of the High Council is the minister of justice.

According to the information provided by the **Union of Bar Associations**, there are about 80 thousand lawyers in Turkey and roughly 30 thousand of them work in Istanbul. After one year of legal practise, lawyers may perform legal activities, without the need to pass an exam. Currently, the Union of Bar Associations is working on the introduction of mandatory examination before granting the right to work as a lawyer.

Members of the Union told us, that 43 thousand people made an attempt to illegally cross the border in 2013. Illegal border crossing is a crime. The detained illegal border crossers are sent to a camp for a period of 2 months.

¹⁵ http://hvg.hu/gazdasag/20130611_Novekedett_a_torok_GDP_MTI

Every detainee has the right to ask for a lawyer, and the Bar Association decides upon who shall be entitled to free legal representation.



Photo: dr. Zoltán Németh

III. 1. Prison conditions

We paid a visit, under the organisation of the representatives of the Ministry of Justice to the **penitentiary of the Sincan penal institution**, where those who were given actual life sentence and were condemned for terrorism are kept.

According to the Turkish penitentiary system, the penitentiary institutions are classified into categories A to F, of which category F is the most severe. The institution visited by us falls into this category.

This penitentiary is an exemplary penitentiary, with cells accommodating 1 to 3 persons. As opposed to common practise, the conditions to work (guitar making, antenna installation) and recreation programmes (painting, mosaic making) are guaranteed here. There is also a well equipped library.

As we have heard later in the presentation of Öztürk Türkdogan, head of the **IHD** (Insan Haklari Dernegi), the **human rights organisation**, in general, the Turkish prisons (especially the prisons and the penitentiaries) are over-crowded, and it happens quite frequently, that people in custody or detainees disappear, and their whereabouts can not be identified even at a later date.

According to the data of the **IHD**, altogether 940 persons disappeared during their detention between 1980 and 2003. The corpses of 400 persons were found later. In Turkey, political opponents are often accused of common criminal offences. Several hundreds of people are registered as disappeared, who, according to the head of the **IHD** died in prison due to beatings, or no trace was ever found of them.

A criminal procedure is in progress also against one of the collaborators of the **IHD** due to the suspicion of terrorism. No judgement has been made in his case, though he has been detained since three years.



Photo: dr. Zoltán Németh

The head of the **IHD**, the human rights organisation pointed out that members of the opposition and dissidents are often accused of participation in terrorist organisation or terrorism. The criminal law prescribes special rules for this act. For example, the term of detention might be 5 years in this case, as opposed to the common 2+1 years.

Impunity, meaning that the members of armed forces are not sentenced for the violation of human rights, is a living practise even today.

IV. Respect of human rights

Respect of human rights has become a decisive issue for Turkey due to EU accession.¹⁶ The European Council defined, in the spring of 2001 the tasks which have to be fulfilled by Turkey to meet the Copenhagen criteria.

In the area of human rights, short- and mid-term tasks were defined by the European Council. Their implementation is constantly monitored by the observers, and reports are sent to the Commission about thereof. The government made a commitment to zero tolerance with regard to torture and inhuman and degrading treatment, and also to strengthen freedom of expression and association, termination of the use of coercive measures, prohibition of death penalty, and permission to use minority languages.

IV. 1. Prohibition of torture

In Turkey, torture is frequently applied as a coercive measure to make statements.

The international community considers torture one of the most severe violations of human rights, thus a number of international treaties contain stipulations about torture, including, besides others, the Convention for the Protection of Human Rights and Fundamental Freedoms of the European Council of 1950, the International Covenant on Civil and Political Rights, adopted in 1966, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe of 1987.

¹⁶ http://elib.kkf.hu/edip/D_14995.pdf

For the purpose to access the EU, Turkey undertook the obligation to terminate the practise of torture.¹⁷ The Constitution stipulates that *'no person shall be exposed to torture or inhuman treatment; no person shall be submitted to a penalty or treatment which is incompatible with human dignity'*. In spite of this, still there are problems related to the elimination of torture. For several years, torture was used as a common tool in Turkey during the questioning or detention of persons, and these acts remained unpunished.

According to the information received from NGOs – **KAOS GL**, which is the interest representation organisation for persons belonging to the LGBT group, **KADER**, a women's right organisation, and **IHD**, a human rights organisation – the number of reports about tortures decreased, together with the number of reports about severe cases, but human rights are still violated. Often enough, the perpetrators of torture get away without punishment, because frequently, the medical reports documenting such cases are imprecise and incorrect. The situation is also worsened by the fact that in spite of the decrease in the number of tortures during detention, use of torture also appeared outside of the detention centres (for example, at the demonstrations or during the transport of the detainees). Human rights organisation reported torture practises which do not leave any visible sign on human body.

The biggest challenge is the implementation of the reforms. A number of novelties are not followed by measures which would guarantee their implementation. For example, there are not enough qualified medical doctors to investigate torture cases.

The head of the **IHD**, **the Turkish Human Rights Association**, Öztürk Türkdogan said that in Turkey, political opponents are often accused of committing common criminal offences. Several hundreds of people are registered as disappeared who, in their opinion, died in prison due to beatings, or no trace was ever found of them. A criminal procedure is in progress also against one of the collaborators of the **IHD** due to the suspicion of terrorism. No judgement has been made in his case, though he has been detained since three years.

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:257E:0038:0049:HU:PDF>

III. The Turkish refugee system

Turkey joined the Geneva Convention of 1951 relating to the status of refugees **with geographical limitations**. Accordingly, refugee procedures shall be conducted only in the case of those persons who arrive from Europe – the members countries of the Council of Europe -, and only such citizens shall be acknowledged as refugees, should the conditions prevail.

Due to geographical limitation, there are two parallel procedures applied during the judgement of the applications of persons for refugee coming from outside of Europe.

The Turkish Ministry for Home Affairs performs a procedure simultaneous with the procedure conducted by the UN High Commission for Refugees, often supporting the decisions of the UNHCR (in this case, the procedure conducted by the Ministry for Home Affairs is formally about ‘whether a foreigner may apply for protection in another country’, in another word, whether he/she might be entitled – as a refugee - to relocation with the help of the UN). In the case of those persons, acknowledged as refugees by the UN, whose decision about granting the refugee status was not accepted by the Turkish authorities shall not receive the permit authorising to leave the territory of the country, consequently, they can not benefit from the only solution, namely relocation either.

At the **Migration and Immigration Directorate of the Turkish Ministry for Home Affairs** – İcisleri Bakanlığı, Göç İdaresi Genel Müdürlüğü – we were provided information about the fact that following co-operation with the civil human rights defence organisations, the European Union and other international organisations, **the Turkish parliament approved in April 2013 the law package No. 6458** (Law on foreigners and international protection), a part of which came into force already in 2013 and the additional parts shall enter into force in **April 2014**, which builds up the **Turkish migration system on new foundations**.

Previously, there was no uniform law on immigration, thus, in accordance with the convention of 1951, the legal foundations were developed on the basis of the recommendations of the European Union. The system of geographical limitation is continued to be applied, meaning that only refugees coming from Europe may get refugee status, while those who come from outside of Europe will only get temporary status.

The purpose of the law is to define the principles and procedural rules for the entry, stay and exit of foreigners and to guarantee international protection.

Article 4 of the new law already defines the principle of non-refoulement: *„no person shall be returned and expelled, or extradited to a country where he or she might be exposed to torture, inhuman or humiliating or cruel punishment or might be threatened with death penalty.’*

The **Migration Directorate** of the Turkish Ministry for Home Affairs started its operation in April 2013, but the activities of merit shall be initiated only in 2014. The tasks of the Migration Directorate shall be to manage **regular and irregular migration**, but the Directorate will also perform **alien policing and refugee related tasks**. The Directorate will operate in 81 provinces at regional and local levels. Currently, they are active in 62 provinces.

The chief officials of the Directorate emphasised that due to the geographical position of the country and the strengthening Turkish economy, they are put under increasing migration pressure. Illegal migration is a great challenge and burden for the Turkish refugee system, because Turkey is the transit route for migration targeting the economically more developed countries of the European Union, which is the most significant on the Eastern and Southern sections of the Turkish border. The officials of the office are on the opinion that safeguarding the approximately 8000-kilometre long land border and the long water border of the country represents an almost irresolvable problem.

As they said, about 100 thousand applications for international protection are being examined each year.

Nowadays, the staff members are trained in using the interview techniques, and it is a basic rule that women can only be interviewed by women.

More financial support would be needed to strengthen the border surveillance system.

V. 1. The situation of Syrian refugees

According to the data of the **Migration Directorate**, Syrian refugees get temporary protection. In 10 provinces of Turkey, about 200 thousand Syrian refugees live in temporary camps located near the border, where they are provided with basic provisions.

An additional 500 thousand Syrian refugees live outside of the camps, in rented apartments, at their own costs, meaning that no provisions are provided for them. Regarding the number of refugees, the Directorate could provide us only with estimates due to the uncontrollability of the long borders and the lack of registration of those who do not file application for refugee status.

The country has spent the equivalent of about 2 billion US dollars on Syrian refugees. With the exception border closures ordained due to smaller armed conflicts near the border, Turkey has always kept its borders open before the Syrian refugees.

Turkish authorities accommodate the vast majority of those persons who arrive into the country illegally in **‘guest houses’** managed by the Ministry for Home Affairs. This accommodation is equal to administrative custody. The accommodated persons have the right to consult with lawyers. It is the competence of the bar association to decide who is entitled to free legal representation. Use of the mother tongue is guaranteed at the expense of the applicant. Should the applicant not have money this option is not fully granted.

The Turkish authorities permit contacts with the **UNHCR**.

Currently, the **Department for Foreigners and Refugee Issues of the Turkish National Police Headquarters** deals with migration. This Department shall transfer its power to the Migration Directorate in 2014. This Department is also in charge of issuing visas and residence permits. The Migration Department of the Ministry for Home Affairs decides upon expelling/deportation, but the courts may supervise this decision. There exists the system of refugee (alien policing) custody also applied in Hungary. In such cases, the detainees are kept in the so-

called deportation centres for a term of three to six months, and the term of the custody is supervised each month. Before being expelled, application for refugee status might be filed, which shall be examined within 48 hours.

Nowadays, the persons shall be informed about the reasons for being kept in custody and legal representation shall also be guaranteed for them.

In the case of those who return to the country, their data are checked at the entry and if the data are in order they are permitted to enter the country. If the documents of the citizen are missing, the embassy shall examine their data and if they are in order, the documents are issued.

Similar to illegal entry, leaving the country illegally is a crime and is punishable with fine.

After June 2012, when the **readmission agreement** between the **EU and Turkey** was initialled, effective implementation of this agreement is of utmost importance, together with the complete enforcement of the existing readmission obligations.¹⁸

In the area of the independence of jurisdiction, treatment with migrants and guaranteeing human rights, Turkey has made and is making significant efforts. The country's clear intention is to become the member of the European Union.

V.2. Refugees in the mirror of numbers

Besides the Syrian refugees, altogether **969 Somali, 9178 Iraqi, 3993 Iranian and 10.648 Afghani applicants** are registered from **outside of Europe**, and – from **Europe - 5 from Germany, 6 from Macedonia, 1 from Greece and 1 from Kosovo.**

According to the information of the **UNHCR**, approximately 61 thousand applications are filed from outside of Europe each year. The UNHCR identifies those third countries where the persons filing applications in accordance with

¹⁸ COM(2012) 600 final, A Bizottság Közleménye az Európai Parlamentnek és a Tanácsnak
Bővítési stratégia és a legfontosabb kihívások 2012–2013

the conditions to receive refugee status shall be admitted. In the first place, Canada, the United States and Australia admit the persons in need of international protection. Each year, approximately 4500 persons are admitted by third countries.

V.3. Situation of migrants belonging to the LGBT group

The Turkish NGOs – like the **KAOS GL** organisation – have pointed out that the migrants – and especially members of the LGBT group – often become victims of discrimination, because the place of residence of the migrants is designated by the police, since these persons have to regularly show up at the competent authority. The police frequently designate traditional communities which are less open to diversity as place of residence.

When the application for refugee status is filed, the applicants might be accommodated at 63 different places in the country, of which members of the LGBT group are received only at 5-6 places. The approach of the society is homophobic in Turkey, and thus the term of ‘common morale’ is turned against the LGBT members.

Sexual diversity is kept in secret in Turkey, since LGBT persons do not get jobs, and if their diversity is discovered, they are dismissed. Sexual diversity is considered an illness in the army.

VI. Freedom of expression and association

The head of the **IHD, the human rights organisation**, İnsan Hakları Derneği said: Since the 1990s, the Constitution of Turkey guarantees the freedom of expression and association, meaning that everybody has the right to free communication, freedom of expression and thoughts and free dissemination of their opinion and thoughts.

The EU Commission concluded that it continues to be a severe problem that the practical implementation of the freedom of media is hindered by additional limitations, and more and more court cases are initiated against writers and

journalists. Consequently, self-censorship is becoming increasingly widespread. The Commission welcomes the obligation of the Turkish government to quickly submit the fourth judicial reform package and calls the Turkish government to deal with all those fundamental issues which currently affect practical enforcement of the freedom of expression.¹⁹

There are two strong tools to limit freedom of expression and association. One of them is the **Act on Anti-Terrorism** and the other is the **Penal Code**. According to the information provided by the leader of **IHD**, the human rights organisation, the regulations of the Penal Code are flexible, thus anybody can be accused of terrorism. Turkey fights against terrorism and this is used to limit freedom rights of people. In **2011**, altogether **13479 persons were sent to court due to violation of the act on the freedom of association and 27 for resistance to the police**.

During the EU liberalisation process, in 2002, the government annulled one of the articles of the Act on Anti-Terrorism. Based on this article, those activities were qualified as criminal acts which endangered the integrity (indivisibility) of the state. This article was used against those persons whose opinion was different from the political opinion of the state authorities. However, the list of ‘terrorist criminal acts’ was extended in 2006. Based on the regulations of the Penal Code, ‘publicly blacken’ Turkey or the ‘Turks’ is an infringement. In its progress reports of 2011, the European Commission concluded that though there was some sort of progress, additional significant efforts are needed in the area of fundamental rights and, within that, freedom of expression.²⁰

During the protests which started on the **31st of May 2013**, more than 2.5 million people went to the streets – according to police data – in about 80 Turkish cities. The peaceful demonstrators, who initially criticised the

¹⁹ COM(2012) 600 final, A Bizottság Közleménye az Európai Parlamentnek és a Tanácsnak Bővítési stratégia és a legfontosabb kihívások 2012–2013

²⁰ http://eeas.europa.eu/human_rights/docs/2011_hr_report_hu.pdf

construction activities in the **Gezi-park**, increasingly turned against the politics of the Turkish head of government, Recep Recep Tayyip Erdogan, who, in their opinion, is authoritarian and aims at Islamising the country. About ten thousand people were demonstrating at the Taksim square in Istanbul, but the riot police forced them out of the square within two hours.²¹

Tough police actions against the demonstrators resulted in clashes which quickly spread to other Turkish cities. Four people died in the clashes, several thousands were wounded and a large number of people were arrested. Finally, a local court, in its judgement, prohibited that the Gezi-park be built in, fulfilling this way the number one request of the demonstrators.

In its resolution of the 13th of June 2013, the European Parliament urged the Turkish authorities to guarantee and respect the right of all the citizens to information, freedom of expression, peaceful association and peaceful demonstration and called the Turkish government to free, without delay, all the peaceful demonstrators who were arrested and are in custody. The European Parliament demanded that all the detainees shall, without limitation, have the right to be assisted by a lawyer chosen by him or her.²²

IV. Equal opportunities of genders

Inequality between social genders is significant in Turkey. This inequality is manifested, in the first place in the area of employment and education.²³

According to the information of **KADER**, the Turkish women's rights organisation, the Turkish constitution states that elementary education is obligatory for every Turkish citizen, independent from gender and it is free in state public schools. In harmony with this, the National Fundamental Law on Education also guarantees, both for the boys and girls the right to basic education.

²¹ <http://www.parameter.sk/rovat/kulfold/2013/07/08/torokorszagi-tuntetesek-isztambul-ujra-megnyitotta-geziparkot>

²² Az Európai Parlament 2013. június 13-i állásfoglalása a törökországi helyzetről (2013/2664(RSP))

²³ http://kitekinto.hu/europa/2012/10/29/nincsenek_konny_helyzetben_a_torok_nk/#.UoFjKeLjXFI

According to the statistical data, 10% of school-age children do not attend school, and three-fourth of them is girls. Due to the costs of education, schooling of children represents a problem for the poorer families. Families give priority to their sons in the area of education due to economic reasons and traditions. A large number of programmes and campaigns were launched in the country to solve these problems. Besides other, in order to increase school registration rate of girls, or prevent their drop-out.

VII. 1. Rights of women

During our visit at the NGO in charge of women's rights we were told that the Turkish society continues to be male-centric. Women often fall victims of discrimination or violence in the family or in smaller communities. Honour killings and domestic violence continue to be a great challenge.²⁴

There was a 14% increase in the number of murdered women. In 2011, 160 honour killings were reported in the country. (bulletinoftheoppressionofwomen.com/2012/01/02/newstatistics-from-turkey-on-honor-killings).

Women are often afraid to turn to the police or the court, because they do not have confidence in effective protection. The lack of confidence is further aggravated by the economic vulnerability of women. For the purpose to guarantee equality of women, in October 2001, the amendment of the constitution declared that the family is based on the 'equality of the spouses'. During the amendment in 2004, equality of genders was declared.²⁵ According to the Constitution, everybody is equal before the law, without discrimination, and without prejudice to mother tongue, race, skin colour, gender, political opinion, conviction, religion, or anything else. Furthermore, the Constitution also states that men and women are equal, and it is the obligation of the state to enforce in practise this equality.

²⁴ <http://new.eur-lex.europa.eu/legal-content/HU/TXT/?uri=OJ:C:2013:257E:FULL#CE2013257HU.01003801.doc>

²⁵ <http://www.wwhr.org/category/women-s-human-rights-in-turkey>



Photo: dr. Zoltán Németh

In 1998, an act on family protection was adopted to prevent domestic violence. Prior to the adoption of the law, domestic violence was regulated by the Penal Code, which caused difficulties in determining the penalties. In 2007, the act was amended so that family members who live separately also enjoy legal protection, and there is an opportunity to make a judgement applicable to all the family members living under one roof, and not only, for example, to the spouse. In spite of this, raping of women often remains unpunished even nowadays.

The Civil Code was supervised between 1993 and 2001. The sections containing discrimination were annulled, and the Parliament adopted in November 2001 the new Civil Code. As opposed to the previous regulation, the new CC states that the basic principle is the equal partnership and equal decision-making power of spouses, and they have equal rights to choose their place of residence.²⁶

²⁶ <http://www.wwhr.org/category/turkish-civil-code>



Photo: dr. Zoltán Németh

Equal rights guaranteed in marital relations shall also be applicable for divorce. Assets and property obtained during the marriage shall be divided equally at divorce. The activities of housewives were acknowledged with this measure.

The new Labour Code, adopted by the parliament on the 22nd of May 2003 also contributed to promoting equality between genders.²⁷ Accordingly, gender, motherhood, marital status, family obligations and children of the employee may not influence the employer. The reform processes are contradictory. The Act on Local Governments of 2004 also contains stipulations on the protection of women: every local government, where the number of inhabitants exceeds 50 thousand shall maintain a shelter for women and children who have fallen victim to violence. An institutional system was also built out for the purpose to support equality of women. The Chief Directorate for the Situation and Problems of Women was set up in 1990. In 1994, it was connected to the prime minister's office and continued its operation under the management of the Deputy Secretariat for Women and Social Benefits.

²⁷ <http://www.wwhr.org/category/the-initiative-for-women-s-labor-and-employment-keig>



Photo: dr. Zoltán Németh

Between 2002 and 2011, participation of women in politics increased. The government kept contacts with women's rights organisations until 2008, but not after.

At present, Islamist thinking is again strongly present and accordingly, women, due to their nature, are suitable to perform family duties.

According to the information provided by the women's rights organisation, **the number of female migrants is high**. The majority of them arrive to the country as victims of **trafficking in human beings**.

VIII. Minority rights in Turkey

The minority policy of Turkey is based on the Kemal principle. As a consequence, the Constitution secures the integrity of the Turkish nation and equality of the citizens. Minorities are the non Muslim communities – traditionally, the Greeks, Armenians and Jewish. The minorities of Muslim religion are entitled to little rights. Even today it is a strong belief in the country that melting of the minorities into the society and nationalism are the fastening forces for the country. It is believed that if more rights are granted to one or the other nationalities in the multi-national country than to the others, like, for example, autonomy to the Kurds, the others will also claim the same rights, and it would ruin united Turkey. For this very reason, all those activities are

prohibited in the country which undermine, disintegrate or weaken national consciousness. According to the information received from the UNHCR, the situation of the Kurdish minority is still not satisfactory.



Photo: dr. Zoltán Németh

The situation of the close to 12 million Kurds living in the country²⁸ exerts a fundamental influence on the Turkish-EU relations. Since the existence of the Republic, the Turkish government has always curbed Kurdish insurgencies and between 1984 and 1999, as a reaction to the violent methods of the Kurdish Labour Party (PKK), military campaign was also launched against them. This campaign did not only target the PKK, but also Kurdish civilians. In the fight between the state and the PKK, approximately 37 thousand people lost their lives, the majority of them being Kurds. In 1987, as a reaction to the worsening security situation, state of emergency was announced in South-Eastern Turkey by the parliament, which was resolved only in 2002. Finally, the military action ended with the arrest of Abdullah Öcalan, the leader of the PKK.

²⁸ http://www.academia.edu/4329153/A_kurdok_helyzete_Torokorszagban_2013



Photo: dr. Zoltán Németh

IX. Abolishment of death penalty

Within the framework of the Council of Europe, the Sixth and Thirteenth Supplementary Protocols of the European Convention on Human Rights regulate the abolishment of death penalty. The other important element of international regulations is the Second optional protocol of the UN to the International Covenant on Political and Civil Rights adopted in 1989. In accordance with the Protocol, ‘no death penalty may be administered on persons falling under the jurisdiction of the participating countries’ and each state shall take the ‘necessary measures to abolish death penalty’.

The Protocol was also signed by Turkey in April 2004.

According to the information provided by the **IHD**, the human rights organisation, until August 2002, the Turkish Penal Code permitted, in some cases, death penalty. Certain cases of murder and acts against the state – during wartime and when the integrity of the state’s territory are in danger - could be penalised with death penalty; or activities aiming at forcefully changing or overruling the Constitution or the government, or inciting others to do so.

But in accordance with the Constitution, the judgement could only be executed if it was voted by the parliament. Since 1984, no such motion has been presented.

At the amendment of the Constitution in October 2001, a sentence was inserted into the text, according to which death penalty can only be administered in wartime, imminent danger of war and terrorist activities.

X. Human trafficking and human smuggling

We received information about the actual problems and legal practises in the area of organised crime, human trafficking and human smuggling from the Chief Prosecutor's Office of the Turkish Republic.

The Turkish Penal Code prohibits human smuggling, sexual exploitation and forced labour. The law punishes these crimes with 10-15 years of imprisonment. Prior to 2010, neither human smuggling nor human trafficking was considered criminal acts.

It was emphasised that cross-border nature is the major characteristic feature of human smuggling in which organised crime has a role and human rights of the aggrieved persons are severely violated.

According to the report of the United Nations Office on Drugs and Crime (UNODC) of 2010, worldwide, 79% of the identified victims of human trafficking became victim of sexual exploitation, 18% of forced labour and 3% of other forms of exploitation. Of the victims, 66% were women, 13% girls, 12% men and 9% boys.

The analysis of the data gathered in September 2011 by the Commission on the victims of human trafficking, police investigations, criminal procedures and convictions by gender, age, form of exploitation and citizenship is still in progress. The preliminary results seem to be in harmony with the statistics presented in the UNODC report. In the case of three-fourth of the identified

victims, the aim of human trafficking was exploitation (this data increased from 70% in 2008 to 76% in 2010), while in the remaining cases, the motivation was labour exploitation (the proportion ratio of this form decreased from 24% in 2008 to 14% in 2010), forced begging (3%) and domestic servitude (1%). Altogether 21 member states could provide information broken down by gender. Based on this information, during the three years investigated, mostly women and girls fall victim to human trafficking: 79% of the victims were women and 12% girls, 21% men and 3% boys. The majority of reported victims from third countries come from Nigeria, Vietnam, Ukraine, Russia and China.

Trafficking in human beings is in the focal point of attention also at international level. The most important legal acts are the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of Palermo and the Council of Europe Convention on Action Against Trafficking in Human Beings.²⁹ Turkey signed the Convention in 2003.

Typically, humane smugglers arrive into the country from the East. Already the fact of reporting at the border is a completed criminal act.

In the area of helping the victims of trafficking in human beings the government makes considerable efforts, co-operates with the experts of the IOM and the competent Turkish ministries.

The government encourages the victims to take an active part as witnesses in the criminal procedure. They are granted free legal aid. Foreign victims may apply for humanitarian visa and may stay in Turkey for a period of six months, which might be extended with another six months. The government makes efforts to responsibly and safely transportation home the victims of human trafficking as well.

(The content of the present report may not be considered the official position of the European Commission or the Ministry for Home Affairs, and the European Commission and the Ministry for Home Affairs might not be made responsible for the content of thereof.)

²⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:hu:PDF>