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THE IRAQI REFUGEE CRISIS AND TURKEY: A LEGAL OUTLOOK

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CARIM Analytic and Synthetic Notes 2009/20

Legal Module

**Cooperation project on the social integration
of immigrants, migration, and the movement
of persons**

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Analytic and Synthetic Notes – Legal Module
CARIM-AS 2009/20

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Abstract

Turkey witnessed a massive influx of Iraqis in both 1988 and 1991, when respectively around 50,000 and 460,000 Iraqis sought refuge there. In 2003, Turkey took measures to guard against another mass influx: and though around two million Iraqis fled out of the country, only 10,000 arrived in Turkey. However, a larger number may flee to Turkey, particularly if security deteriorates in the northern parts of Iraq.

Turkey is the only one of Iraq's direct neighbours to be party to the UN Refugees Convention. Yet, Turkey nevertheless introduced a geographical limitation: Iraqis, like other non-Europeans, are not granted refugee status. However, the customary law principle of *non-refoulement* is applied to anyone, including Iraqis, considered either as "asylum seeker" or recognized as *de facto* refugee. With regard to the protection provided and the rights recognized, there is not much difference between their situation and a 1951 UN Convention refugee, except that they are not meant to stay and integrate into Turkey but to be resettled in a third country.

Both procedural and substantive international refugee law standards are applied in Turkey. The UNHCR also plays a part and decides the cases of persons who have applied for "refugee status" in Turkey, helping the resettlement of Iraqis in third countries.

Turkey has adopted a system for dealing with individual asylum claims and the system seems to have satisfied international legal standards. However, the system is not designed to answer collective asylum claims and might collapse in the event of a massive influx.

Résumé

La Turquie a déjà connu deux arrivées massives d'Irakiens en quête d'asile, en 1988 (50.000) et 1991 (460.000). En 2003, elle a pris des mesures pour prévenir une nouvelle arrivée de cette ampleur, il est en effet assez remarquable que seuls 10.000 des 2 millions d'Irakiens qui ont fui leur pays sont arrivés en Turquie. Néanmoins, de nouvelles arrivées sont considérées comme possibles, en particulier, si les conditions de sécurité dans le Nord de l'Irak venaient à se détériorer.

La Turquie est le seul pays directement voisin de l'Iraq à avoir ratifié la Convention de 1951 relative au statut des réfugiés. Elle a cependant formulé une réserve géographique de telle sorte que les Irakiens, comme tout autre « non européen » ne se voient pas reconnaître le statut de réfugié en vertu de la Convention. Néanmoins, le principe de non refoulement, dont le caractère coutumier est reconnu en droit international s'applique à chacun, en ce compris aux réfugiés en provenance d'Irak, qu'ils soient considérés comme demandeurs d'asile ou réfugiés *de facto*. Au regard de la qualité de leur protection et de leurs droits, peu de différences notables doivent être signalées par comparaison au statut reconnu aux « réfugiés » en vertu de la Convention de 1951. Avec une réserve notable, ils n'ont pas vocation à rester et à s'intégrer mais à être réinstallés.

Les standards procéduraux et substantiels du droit international des réfugiés sont applicables en Turquie. Le UNHCR y joue un rôle majeur, il prend la décision de reconnaissance de la qualité de « réfugié » et intervient dans les procédures de réinstallations dans des pays tiers.

La Turquie a mis en place un système pour traiter des demandes individuelles d'asile et ce système semble généralement rencontrer les standards internationaux. Il n'est néanmoins pas adapté dans les hypothèses d'afflux massifs.

Introduction

There are believed to be well over four million displaced Iraqis around the world and within Iraq. Half of these sought refuge in neighbouring countries, in particular Syria, Jordan, Egypt, Iran, Lebanon and, also, Turkey. The Iraqi displacement crisis started a long time prior to the military invasion of Iraq and the fall of the regime in 2003. Indeed, around one million were displaced before 2003.

Since there are no signs of sufficient improvements in the situation in Iraq, the return of Iraqis home does not seem a realistic hope in the near future. Also the massive nature of the influx creates a real financial as well as social burden for the host countries. Though receiving comparably a low number of Iraqis, Turkey is by no means an exception and may face an increasing number of refugees if matters deteriorate. This would especially be true if crisis struck the northern parts of Iraq where the inhabitants, not only the Turks of Iraq but also the Kurds and Arabs of that region have historical as well as cultural ties with Turkey.

This paper explores how Turkey deals with Iraqi asylum seekers, in which political contexts and under which legal provisions. It further explores whether improvements in national policy are needed and studies their feasibility as well.

Iraqi Refugees: A Turkish Experience

Turkey has been a major country of asylum for Iraqis since the early 1980s. Two Gulf wars, political turmoil and the US invasion have all contributed to the flow of asylum-seeking Iraqis to Turkey. Besides the massive influx of Iraqis in the late 1980s and early 1990s, there have been ongoing flows of individuals who sought refuge in Turkey as well.¹

Turkey witnessed a massive influx of Iraqis in 1988 when 51,542 arrived in Turkey. Turkey experienced its biggest influx in 1991 when almost 460,000 Iraqis fled into Turkey.² Humanitarian and economic considerations apart, these large numbers also represented a security concern for Turkey for among the Iraqis, there were Kurdish militias (“peshmerge”) with guns.

In the run-up to the 2003 invasion, Turkey started preparations for the arrival of refugees from Iraq. Reportedly, refugee camps were planned within Iraq itself showing the government’s readiness to set up camps outside Turkish territory and its determination to limit the numbers coming into south-eastern Turkey.³

Turkey does not accept *de jure* refugees from non-European countries. However, the Iraqis were given the *de facto* status of asylum seekers and provided with international protection. Many non-European asylum seekers, including people coming from Iraq, enter Turkey *en route* to the West. Not all, by any means, consider Turkey their final destination in their journey to freedom, security and, they hope, prosperity. Others trust in returning when “things are settled down”.⁴

¹ A. ICDUYGU, “Transit Migration in Turkey: Trends, Patterns, and Issues”, *CARIM RR (2005/04)*, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI), European University Institute, 2005. p. 8.

² These are official figures from the Turkish authorities. Ministry of Interior, Asylum and Migration Legislation, 2005, p. 48.

³ “Turkey Prepares for Iraq Refugees” BBC news, 15 January 2003.

⁴ Y. ACER, I. KAYA, and M. GUMUS, *Turkey’s Refugee and Asylum Seeker Policy under the EU and International Law*, TUBITAK, Ankara, 2008. Interviews. (on file with the author)

Between 1995-2007, 16972 Iraqi applications were made for asylum in Turkey, of which 4666 were registered after 2003 when the war broke out.⁵ Although in the eight years before 2003 the annual average was almost 1500, 2003 witnessed a dramatic decrease. Only 181 applied for asylum. Since 2003, 1041 (2004), 764 (2005), 555 (2006) and finally 2306 (2007) applications have been made.⁶ The UN estimates that 10,000 displaced Iraqis live in Turkey today.⁷

According to the Turkish Human Movements Bureau 123508 illegal Iraqis were apprehended by Turkish authorities between 1995-2007. The peak year was 2002 reaching 20926; the number dropping precipitously to 3757 in 2003. The following three years witnessed a consistent number of about 6500 annually. In 2007 the apprehended illegal Iraqis number jumped to 9384, increasing by nearly 50%.⁸ It should be noted that these numbers of “illegal migrants” include illegal entry and exits as well as simple visa breaches and overstays.

The sharp decline in the number of Iraqis arriving in Turkey in the aftermath of the 2003 invasion, compared to the period before the war, was judged a result of the sealing of the borders between Iraq and Turkey.⁹ Since then, there has been a significant increase in both the numbers applying for asylum and those illegal Iraqi migrants apprehended.

Legal Status of Iraqis in Turkey

The legal regulations concerning entry into and exit from Turkey fall under the Turkish Passport Law number 5682, which stipulates that all travelers require a valid passport or travel document whenever they leave or enter the country.¹⁰ Foreign nationals, as well as Turkish nationals, may only enter and exit Turkey through places determined by the Council of Ministers acting upon a proposal of the Ministry of the Interior.¹¹ With some exceptions, a visa is needed to enter Turkey.¹² For nationals of certain countries it is possible to obtain visas (sticker visas) at border gates.

Residence permits (“ikamet tezkeresi”) are regulated by the Law on Residence and Travel of Foreigners in Turkey.¹³ Article 3 (1) of the Law states that aliens have to make an application to local police authorities within one month of their arrival and, in any case, before taking up employment. Under this law the Council of Ministers are allowed to make amendments to time limits. In 2004 “one month” was amended by the Council of Ministers to “ninety days”.¹⁴ However, that “ninety days” is subject to the visa period. If the visa expires before ninety days, the person is required to apply for a residence permit before the expiration of the visa.

Residence permits are for a maximum of five years.¹⁵ For persons with residence permits who have left Turkey and want to enter again within the period that their permits are valid no visa is needed.¹⁶ Persons who apply for asylum are required to live in cities permitted by the Ministry of the Interior.¹⁷

⁵ People Movements Bureau (PMB), Number of Illegal Migrants Apprehended: Illegal entry, exit, presence and breach of visa and residence permit. (As of the end of 2007)

⁶ Ibid.

⁷ UNHCR, Statistics on Displaced Iraqis Around the World, September 2007

⁸ As of end of 2007.

⁹ Caritas.

¹⁰ *Official Gazette*, 24.07.1950 no. 7564. Passport Law, Art. 2.

¹¹ Passport Law, Art. 1.

¹² Passport Law, Art. 5.

¹³ Law no. 5683. *Official Gazette*, 24.07.1950 no. 7564.

¹⁴ *Official Gazette*, 08.01.2004 no. 25340.

¹⁵ Art. 9(1).

Iraqis are required to have visas to enter Turkey. Turkey has an embassy in Bagdad and a consulate general in Mosul. Ordinary passport-holding Iraqis, traveling to Turkey on flights from Bagdad, Erbil, Suleymania or Amman Airports to Istanbul Atatürk Airport or Antalya Airport, can get their visas at the Turkish immigration control point upon their arrival.¹⁸

International Law, Turkey and Refugees

Turkey is party to the important United Nations and Council of Europe conventions which include the 1951 United Nations Refugees Convention and its 1967 Additional Protocol, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the European Social Charter.¹⁹ According to the Turkish Constitution, article 90, international agreements have the power of national laws and are implemented directly by courts. Moreover, in case of a contradiction between an international agreement and domestic law, the provisions of international agreement will prevail as long as the subject matter is human rights.²⁰ Therefore, there is nothing to prevent the Turkish authorities from applying the provisions of international agreements concerning asylum. And asylum seekers can demand that their rights be protected in accordance with international legislation in the Turkish courts.

With regard to massive influxes, the 1994 Regulation states that “it is essential that population movements be stopped at the border, and that asylum seekers be prevented from crossing over into Turkey”, “provided that Turkey’s obligations under international law are maintained”.²¹ In the first instance, refugees and asylum seekers shall be disarmed by military authorities.²² Front-line assembly areas to shelter asylum seekers and refugees as close as possible to the border will be designated by the Ministry of the Interior in conjunction with the Turkish General Staff and will be established by the Governorates.²³ Those who seek asylum in Turkey and take refuge in Turkey are under the protection and supervision of the government whilst they remain in Turkey.²⁴ Aliens who are to be sent to in-land assembly areas will be interviewed and their statements taken either in their own language or in a language that they can understand.²⁵ Camps established in the front-line assembly areas and in-land assembly areas will be administered by the Governorate of the relevant province.²⁶ However, the asylum processing of Iraqis after the 2003 Iraq war was not considered as a massive influx comparable to the influx of 1991.

Turkey is party to the Refugee Convention and recognizes the right to asylum as envisaged by article 14 of the Universal Declaration of Human Rights. Yet, the Turkish parliament has never enacted a law comprehensively regulating asylum and related issues, which have rather been dealt with piecemeal by a number of pieces of legislation such as Passport Law, Law on Residence and Travel of Foreigners in Turkey. In 1994 Council of Ministers issued “The Regulation on the

(Contd.) _____

¹⁶ Art. 13.

¹⁷ Art. 17.

¹⁸ Turkish Ministry of Foreign Affairs. www.mfa.gov.tr Last visited 15.04.2008.

¹⁹ Turkey became party to the 1951 Convention in 1962 and 1967 Protocol in 1968.

²⁰ New article 90 as amended in 2004.

²¹ Art. 8.

²² Art. 9.

²³ Art. 11.

²⁴ Art. 10.

²⁵ Art. 12.

²⁶ Art. 14.

Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either From Turkey or Requesting Residence Permission in order to Seek Asylum in another Country” which was amended in 1999 and 2006 (hereafter the 1994 Asylum Regulation).²⁷ In 2006 the General Directorate of Security, at the Ministry of the Interior prepared an Implementation Circular to stipulate asylum procedure and the rights and obligations of refugees and asylum seekers.²⁸ The 1994 Asylum Regulation and the 2006 Circular are the main Turkish legislative works relating to asylum. Both lack statutory protection.

Turkey is the only neighbour of Iraq which has accession negotiations with the European Union. Turkey is obliged to undertake the EU *acquis* in the field. To this end the General Directorate of Security, at the Ministry of the Interior prepared an Action Plan for Asylum and Immigration which was endorsed by the prime minister in 2005.²⁹ The Action Plan sets forth how Turkish national legislation should be made compatible with that of the EU and a time frame is also set.

Although Turkey is party to the 1951 Refugee Convention and 1967 Protocol, a “geographical limitation” was introduced by Turkey. Turkey's convention obligations are only towards persons uprooted by events in Europe. This considerably limits Turkey's obligations in international refugee law. This geographical limitation was introduced by Turkey owing to “challenging experiences in the region”, which clearly includes a massive refugee influx from its Middle Eastern neighbours such as happened with Iraqis in 1988 and 1991.³⁰

Under current legislation non-Europeans, such as Iraqis, are not recognized as “refugees”.³¹ However, people coming from non-European countries are qualified as “asylum-seekers”.³² The only difference between a “refugee” and “asylum seeker” is whether the events that led to the subject fleeing occurred in Europe or outside. The rights arising from the Geneva Convention such as international protection as well as other types of protection, and the non-refoulement principle, are granted by Turkey to asylum-seekers.

Asylum procedure begins with the asylum seeker registering with the police. A non-European asylum seeker must register with the police, whether or not he or she has entered Turkey legally. Only after registration, will the police evaluate whether to grant “asylum seeker status” or not.³³ In the case of illegal entrance registration is made in the city of first arrival. Persons who entered legally with valid passports should register with the police in the city where they are present or currently live. According to the law, persons are required to register “without delay”, though no exact time limit is specified. Iraqis who entered Turkey illegally mostly use southeastern land borders. Therefore, they need to register in cities neighbouring Iraq. Legal immigrants use airports, mostly Istanbul, as well as land gates in Khabur.

²⁷ Regulation No. 6169. *Official Gazette* 30.11.1994.

²⁸ Circular No. 57. 22.6.2006.

²⁹ 17.1.2005.

³⁰ Action Plan in Ministry of Interior, Asylum and Migration Legislation, 2005., para. 4.13.

³¹ “Refugee” is defined by Turkish law as “an alien who as a result of events occurring in Europe and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. The 1994 Regulation.

³² “Asylum seeker” is defined as “an alien who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. The 1994 Regulation.

³³ 2006 Circular.

During registration, the police ask information concerning personal status (name, age, birth, marital status etc). Pictures and fingerprints are also taken. An interpreter is provided when needed. Failure to register with the police makes the asylum seeker's presence illegal, a breach of the law in Turkey and may lead, in turn, to deportation. Delay in registration with the police results in a monetary fine, which can be quite high depending on the length of any delay. It is observed that some illegal immigrants never register and try to leave Turkey illegally. Some make application only after they are apprehended by the police. Unregistered asylum seekers are not interviewed by the UNHCR, which evaluates whether they qualify as "refugees" under the 1951 Convention and help them to resettle outside Turkey.³⁴

When an asylum seeker application is made, two documents are issued by Turkish authorities: a specific ID card ("sığınmacı tanıma kartı") and a residence permit ("ikamet tezkeresi"). The former contains a picture and the personal details of the applicant and is issued quickly: there is no need to renew or extend it. The latter is, instead, valid for only six months, but renewable. If Turkey was entered legally, the residence permit is valid for six months after the expiration of the visa. If Turkey was entered illegally, the residence permit is valid again for six months but from the date of arrival in Turkey. It is renewed by the police after six months until the asylum seeker's application is evaluated and a decision is given. It may take quite some time to get a residence permit. Although the ID card is free of charge, the residence permit is costly. In fact to get a residence permit two types of fees apply: a document fee ("defter bedeli") and a residence fee. ("ikamet harcı"). Compared to the residence fee which is set each year by the Ministry of Finance the document fee is quite low.³⁵ Fees apply to each family member, though they can be waived in certain circumstances. The original travel document or passport, if any, is taken and held by the police.

In case of police inspections both documents must be produced and in order to access health care, education, work, financial and social assistance these documents are needed.

When registration is complete, the applicant is assigned to live in one of twenty six cities. Two of them are cities close to the borders with Iraq: Hakkari and Şırnak. The Khabur border gate is located in Şırnak. In the assigned city, the applicant is called to the police station to sign-in regularly. Taking into account the family ties and medical conditions of the applicant, the police can assign the applicant to live in another city upon request. It should be noted that the cities list does not include big cities or metropolises like Istanbul, where applicants can more easily find jobs. It is also possible to apply to the police for permission to leave the assigned city for a short period. If the application is successful, the police issue, a temporary-leave permit ("izin belgesi"). Permission can be given for up to 15 days with the possibility of a further renewal of another 15 days by the police in the city where the applicant has gone. If the person travels out of the city without permission, he or she is regarded as an "escapee" ("firari"). Escape can result in prosecution and ultimately a monetary fine and/or imprisonment: only reasonable explanations will satisfy the police and prevent prosecution.

Following police registration a preliminary interview ("ön görüşme") is conducted by the police. The objective is to give information on the rights and obligations of asylum applicants in Turkey and to find out why the applicant left his or her home country, why they cannot return and how they arrived in Turkey. In the preliminary interview a personal interview appointment slip ("kişisel mülakat randevu belgesi") with the date and time of the asylum interview is also given to the applicant. The personal interview will be conducted by the police in a room employed only for asylum interviews. In both interviews police officers are not allowed to wear uniforms, civilian clothing is essential. The official who conducts the interview is expected to study the country of origin and examines the personal history of the applicant beforehand. In the interview attempts are made to collect detailed information about the applicant. When needed an interpreter is provided. On the basis of the

³⁴ See below.

³⁵ 2008 Fees are as follows: Document fee nearly 40 Euros, Six month-residence fee 130 Euros per person. General Directorate of Security, www.egm.gov.tr.

information gathered in the two interviews and from the country of origin a report is prepared. The decision to recognize or reject asylum-seeker status is made by the Ministry of Interior and given in writing to the applicant by the governorate of the city where the applicant lives. If asylum-seeker status is granted, the applicant may take up residence. If the application is rejected, he or she has the right to appeal against the first rejection decision within 15 days. If no appeal is made the applicant has a further 15 days to leave Turkey.

There is no formal form to be filled in case of an appeal. But the applicant can write a letter explaining why the decision of the Ministry of the Interior is wrong or the applicant may demand another interview and would then have a further chance to present his case. While the final decision is being made the applicant will have the right to remain in Turkey. In case of rejection, the applicant has 15 days to leave Turkey. The 2006 Circular stipulates that if the application is rejected relevant authorities have also to take into account whether return to the home country would result in serious harm within the framework of European Convention on Human Rights and whether secondary protection should be given.³⁶ The authorities also consider whether the applicant should be given a residence permit on humanitarian grounds, e.g. health, education and family unity.³⁷

After a second rejection by the Ministry of Interior, the applicant can file a case in an administrative court. Finally, since Turkey has recognized individual applications made to the European Court of Human Rights (ECHR), the applicant can make an application against the Turkish courts' decision in the ECHR after exhausting all avenues of appeal in Turkey.³⁸

There is a special protection procedure for unaccompanied minor children. In case of their application, the authority to which the application is made is under an obligation to notify urgently the Ministry of the Interior verbally and in writing. Minor children have to be placed in protection centers by the social-services department. In case of doubt about the age of the children, children can be referred to a medical examination. In the interview of the children a social-services expert and physiological expert must be present.³⁹

There are currently 16972 Iraqi asylum-seeker applications of which 4707 are pending (i.e. not decided yet), 3672 have been rejected, 986 are closed cases, and 5849 have seen asylum-seeker status granted.⁴⁰

The UNHCR and Refugees in Turkey

Another registration with the UNHCR in Ankara is needed for refugees or asylum seekers. In the UNHCR registration "RSD [Refugee Status Determination] Application Form" is filled out by the applicant. The form contains information on background, education, work, travel history en route to Turkey and obviously the reasons for which the refugee left his or her home country and the reasons that the applicant cannot go back. The UNHCR, like the Turkish police, provides an interpreter when needed. An Asylum-Seeker Certificate is issued by the UNHCR depending on workload, sometimes on the day of registration. Pictures are also taken during registration. Those applicants who have not yet registered with the police are advised by the UNHCR to register as soon as possible.

³⁶ 2006 Circular. Para 16.

³⁷ *Ibid.*

³⁸ See UNHCR, *The Collection of Turkish Jurisprudence on Asylum, Refugees and Migration*, Second edition, Istanbul: Bogazici University Foundation, 2000.

³⁹ 2006 Circular. Para 6.

⁴⁰ As of 10.01.2008. Statistics and Data Recording Bureau of the Directorate of Security. Remaining numbers are escapees, legal leavers to third country etc.

An appointment slip with date for interview to determine whether the applicant qualifies to be a refugee according to UN guidelines is also given. No interview by UNCHR is carried out if the subject is not already registered with the police. A legal representative can be present in the interview. The case is determined on the basis of information provided in the interview. If refugee status is granted, a UNHCR Refugee Certificate will be issued and the case will be referred to the “Durable Solutions” department. Those who pass the UNHCR test wait in Turkey for eventual resettlement to a third country since, as already mentioned, Turkey does not accept refugees from non-European countries. Those who are granted refugee status by the UNHCR go through an application process with the embassy of the resettlement country, in accordance with the criteria set forth by the resettlement country. Final resettlement can take several months even years. In fact recognition of refugee status by the UNHCR does not guarantee final resettlement in either a third country or Turkey. If refugee status is granted though, the refugee may apply for financial aid to the UNHCR.

If the application for refugee status is rejected by the UNHCR, the applicant has a right to appeal to the UNHCR. The UNHCR must explain why the application has been rejected in writing. As soon as the person is informed of the rejection there are 30 days to appeal. The applicant fills out an “Appeal Application Form” and makes an appeal statement explaining the grounds for making a refugee application, including new developments which have occurred while the person was in Turkey. An appeal interview date can only be given after a written application is made to the UNHCR. The appeal interview is similar to that of the first interview. As a result of the interview refugee status can, once more, be granted or rejected. When refugee status is granted, resettlement procedure begins as explained above. If rejected, the case is closed. The case can only be re-opened under extraordinary circumstances in which a recent development in the home country or the case has not been properly decided or examined. Like the appeal application, the re-opening of any request must be made in writing. The applicant may be invited to a re-opening interview where the case will be decided.

There are 5827 Iraqis who were granted refugee status and resettled in third countries through Turkey. Main resettlement countries were the US (1552), Australia (1060), Canada (900), Sweden (563), Norway (481), Germany (421), Finland (413), Denmark (146), the Netherlands (103), and the United Kingdom (47).⁴¹

Rights of Iraqi “Refugees” in Turkey

The Turkish constitution recognizes social and economic rights. As opposed to political rights which can only be enjoyed by “citizens”, social and economic rights apply to “anyone”, whether a foreign or Turkish national. State authorities, local governments and non-governmental organizations provide assistance for health care, work, education, housing, food and legal aid: though note that this varies from city to city.

With regard to health care, in principle, the cost of health care must be covered by the asylum seeker.⁴² If the person is financially unable to pay for health care or the UNHCR does not cover the costs, the police refers the asylum seeker to the Social Assistance and Solidarity Foundations (“Sosyal Yardımlaşma ve Dayanışma Vakfı”) which are present in every city and run by the authorities. These foundations provide a certificate which must be produced in hospitals. Costs are then covered by the foundations.

Article 27 of the 1994 Regulation provides that “within the general provisions, possibilities for education and work, limited to their period of residence in our country, are to be accorded to refugees and asylum seekers.” Under Turkish law, anyone who holds residence permits for six months or more

⁴¹ As of 10.01.2008. Statistics and Data Recording Bureau of the Directorate of Security. There are also other countries receiving small numbers of Iraqi refugees such as Israel (22), Syria (3), Indonesia (2).

⁴² 2006 Circular. Para 19.

is allowed to apply for a work permit.⁴³ It was stated by the 2006 Circular that asylum seekers are to be encouraged to get a job. However, it must be noted that the cities where they live do not have abundant job opportunities. Also it is known that a large number of employees work unregistered in Turkey. This is also true for asylum seekers.

Under the Turkish Constitution a children's education is compulsory and free:⁴⁴ in Turkey, in fact, children aged 6-14 are required to attend school. The assigned city schools register asylum seekers' children. There are currently 101 Iraqi students attending schools in Turkey.⁴⁵

Turkish Citizenship Law and Favourable Treatment for Iraqis

The status of Turkish citizenship is regulated by the Turkish Citizenship Law.⁴⁶ Turkish citizenship, this law states, may be obtained by birth, descent, marriage or naturalization. Birth within the territory of Turkey does not automatically confer citizenship; however, if a child who was born in Turkey does not obtain a citizenship through his father or mother then he/she is nevertheless a Turkish citizen. Any child who has, at least, one Turkish parent has right to Turkish citizenship.⁴⁷

An alien who has resided in Turkey for at least five years, has shown interest in remaining in the country, has familiarity with the Turkish language, has adequate means of self-support, has good moral character and has no illness that may pose a threat to the public may obtain Turkish citizenship through naturalization.⁴⁸ However, "those who are of Turkish descent, their spouses and children" constitute one of the categories of persons who may be granted Turkish citizenship irrespective of fulfilling all the conditions given above.⁴⁹ Persons with Turkish descent are given Turkish nationality after only two years residence, instead of five. It is not always easy to prove "Turkish descent" which is, in general, supported by a statement from Turkish officials in the country of origin. In the case of Iraq, it is documented by the Iraqi Turks Association for Culture and Cooperation, an NGO established in 1959 in Istanbul.⁵⁰ Many Iraqis migrated to Turkey over time and those who had Turkish descent preferred Turkey for historical and cultural reasons. They speak Turkish as their mother tongue, share the same faith and lead a similar cultural life to Turk nationals. Their spouses and children are also entitled to Turkish citizenship on preferential terms.

⁴³ Law no 4817.

⁴⁴ Article 42.

⁴⁵ As of the end of 2007. Total number of asylum seekers' school age children is 1985 of whom only 386 attend classes. Statistics and Data Recording Bureau at the Directorate of Security.

⁴⁶ Law no 403.

⁴⁷ Constitution Art. 66.

⁴⁸ Art. 6. Citizenship Law.

⁴⁹ Art 7. Citizenship Law.

⁵⁰ Ministry of Interior Circular no. 27525, 22.02.1993.

Conclusion

Turkey has received around ten thousand Iraqis since 2003. The number seems relatively low given that more than two million Iraqis are presently displaced around the world, never mind those displaced within the country. Yet, there is a possibility of a dramatic increase if things go wrong, an increase such as that which Turkey experienced in the early 1990s.

Turkey is party to the UN Refugees Convention, but has a geographical limitation. Iraqis as non-Europeans are not granted refugee status. However, the customary law principle of *non-refoulement* is applied to anyone, including Iraqis who are accepted as “asylum seekers” as opposed to “refugees”. With regard to the protection provided and the rights recognized there is not much difference between an asylum seeker and a refugee except that asylum seekers are not supposed to stay in Turkey but to be resettled in a third country .

Turkey applies international standards, both procedural and substantive ones, in determining asylum-law cases.⁵¹ The UNHCR also interviews and decides the cases of persons who applied for refugee status in Turkey. The UNCHR helps the resettlement of Iraqis in third countries.

The Turkish way of dealing with Iraqi refugees is, at least formally, largely in line with its obligations under international law. However, the system is designed to answer only to individual asylum claims. In the event of a massive influx the system might collapse.

⁵¹ For a critical evaluation of Turkish practice with regard to asylum seekers treatment see Amnesty International 2008 Annual Report: Turkey. Available at www.amnesty.org.tr

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