



RSC 2024/08  
Robert Schuman Centre for Advanced Studies  
Migration Policy Centre

# WORKING PAPER

**Alternatives to Immigration Detention in  
Türkiye: What's the European Union got to  
do with it?**

Meltem Ineli Ciger

European University Institute  
**Robert Schuman Centre for Advanced Studies**  
Migration Policy Centre

## **Alternatives to Immigration Detention in Türkiye: What's the European Union got to do with it?**

Meltem Ineli Ciger

RSC Working Paper 2024/08

This work is licensed under the [Creative Commons Attribution 4.0 \(CC-BY 4.0\) International license](https://creativecommons.org/licenses/by/4.0/) which governs the terms of access and reuse for this work.

If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the series and number, the year and the publisher.

ISSN 1028-3625

© Meltem Ineli Ciger, 2024

Published in March 2024 by the European University Institute.  
Badia Fiesolana, via dei Roccettini 9  
I – 50014 San Domenico di Fiesole (FI)

Italy

Views expressed in this publication reflect the opinion of individual author(s) and not those of the European University Institute.

This publication is available in Open Access in Cadmus, the EUI Research Repository:

<https://cadmus.eui.eu>

[www.eui.eu](http://www.eui.eu)



With the support of the  
Erasmus+ Programme  
of the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

### **Robert Schuman Centre for Advanced Studies**

The Robert Schuman Centre for Advanced Studies, created in 1992 and currently directed by Professor Erik Jones, aims to develop inter-disciplinary and comparative research on the major issues facing the process of European integration, European societies and Europe's place in 21st century global politics.

The Centre is home to a large post-doctoral programme and hosts major research programmes, projects and data sets, in addition to a range of working groups and ad hoc initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration, the expanding membership of the European Union, developments in Europe's neighbourhood and the wider world.

For more information: <http://eui.eu/rscas>

The EUI and the RSC are not responsible for the opinion expressed by the author(s).

### **Migration Policy Centre (MPC)**

The Migration Policy Centre (MPC) is part of the Robert Schuman Centre for Advanced Studies at the European University Institute in Florence. It conducts advanced research on the transnational governance of international migration, asylum and mobility. It provides new ideas, rigorous evidence, and critical thinking to inform major European and global policy debates.

The MPC aims to bridge academic research, public debates, and policy-making. It proactively engages with users of migration research to foster policy dialogues between researchers, policy-makers, migrants, and a wide range of civil society organisations in Europe and globally. The MPC seeks to contribute to major debates about migration policy and governance while building links with other key global challenges and changes.

The MPC working paper series, published since April 2013, aims at disseminating high-quality research pertaining to migration and related issues. All EUI members are welcome to submit their work to the series. For further queries, please contact the Migration Policy Centre Secretariat at [migration@eui.eu](mailto:migration@eui.eu)

More information can be found on: <http://www.migrationpolicycentre.eu/>

Disclaimer: The EUI, RSC and MPC are not responsible for the opinion expressed by the author(s). Furthermore, the views expressed in this publication cannot in any circumstances be regarded as the official position of the European Union.



Co-funded by  
the European Union



**ASILE**

Global Asylum  
Governance and  
the European  
Union's Role

## **Abstract**

Türkiye, hosting the world's largest refugee population, has become an important partner for the European Union in managing large-scale arrivals of refugees and migrants. Over the years, the EU-Turkey Statement of March 2016 and the EU funding have notably increased Türkiye's detention capacities, raising questions about the EU's simultaneous support for alternatives to immigration detention. Türkiye's recent legal amendments introduce seven alternatives to immigration detention, aiming to uphold the rights of migrants and reduce detention reliance. This shift necessitates academic scrutiny. This paper provides an overview of alternatives to detention in Türkiye and discusses the EU's support of alternatives to detention in Türkiye and the possible motivation behind this support.

## **Keywords**

Alternatives to immigration detention, Türkiye, EU-Türkiye cooperation in the field of migration, electronic monitoring

## **Disclaimer**

A shorter non-academic summary of this paper has been published as M. Ineli-Ciger, The EU support for alternatives to immigration detention in Türkiye: a curious case at odds with EU's external migration policy? EU Immigration and Asylum Law and Policy, 17 January 2024 <<https://eumigrationlawblog.eu/the-eu-support-for-alternatives-to-immigration-detention-in-turkiye-a-curious-case-at-odds-with-eus-external-migration-policy/>>. The author wish to thank Ms. Özgenur Yiğit (Research Assistant, Suleyman Demirel University Faculty of Law) for her valuable assistance throughout the editing of this paper. This paper falls within the scope of the ASILE Project. The ASILE Project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement no 870787. This paper reflects only the author's views, and the Commission is not responsible for any use that may be made of the information it contains.

## **Table of Contents**

<b>Introduction</b>	<b>7</b>
<b>1. What are alternatives to immigration detention, and why do ATDs matter in Türkiye?</b>	<b>8</b>
<b>2. Alternatives to immigration detention in Turkish law and practice</b>	<b>12</b>
A. Who can be issued alternatives to immigration detention in Türkiye?	12
B. How should the assessment of alternatives to immigration detention be made?	12
C. Procedural Issues relating to alternatives to immigration detention	13
D. Seven alternatives to immigration detention provided under Turkish laws	13
Reporting obligations	13
Residing at a specific address	14
Family-based return	14
Return counselling	14
Volunteering in public services	15
Financial guarantee	15
Electronic monitoring	15
E. Termination of the alternatives to immigration detention	16
<b>3. A brief analysis of alternatives to immigration detention in Türkiye</b>	<b>17</b>
A. Strengths of the alternatives to immigration detention in Türkiye	17
B. Weaknesses of the alternatives to immigration detention in Türkiye	18
C. A few recommendations on the alternatives to immigration detention in Türkiye	18
<b>4. In lieu of a conclusion: A discussion on the European Union's involvement in the establishment and application of alternatives to immigration detention in Türkiye</b>	<b>19</b>
<b>Selected Bibliography</b>	<b>21</b>

## Introduction

Türkiye hosts the largest number of refugees in the world and has been a key partner of the European Union (EU) in addressing the migration crisis.<sup>1</sup> The EU-Turkey Statement of March 2016<sup>2</sup> is an example of the externalisation of migration management from the EU to Türkiye. Externalisation policies, inter alia, include financial and political support of migrant detention.<sup>3</sup> The EU has funded the construction of new Removal Centres and covered the running costs of certain centres in Türkiye through the Instrument for Pre-accession Assistance (IPA) and other EU funding instruments.<sup>4</sup> The Union has been building Türkiye's detention and containment capacity and funding the establishment and running of Removal Centres as part of its externalisation policy.<sup>5</sup> In part, due to the EU-Türkiye cooperation, today, Türkiye has one of the world's largest migration-related detention systems.<sup>6</sup> Considering the EU has been heavily involved in increasing Türkiye's detention capacity, it is curious that both the Union and Member States have also been supporters of the alternatives to detention in Türkiye, which merits academic scrutiny.

Immigration detention affects the rights and well-being of asylum seekers and migrants.<sup>7</sup> In recent years, there has been a growing interest in finding alternatives to immigration detention (ATDs) that are more humane, less costly, and more effective in ensuring compliance with immigration procedures.<sup>8</sup> On 6 December 2019, Türkiye amended its main asylum and migration law, the Law on Foreigners and International Protection<sup>9</sup> (hereinafter the LFIP), to introduce seven different alternative measures to its legal framework. These are: a) residing at a specific address, b) reporting obligations, c) family-based return, d) return counselling, e) volunteering in public services, f) financial guarantees, and g) electronic monitoring. A subsequent regulation, Regulation No. 31953 on alternatives to detention<sup>10</sup> (hereinafter the ATD Regulation), which entered into force on 14 September 2022, provided further details on how these ATDs should be applied and what procedural safeguards should be observed. The introduction of ATDs in Türkiye is a significant development, as it could potentially reduce the use of immigration detention and enhance the respect for the right to liberty and security of asylum seekers and migrants, especially those held in Removal Centres.

There is a lack of academic research on alternatives to immigration detention in Türkiye despite the importance and relevance of this topic.<sup>11</sup> In particular, no studies have analysed alternatives

- 1 UNHCR, 'Refugee Data Finder' <<https://www.unhcr.org/refugee-statistics/>> accessed 5 January 2024.
- 2 European Council, 'EU- Turkey Statement' (18 March 2016) <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>> accessed 5 January 2024.
- 3 Bill Frelick, Ian M. Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants' (2016) 4 JMHS 190, p. 195; Emma Haddad, 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' 43 Government and Opposition 190.
- 4 European Commission, 'Instrument for Pre-Accession Assistance (IPA II) 2014-2020 Turkey' <[https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-12/c\\_2019\\_8727\\_ad\\_home\\_affairs.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-12/c_2019_8727_ad_home_affairs.pdf)> accessed 5 January 2024; Mark Akkerman, 'Outsourcing Oppression, How Europe externalises migrant detention beyond its shores', Transnational Institute, Amsterdam, April 2021 <<https://www.tni.org/files/publication-downloads/outourcingoppression-report-tni.pdf>> accessed 5 January 2024.
- 5 European Commission, 'Instrument for Pre-Accession Assistance (IPA II) 2014-2020 Turkey' <[https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-12/c\\_2019\\_8727\\_ad\\_home\\_affairs.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-12/c_2019_8727_ad_home_affairs.pdf)> accessed 5 January 2024.
- 6 Global Detention Project, 'Turkey' <<https://www.globaldetentionproject.org/countries/europe/turkey>> accessed 5 January 2024.
- 7 Cf. Council of Europe, 'Legal and practical aspects of effective alternatives to detention in the context of migration', Analysis by the Steering Committee for Human Rights (CDDH), 7 December 2017, <<https://rm.coe.int/legal-and-practical-aspectsof-effective-alternatives-to-detention-in-th/16809e358b>>.
- 8 European Migration Network, 'Asylum and Migration Glossary 6.0 A Tool for Better Comparability Produced by the European Migration Network' (2018) <[https://home-affairs.ec.europa.eu/system/files\\_en?file=2020-09/interactive\\_glossary\\_6.0\\_final\\_version.pdf](https://home-affairs.ec.europa.eu/system/files_en?file=2020-09/interactive_glossary_6.0_final_version.pdf)> accessed 5 January 2024.
- 9 Türkiye, Law on Foreigners and International Protection 6458 (2013) <[https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP\\_ENG\\_DGMM\\_revised-2017.pdf](https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP_ENG_DGMM_revised-2017.pdf)> accessed 5 January 2024.
- 10 Türkiye, Regulation on Alternatives to Detention (İdari Gözetime Alternatif Yükümlülüklerle İlişkin Yönetmelik) <<https://www.resmi-gazete.gov.tr/eskiler/2022/09/20220914-3.htm>> (only available in Turkish).
- 11 For alternatives to detention cf. Forced Migration Review, 'Detention, 'Alternatives to Detention, and Deportation' (2013) 44 Refugee Studies Centre; Council of Europe, 'Human Rights and Migration. Legal and practical aspects of effective alternatives to detention in the context of migration' Analysis of the Steering Committee for Human Rights (CDDH), (7 December 2017) <<https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f>> accessed 5 January 2024; International Detention Coalition (IDC), 'There are Alternatives: A handbook for preventing unnecessary immigration detention' (revised edition 2015) p. 7 <<https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>> accessed 5 January 2024; European Union Agency for Fundamental Rights (FRA), 'Alternatives to detention for asylum seekers and people in return procedures' (2015) <<https://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures>> accessed 5 January 2024;

to immigration detention in Türkiye<sup>12</sup> or examined the link between the EU and the introduction of ATDs in Türkiye and how the EU has influenced the design and implementation of ATDs in the Turkish context. This paper aims to fill this gap in the literature by analysing the laws and policies concerning ATDs in Türkiye and discussing the EU's role in shaping and supporting Türkiye's policies on alternatives to detention. In doing so, the paper will also critically assess the strengths and weaknesses of the Turkish ATD system and offer several recommendations for improvement.

The paper has four sections. The first section explains why the introduction of ATDs matters in Türkiye. The second section provides a detailed overview of how Turkish laws regulate ATDs and the state of play with regard to the application of the recently introduced seven different alternatives. The third section offers an analysis of the ATDs in Türkiye, discusses the strengths and weaknesses of the newly introduced alternative measures, and provides a few recommendations on how to improve the implementation of ATDs in Türkiye. Finally, in lieu of a conclusion, the final section answers the research question posed in the title of this paper and discusses the EU's support of alternatives to detention in Türkiye and the possible motivation behind this support.

## **1. What are alternatives to immigration detention, and why do ATDs matter in Türkiye?**

Alternatives to detention can be defined as any law, policy or practice by which persons are not detained for reasons relating to their migration status.<sup>13</sup> Immigration detention is considered a measure that deprives migrants of their right to liberty and security. The right to liberty and security, which is guaranteed by international treaties and, inter alia, secured under Article 9 of the International Covenant on Civil and Political Rights, Article 37 of the Convention on the Rights of the Child, Article 14 of the Convention on the Rights of Persons with Disabilities and Article 5 of the European Convention on Human Rights (ECHR), requires that no one shall be arbitrarily deprived of his or her liberty. Türkiye is a party to these human rights conventions, including the ECHR, and according to the Turkish Constitution<sup>14</sup>, "in the case of a conflict between international conventions concerning fundamental rights and freedoms and the Turkish laws, the provisions of international agreements shall prevail." According to the established case law of the European Court of Human Rights (ECtHR), "the detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case".<sup>15</sup>

International human rights law provides that immigration detention should be used as a 'last resort' and alternatives to immigration detention should be used to avoid arbitrary deprivation of liberty of migrants.<sup>16</sup> Similar to international human rights conventions, various soft law instruments, including

---

Alice Bloomfield, 'Alternatives to detention at a crossroads: Humanisation or criminalisation?' (2016) 35(1) *Refugee Survey Quarterly* 29-46; Alternatives to Immigration and Asylum Detention in the EU Time for Implementation, Philippe De Bruycker, Alice Bloomfield, Evangelia (Lilian) Tsourdi, Joanna Pétin (eds.) (2015) <https://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf> accessed 5 January 2024; European Migration Network, 'The use of detention and alternatives to detention in the context of immigration policies Synthesis Report' (2014) <<https://www.refworld.org/docid/546dd6f24.html>> accessed 5 January 2024; Mary Bosworth, 'Alternatives to immigration detention: a literature review' in Stephen Shaw (eds), *Assessment of Government Progress in Implementing The Report on The Welfare in Detention of Vulnerable Persons: A Follow-Up Report to The Home Office*, (2018) HMSO 213; Lorna McGregor, *Detention and Its Alternatives under International Law* (Oxford University Press 2023); European Union Agency for Fundamental Rights (FRA), *Alternatives to detention for asylum seekers and people in return procedures*, 2015 <https://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures>; Council of Europe Steering Committee for Human Rights (CDDH), 'Analysis of the Legal and Practical Aspects of Effective Alternatives to Detention in the Context of Migration', CDDH(2017)R88add2, 26 Ocak 2018.

12 Only source in English referring to ATDs in Türkiye is the ECE Turkey Report, cf. AIDA, 'Country Report: Türkiye' (2022) p. 106-109 <[https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR_2022-Update.pdf)> accessed 5 January 2024.

13 This definition belongs to IDS, cf. International Detention Coalition (IDC), 'There are Alternatives: A handbook for preventing unnecessary immigration detention' (revised edition 2015) p. 3 <<https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>> accessed 5 January 2024.

14 Constitution of the Republic of Turkey, <[https://www.anayasa.gov.tr/media/7258/anayasa\\_eng.pdf](https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf)>.

15 Cf. *Rahimi v. Greece*, App no 8687/08, ECHR 5 July 2011; *Yoh - Ekale Mwanje v. Belgium*, App no 10486/10, 20 December 2011, para 124; *A.B. and others v. France*, App no. 11593/12, 12 July 2016; *Nikoghosyan and others v. Poland*, App no 14743/17, para 87, 88.

16 Council of Europe, *Legal and practical aspects of effective alternatives to detention in the context of migration*, Analysis by the Steering Committee for Human Rights (CDDH), 7 December 2017, <https://rm.coe.int/legal-and-practical-aspectsof-effective-alternatives-to-detention-in-th/16809e358b> accessed 5 January 2024, p. 14.



those adopted by the UN General Assembly<sup>17</sup>, UN Human Rights Committee<sup>18</sup>, Council of Europe<sup>19</sup> and Executive Committee of the High Commissioner's Programme (ExCom)<sup>20</sup>, also endorse alternatives to immigration detention and emphasise detention should be a measure of last resort. Most recently, objective 13 of the Global Compact for Safe, Orderly and Regular Migration<sup>21</sup> has been set as to "use immigration detention only as a measure of last resort and work towards alternatives", and in this Compact, states commit to "promote, implement and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children".<sup>22</sup> The detention being a last resort implies that if the aim pursued by the detention of a migrant can be achieved by less coercive measures which do not involve deprivation of the right to liberty, then detention becomes arbitrary. It should also be mentioned that the Global Compact on Refugees, which provides a framework for more predictable and equitable responsibility-sharing, does not comment on detention or alternatives to detention. ATDs are usually regarded as humane policies that respect the fundamental rights of migrants.<sup>23</sup> Therefore, alternatives to immigration detention are often seen as 'good practice' for states that use immigration detention as a means of migration management. However, for Türkiye, ATDs are especially important for two main reasons.

First, Türkiye hosts the largest number of forced migrants in the world, with more than 3.4 million refugees<sup>24</sup> and has one of the world's largest migration-related detention systems.<sup>25</sup> Türkiye does not, in principle, detain unaccompanied children<sup>26</sup> and detention is foreseen for foreigners who are issued with deportation orders.<sup>27</sup> Nevertheless, in practice, asylum seekers or Syrians under temporary protection may be placed in administrative detention pending removal.<sup>28</sup> The use of ATDs could protect the rights of thousands of asylum seekers and migrants in Türkiye who are at risk of being detained in Removal Centres. According to the Turkish Presidency of Migration Management (PMM), as of November 2023, there were 29 removal centres across the country with a total capacity of 16,110 migrants, and eight more centres are planned to be built soon.<sup>29</sup> Therefore, effective and widespread implementation of alternatives to immigration detention can reduce the reliance on detention and enhance the liberty and security of thousands of migrants in Türkiye.

- 
- 17 Resolution adopted by the General Assembly on 18 December 2008 [on the report of the Third Committee (A/63/430/Add.2)] 63/184; Protection of migrants A/RES/63/184, para 9; Resolution adopted by the General Assembly on 18 December 2009, [on the report of the Third Committee (A/64/439/Add.2 (Part II))] 19 March 2010, A/RES/64/166, para 4; Resolution adopted by the General Assembly on 20 December 2012, [on the report of the Third Committee (A/67/457/Add.2 and Corr.1)] 3 April 2013, A/RES/67/172.
- 18 UN Human Rights Committee, General comment No. 35: Article 9, Liberty and security of person, 30 October 2014, CCPR/C/GC/35/18, article 9.
- 19 Council of Europe, Committee of Ministers, 'Guidelines on human rights protection in the context of accelerated asylum procedures' (2009) para XI; Council of Europe, Parliamentary Assembly, Assembly debate on 28 January 2010 (7th Sitting) (see Doc. 12105, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Mendonça). Text adopted by the Assembly on 28 January 2010 (7th Sitting), < <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17813&lang=en>> Erişim Tarihi 30 April 2020, para 9.
- 20 ExCom Conclusion No. 85 (XLIX), 9 October 1998.
- 21 Global Compact for Migration, Global Compact for Safe, Orderly and Regular Migration Final Draft 11 July 2018 <[https://refugeesmi-grants.un.org/sites/default/files/180711\\_final\\_draft\\_0.pdf](https://refugeesmi-grants.un.org/sites/default/files/180711_final_draft_0.pdf)> accessed 5 January 2024.
- 22 United Nations, 'Resolution adopted by the General Assembly on 19 December 2018' Global Compact for Safe, Orderly and Regular Migration A/RES/73/195, para 29.
- 23 International Detention Coalition (IDC), 'There are Alternatives: A handbook for preventing unnecessary immigration detention' (revised edition 2015) <<https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>> accessed 5 January 2024, p. 3; Alice Bloomfield, 'Alternatives to detention at a crossroads: Humanisation or criminalisation?' (2016) 35(1) Refugee Survey Quarterly 29, p. 32.
- 24 According to UNHCR, Türkiye and the Islamic Republic of Iran each had 3.4 million refugees in 2023, more than any other country. UNHCR, 'Refugee Data Finder' <<https://www.unhcr.org/refugee-statistics/#:~:text=Over%20half%20of%20all%20refugees,come%20from%20just%20three%20countries.&text=The%20Islamic%20Republic%20of%20Iran%20and%20T%C3%BCrkiye%20each%20hosted,refugees%2C%20the%20largest%20populations%20worldwide>> accessed 5 January 2024.
- 25 Global Detention Project, 'Turkey' <<https://www.globaldetentionproject.org/countries/europe/turkey>> accessed 5 January 2024.
- 26 Article 57 of the Law on Foreigners and International Protection.
- 27 Article 66 of the Law on Foreigners and International Protection.
- 28 AIDA, 'Country Report:Türkiye' (2022) <[https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR_2022-Update.pdf)> accessed 5 January 2024, p. 103-105.
- 29 Republic of Türkiye Ministry of Interior, Presidency of Migration Management, 'Performance Programme' (2023) p. 32 <<https://www.goc.gov.tr/kurumlar/goc.gov.tr/Kurumsal/Strateji/2023-Mayis-/Performans-Raporu-29032023.pdf>> accessed 5 January 2024. Cf. November 2023 data is contained in the author's file.

A second reason ATDs are important for Türkiye is the shortcomings of the Turkish detention law and policy and poor detention conditions, which have been criticised by the European Court of Human Rights (ECtHR) and the Turkish Constitutional Court.<sup>30</sup> The ECtHR has found violations of the European Convention on Human Rights (ECHR) in several cases involving the detention of foreigners in Türkiye. For example, in *GB and others v. Turkey*<sup>31</sup>, the ECtHR held that the detention conditions in Kumkapı Removal Centre amounted to inhuman and degrading treatment of a mother and her three children, in breach of Article 3 of the ECHR. The Court also noted that the material conditions in Gaziantep Removal Centre were unsuitable for young children and that there was no effective remedy to challenge the inadequate detention conditions in Türkiye. In another case, *Akkad v. Turkey*<sup>32</sup>, the ECtHR found that the applicant's detention pending deportation was arbitrary and unlawful, in violation of Article 5§1 of the ECHR.

Forced migrants in Türkiye also face problems concerning the registration of international protection applications, leading asylum seekers to be apprehended as 'irregular migrants' and promptly detained pending removal in Removal Centres.<sup>33</sup> Some reports note that detained migrants experience difficulties in applying for international protection in Removal Centres.<sup>34</sup> Other problems that exist with regard to detention include the following: detention beyond 48 hours prior to transfer to a Removal Centre (although this is unlawful under the LFIP)<sup>35</sup>, absence of proper identification of vulnerabilities before the administrative detention decision<sup>36</sup> and absence of due consideration of alternatives to detention while deciding on whether a migrant should be detained.<sup>37</sup> Moreover, the frequent use of administrative detention for families and other vulnerable individuals<sup>38</sup> and the absence of adequate information provided to detained migrants in simple, non-technical language so that they can understand the legal and factual grounds for their deprivation of liberty are problematic.<sup>39</sup> Furthermore, there are reports that individuals who are classified as 'Foreign Terrorist

30 Meltem Ineli-Ciger and Özgenur Yiğit, 'An Assessment on The Role of the Turkish Ombudsman Institution and The Human Rights and Equality Institution of Turkey in Protecting Migrants in Detention' (2022) 12 Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi 503, p. 506-510; International Refugee Rights Association and Global Detention Project, 'Türkiye', Joint Submission to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families 35th Session September 2022 Issues related to Immigration Detention (29 August 2022) <<https://www.globaldetentionproject.org/wp-content/uploads/2022/08/GDP-IR-RA-CMW-Submission-Turkey-30.08.22.pdf>> accessed 5 January 2024; Gamze Ovacık, Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept (On İki Levha 2021).

31 G.B. and others v Turkey App no 4633/15 (ECHR, 17 January 2020).

32 Akkad v Turkey App no 1557/19 (ECHR, 21 June 2022).

33 European Commission, European Neighbourhood Policy and Enlargement Negotiations, 'Turkey Report 2021' (2021) para 17 <[https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en)> accessed 5 January 2024.

34 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017', CPT/Inf (2020) 22, para 95.

35 B.T. App no 2014/15769 (Turkish Constitutional Court, 30 November 2017).

36 Council of Europe, 'Report of the fact-finding mission to Turkey by Ambassador Drahošlav Štefánek, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021' (2021) Information Documents SG/Inf(2021)35 <<https://rm.coe.int/report-of-the-fact-finding-mission-to-turkey/1680a4b673>> accessed 5 January 2024. Similarly, it is noted by the CAT Committee, Turkey needs to formulate clear guidelines and related training on the identification of torture victims among asylum seekers and migrants, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Committee against Torture, 'Concluding observations on the fourth periodic reports of Turkey' (2016) CAT/C/TUR/CO/4 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/109/81/PDF/G1610981.pdf?OpenElement>> accessed 5 January 2024.

37 The detention of vulnerable individuals can violate Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures including alternatives to detention in the light of the specific circumstances of the individual case. *Nikoghosyan and others v Poland* App no 14743/17 (ECHR, 3 March 2022) paras 86 and 88; *Rahimi v Greece* App no 8687/08 (ECHR, 5 July 2011) paras 108-110; *Yoh-Ekale Mwanje v Belgium* App no 10486/10 (ECHR, 20 November 2011); Council of Europe/European Court of Human Rights, 'Guide on the case-law of the European Convention on Human Rights Immigration' (30 April 2022) para 27 <[https://www.echr.coe.int/Documents/Guide\\_Immigration\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf)> accessed 5 January 2024. See for problems relating to the Turkish practice see *G.B. and others v Turkey* App no 4633/15 (ECHR, 17 January 2020); see also United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'Concluding observations on the initial report of Turkey' (2016) CMW/C/TUR/CO/1, p. 12.

38 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017' CPT/Inf (2020) 22, 2020, para 38 <<https://rm.coe.int/16809f209e>> accessed 5 January 2024.

39 See for this obligation see: *Khlaifia and others v Italy* App no 16483/12 (ECHR, 15 December 2016) para 115; for problem in this regard see Council of Europe, 'Report of the fact-finding mission to Turkey by Ambassador Drahošlav Štefánek, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021' (2021) Information Documents SG/Inf(2021)35 <<https://rm.coe.int/report-of-the-fact-finding-mission-to-turkey/1680a4b673>> accessed 5 January 2024.

Fighters' (*Yabancı Terrörist Savaşçı-YTS* in Turkish) are subject to lesser detention conditions and treated differently in terms of accessing rights in detention, although there is no legal basis for such treatment in law.<sup>40</sup>

As for detention conditions, several cases decided by the European Court of Human Rights (ECtHR)<sup>41</sup> and a number of reports published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>42</sup> and others<sup>43</sup> identify problems with access to legal counsel and interpreters<sup>44</sup>, overcrowded centres<sup>45</sup>, vulnerable individuals including children, pregnant women, persons with disabilities, single parents, elderly persons with health conditions, LGBTQ+ individuals, sex workers and victims of trafficking being held in immigration detention not receiving sensitive or appropriate treatment,<sup>46</sup> absence of suitable psychosocial and educational activities for the detained migrants<sup>47</sup>, not enough access to outdoor areas and recreational activities<sup>48</sup> and limited access of the detained migrants to their countries' consulates, lawyers, UNHCR and sometimes family members and relatives.<sup>49</sup> Finally, although in recent years, both detention conditions and access to fundamental rights have been improved in Removal Centres, to a certain extent, many challenges remain, and Turkish practice of immigration detention is not entirely in line with international legal norms provided under the ECHR and other international human rights instruments.

The Turkish Law on Foreigners and International Protection introduced significant procedural safeguards to ensure protection against arbitrary detention.<sup>50</sup> Yet, as illustrated above, not all these safeguards are respected in practice.<sup>51</sup> Moreover, significant challenges for the migrants in accessing fundamental rights in detention and problems with regard to inadequate or sub-par detention conditions in Removal Centres still exist. Against this backdrop, effective use of ATDs in Türkiye can prevent such human rights violations and ensure compliance with the human rights standards provided under the LFIP, the Turkish Constitution and the ECHR.<sup>52</sup>

40 Global Detention Project, '20 September 2022 – Turkey' (2022) <<https://www.globaldetentionproject.org/20-september-2022-turkey>> accessed 5 January 2024.

41 *G.B. and others v Turkey* App no: 4633/15 (ECHR, 17 January 2020); *Yarashonen v Turkey* App no 72710/11 (ECHR, 24 June 2014).

42 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017', CPT/Inf (2020) 22.

43 European Commission, 'Turkey Report 2021' (2021) p.12 <[https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en)> accessed 5 January 2024; Global Detention Project, 'TURKEY: Joint Submission to the Committee on the Elimination of Discrimination against Women' (2022) <<https://www.globaldetentionproject.org/turkey-joint-submission-to-the-committee-on-the-elimination-of-discrimination-against-women>> accessed 5 January 2024.

44 Council of Europe, 'Report of the fact-finding mission to Turkey by Ambassador Drahoslav Štefánek, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021' (2021) Information Documents SG/Inf(2021)35 para 85 <<https://rm.coe.int/report-of-the-fact-finding-mission-to-turkey/1680a4b673>> accessed 5 January 2024.

45 *Yarashonen v Turkey* App no 72710/11 (ECHR, 24 June 2014) paras 74-81; *G.B. and others v Turkey* App no: 4633/15 (ECHR, 17 January 2020) para 103.

46 United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'Concluding observations on the initial report of Turkey' (2016) CMW/C/TUR/CO/1, para 12; Global Detention Project, 'Turkey: Joint Submission to the Committee on the Elimination of Discrimination against Women' (2022) <<https://www.globaldetentionproject.org/turkey-joint-submission-to-the-committee-on-the-elimination-of-discrimination-against-women>> accessed 5 January 2024.

47 CPT, 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017' para 116.

48 CPT, 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017' para 48.

49 CPT, 'Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017' para 72-75; Kristen Biehl and Meral Açıkgoz, 'Migration and Asylum Sub-Sector Review and Gaps Assessment to Help Define Priorities of Future IPA III Programming in Turkey', (2020) p. 80 <<https://www.avrupa.info.tr/sites/default/files/2021-12/Final%20Report%20Sector%20Study%20Migration%20and%20Asylum.pdf>> accessed 5 January 2024.

50 The legal framework governing the deprivation of liberty of foreign nationals is set out in Articles 57 to 59 of the Turkish Law on Foreigners and International Protection.

51 International Refugee Rights Association and Global Detention Project, 'Türkiye', Joint Submission to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families 35th Session September 2022 Issues related to Immigration Detention (29 August 2022) <<https://www.globaldetentionproject.org/wp-content/uploads/2022/08/GDP-IRRA-CMW-Submission-Turkey-30.08.22.pdf>> accessed 5 January 2024.

52 Meltem Ineli-Ciger and Özgenur Yiğit, 'An Assessment on The Role of the Turkish Ombudsman Institution and The Human Rights and Equality Institution of Turkey in Protecting Migrants in Detention' (2022) 12 Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi 503, p. 506-510.

## 2. Alternatives to immigration detention in Turkish law and practice

### A. Who can be issued alternatives to immigration detention in Türkiye?

Governorates have the authority to issue detention or alternative measures to foreigners in Türkiye.<sup>53</sup> In practice, staff of the Presidency of Migration Management (PMM) and its local branches (Provincial Directorates of Migration Management- PDMMs) issue ATD decisions. Turkish law provides that decisions of administrative detention<sup>54</sup> and alternatives to detention can only be made concerning foreigners who are issued removal decisions.<sup>55</sup> Article 4 of the LFIP<sup>56</sup> explicitly prohibits refoulement, and Article 55 of the LFIP<sup>57</sup> provides humanitarian grounds for why a foreigner should not be issued a removal order. Therefore, migrants cannot be removed due to the risk of refoulement or humanitarian reasons, such as those related to health, age, pregnancy or being a victim of human trafficking or violence, and should not be issued detention or an ATD decision. Under the LFIP, for a migrant to be issued detention or an ATD decision, they should:

- pose a risk of absconding or disappearing,
- previously violated rules of entry into or exit from Türkiye,
- used false or fabricated documents,
- have not left Turkey after the expiry of the period granted to them to leave without an acceptable excuse or
- pose a threat to public order, public security or public health.

If a migrant who is issued a removal decision falls within one or more of the listed categories, then an administrative or an ATD decision can be given with regard to this individual. ATD is foreseen under the LFIP as a measure that can be invoked instead of detention or applied once the administrative detention decision is terminated.<sup>58</sup>

### B. How should the assessment of alternatives to immigration detention be made?

It is not the Law on Foreigners and International Protection but the ATD Regulation<sup>59</sup> that clarifies that administrative detention should be a last resort and be applied if the alternatives are not applicable or sufficient in a particular case. According to Article 6 of the ATD Regulation, whether a migrant should be detained or subject to an ATD should balance the foreigner's right to liberty and security, family unity, the child's best interest and public order, public health and public safety. The ATD assessment should consider whether the person has a special need or is vulnerable, age, health, gender, family status of the migrant and other relevant factors. The ATD Regulation defines two

53 Article 5(1) of the ATD Regulation.

54 For administrative detention laws and practices in Türkiye. Cf. Esra S. Kaytaç, 'At the border of 'Fortress Europe': Immigration detention in Turkey' in S. J. Silverman and A. Nethery (eds), *Immigration Detention: The migration of a policy and its human impact*, (Routledge 2015); Gamze Ovacık, *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept* (On İki Levha Publications 2021); Nimet Özbek, 'Administrative Detention In Accordance With The Foreigners And International Protection Law' (2020) 10 *Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi* 2, 119; Ulaş Sunata and Selenay Erduran, 'Practicing Law in Administrative Detention for Syrian Refugees in Turkey' (2022) 20 *Journal of Immigrant & Refugee Studies* 3, 350.

55 Article 6 of the ATD Regulation.

56 Article 4 of the LFIP prohibits returning a foreigner back to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

57 Article 55 of the LFIP provides that "Removal decision shall not be issued in respect of those foreigners listed below regardless of whether they are within the scope of Article 54: a) when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to; b) who would face risk due to serious health condition, age or, pregnancy in case of travel; c) who would not be able to receive treatment in the country to which they shall be returned while undergoing treatment for a life threatening health condition; ç) victims of human trafficking, supported by the victim's assistance programme; d) victims of serious psychological, physical or sexual violence, until their treatment is completed."

58 Article 57(2) and (4) and 57/A (1) of the LFIP.

59 Article 7(1) of the ATD Regulation.



categories of vulnerability where ATDs are considered to be particularly appropriate: a) persons with special needs and b) vulnerable individuals. It is not clear why vulnerabilities are categorised into two distinct categories. Nevertheless, the term ‘persons with special needs’ is defined by the Regulation as: “Unaccompanied children, disabled, elderly, pregnant, individuals with serious health problems, single mothers or fathers accompanied by their child or children, or individuals who have been subjected to torture, sexual assault, or other physical, sexual, or psychological violence.”<sup>60</sup> Whereas, the term ‘vulnerable individuals’ is defined as to include “individuals with special needs, alcohol or substance addiction, physical or psychological illness, the tendency to harm themselves or others, infectious disease, a strong suspicion of being a victim of human trafficking or being part of a vulnerable group defined by the United Nations High Commissioner for Refugees, or children at risk.”<sup>61</sup>

Single mothers, single fathers and children are accepted as vulnerable individuals with special needs. However, families with children or family members as a unit are not perceived explicitly as vulnerable. Moreover, the LFIP or the ATD Regulation does not cite LGBTQ+ individuals explicitly as vulnerable. Individuals who would face a risk in detention due to their sexual orientation are implicitly included within the ‘a vulnerable group defined by the United Nations High Commissioner for Refugees’ category.

### **C. Procedural Issues relating to alternatives to immigration detention**

As for procedural guarantees, the Turkish administration should notify the migrant or their legal representative or lawyer of the ATD decision. If a lawyer does not represent the migrant, he/she must be informed of the ATD decision, the procedures and the deadlines for appeal.<sup>62</sup> Appeals against an ATD decision can be lodged before the administrative courts, or in the case of electronic monitoring through ankle monitors, appeals can be lodged before the criminal courts, in particular criminal judgements of peace.

### **D. Seven alternatives to immigration detention provided under Turkish laws**

Turkish law defines an alternative to detention as: “an administrative measure or measures that do not restrict freedom of a foreigner who is issued a deportation order or restrict it less than administrative detention.”<sup>63</sup> In line with this very general description, the following measures are defined and regulated under the ATD Regulation: a) reporting obligations, b) residing at a specific address, c) family-based return, d) return counselling, e) volunteering in public services, f) financial guarantees, and g) electronic monitoring.

#### Reporting obligations

Reporting obligations are one of the most common alternatives to detention.<sup>64</sup> In Türkiye, reporting obligations were already being used as an alternative, though its legal basis was not entirely clear. With the introduction of Article 57/A of the LFIP and Article 9 of the ATD Regulation, reporting as an ATD and how this can apply has been clarified. Reporting obligation can be fulfilled through three means: a) verification of fingerprint data, b) voice recognition application and c) signature.<sup>65</sup> The Provincial Directorate of Migration Management staff can decide on the frequency of reporting. The notification intervals, nevertheless, cannot be more than 30 days. When determining the frequency of reporting obligations, migrants’ health, education, family ties, and perceived risk to public security are to be considered. In practice, migrants are usually subject to reporting requirements every two weeks. At the time of writing, in practice, reporting obligations cannot be fulfilled through voice

60 Article 4 of the ATD Regulation.

61 Article 4 of the ATD Regulation.

62 Article 57/A (2) of the LFIP.

63 Article 4(i) of the ATD Regulation.

64 European Migration Network, ‘Detention and Alternatives to Detention in International Protection and Return’ (2020) <[https://home-affairs.ec.europa.eu/system/files/2022-09/detention\\_and\\_alternatives\\_spain\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2022-09/detention_and_alternatives_spain_en.pdf)> accessed 5 January 2024.

65 Article 9(1) of the ATD Regulation.

recognition technologies due to the absence of infrastructure. If an individual does not fulfil the reporting requirement twice in a row without a valid reason, the ATD is terminated, and the migrant is detained.

#### Residing at a specific address

Residing at a specific address refers to the obligation of the migrant to reside at a certain address until they are removed.<sup>66</sup> For a migrant to be subject to the obligation to reside at a certain address, they must declare a specific address, which must be verified through the online address system or in person by the police officers.<sup>67</sup> If the migrant wishes to stay with someone else, the written consent of the person or persons with whom the migrant will stay must be obtained. If the migrant leaves their address without a valid reason, and this is confirmed through police visits, the ATD is terminated, and then they are detained.

#### Family-based return

Family-based return refers to the obligation of the migrant to stay with his/her first and second-degree relatives who are legally present in Turkey until he/she is removed or leaves the country voluntarily.<sup>68</sup> This measure can only be applied upon the foreigner's request. In order for the migrant to be subject to the family-based return measure, his/her relatives with whom he/she will stay must give written consent to cooperate with the administration during the deportation process and undertake to cover the foreigner's travel expenses for his/her return to the country of origin or a third country.<sup>69</sup> A reasonable period is determined for the foreigner subject to this measure to leave the country, and the relevant period is notified to the foreigner in writing. If the foreigner does not leave the country within the specified period, the obligation to family-based return is terminated, and the migrant is detained.

#### Return counselling

Return counselling is a kind of case management. According to Article 12 of the ATD Regulation, return counselling as an ATD pursues four main objectives: a) identification of the correct information and the documents concerning the migrant's country of origin, b) informing migrants about their rights and obligations during the return process, c) ensuring cooperation of the migrant with the administration and d) encouraging voluntary return. As part of return counselling, the return counsellor conducts a series of interviews with the migrant. The migrant needs to leave the country within a given period and attend periodic meetings with the return counsellor. If the migrant does not attend these meetings twice without a valid excuse, then the ATD is terminated, and the migrant is detained.

Return counselling may also include return assistance provided under Article 60/A of LFIP.<sup>70</sup> According to this provision, the PMM may provide in-kind or cash support to persons deemed appropriate by the Presidency who have been issued a deportation decision and wish to return voluntarily to their country of origin. Article 60/A of LFIP also stipulates that voluntary returns of irregular migrants can be carried out in cooperation with international organisations such as the International Organization for Migration (IOM), public institutions and organisations such as the Turkish Red Crescent (Kızılay), and non-governmental organisations.

---

66 Article 8 of the ATD Regulation.

67 Article 8(3) and (5) of the ATD Regulation.

68 Article 11 of the ATD Regulation.

69 Article 11(4) of the ATD Regulation.

70 Article 12(2) of the ATD Regulation.

## Volunteering in public services

Although reference to the obligation to serve voluntarily in public services is included as an ATD in Article 57/A of the LFIP and Article 13 of the ATD Regulation, it is noted that specific regulations concerning this measure will be made in the future. Yet, at the time of writing, volunteering in public services has not been regulated, and the details of this measure are unclear. Hence, at the time of writing, volunteering in public services is not an ATD applied in practice in Türkiye.

## Financial guarantee

Financial guarantee refers to the payment of a certain amount of collateral by the migrant who has been subject to a deportation decision or by a person authorised by the migrant to act on their behalf.<sup>71</sup> The financial guarantee is applied together with reporting obligations.<sup>72</sup> Migrants who are involved in terrorist activities and organised crimes and those who pose a threat to public security cannot be subject to financial guarantee. The financial guarantee is a fixed amount which applies to all migrants and is 100,000 Turkish liras (which is around 3000 euros) as of December 2023. It is foreseen that this amount will be increased each year in view of the revaluation rate announced in accordance with Tax Procedure Law No. 213.

Interviews are mandatory with migrants who will be subject to financial guarantees to determine whether they are victims of human trafficking and to prevent traffickers from depositing the financial guarantee on behalf of the migrant.<sup>73</sup> However, if it is determined as a result of the interview that the migrant is not at risk of being a victim of human trafficking, a financial guarantee cannot be applied.

Financial guarantee as an alternative measure is applied as follows. The financial guarantee amount is deposited into the designated government bank accounts by the migrant or the person authorised by the migrant. After the receipt is submitted to the PDMs, administrative detention is terminated. The migrants who deposited a financial guarantee are given a period of one to six months to leave Türkiye.<sup>74</sup> They then need to leave Türkiye at the given time. Suppose the migrant does not leave the country or comply with their reporting obligations during this period without providing a legitimate reason for non-compliance. In that case, the financial guarantee deposited to the government account is transferred to the Turkish treasury. If the migrant is removed or leaves the country voluntarily, or the Administrative Court abolishes the deportation decision, the deposited amount is refunded to the migrant.<sup>75</sup>

## Electronic monitoring

Turkish law provides two kinds of electronic monitoring: through a mobile phone application and ankle monitors.<sup>76</sup> These very different measures are directed to different migrant profiles; whilst electronic monitoring is a way to facilitate the fulfilment of reporting obligations, especially for vulnerable individuals, ankle monitors are only to be used in the case when the migrant poses a high risk to national security.

---

71 Article 14(1) of the ATD Regulation.

72 Article 14(5) of the ATD Regulation.

73 Article 14(9) of the ATD Regulation.

74 Article 14(8) of the ATD Regulation.

75 Article 14(7) of the ATD Regulation.

76 The principles of electronic monitoring are regulated between Articles 15 and 19 of the ATD Regulation.

### *Electronic monitoring through a mobile phone application*

Electronic monitoring through the mobile app would work as follows: migrants subject to this measure are expected to install the application developed by the PMM on their phones and fulfil their reporting obligations through this app.<sup>77</sup> Without any valid reason, if migrants subject to this ATD do not fulfil two consecutive reporting obligations or are found to be outside the province where they are registered without permission, they are to be detained. At the time of writing, electronic monitoring through the mobile application app was not applied in practice since the said mobile phone app had not yet been developed.

### *Electronic monitoring via ankle monitors*

Electronic monitoring through ankle monitors can be considered a measure that involves the most serious and severe intervention in fundamental human rights, especially the right to freedom and security, freedom of movement, and respect for private and family life, compared to other alternatives under Turkish law. Ankle monitors can be only applied to “foreigners who are subject to deportation under articles 54(1)(b), (d), and/or (k) of the Law on Foreigners and International Protection.” The mentioned categories include leaders, members or supporters of a terrorist or a criminal organisation; those who pose a public order or public security or public health threat; and those who are considered to be linked to organisations that are considered terrorist organisations by international organisations. Only migrants who fit the abovementioned categories can be subject to ankle monitors.

Compared to other ATDs, ankle monitors are attached to more procedural safeguards. The first requirement is to inform the migrant in a written manner about the rules of use of the ankle monitors and the consequences of non-compliance. Secondly, a special appeal procedure has been introduced for this ATD alone. While appeals against six ATDs can be made before the administrative courts, appeals against electronic monitoring through ankle monitors are to be made to the criminal courts, particularly criminal judgeships of peace. Ankle monitors are to be removed when: a) the judge decides to terminate this ATD, b) when the migrant leaves Türkiye or c) when the PMM decides to terminate this alternative measure.

## ***E. Termination of the alternatives to immigration detention***

Alternatives to detention can only continue for 24 months.<sup>78</sup> If a deportation order imposed upon a migrant is cancelled, withdrawn or terminated, the ATD measures should also be terminated. Moreover, ATDs can be terminated anytime, provided that ATDs are not considered necessary by the PMM or a judge. If a court terminates the alternative obligations, a new alternative obligation may be imposed on the foreigner. As a rule, the new alternative obligation to which the foreigner will be subject should not be more restrictive than the measure annulled by the court.

Moreover, in case of a forced or voluntary exit from the country, an alternative measure is to be terminated. Finally, when the migrant does not comply with the alternative measure or measures imposed upon him/her without a valid reason, ATDs are terminated, and he/she is detained. Turkish laws do not provide a clear list of ‘valid reasons’ or ‘legitimate excuses’ for non-compliance. Nevertheless, in practice, the following reasons are accepted as valid: illness, giving birth, being in prison or arrested on suspicion of a crime, or another reasonable situation that prevents a migrant from fulfilling the alternative measures.

---

<sup>77</sup> Article 15(2) of the ATD Regulation.

<sup>78</sup> Article 57/A (2) of the LFIP.



### 3. A brief analysis of alternatives to immigration detention in Türkiye

#### A. Strengths of the alternatives to immigration detention in Türkiye

There are four main strengths of alternatives to detention in Türkiye. First of all, the amendment of the LFIP and the introduction of various alternative measures to Turkish laws and practices are positive steps towards aligning Turkish laws with international human rights law. In accordance with human rights instruments, such as the ECHR and the jurisprudence of the ECtHR, states are obliged to demonstrate that they have considered less intrusive alternative measures before resorting to detention to satisfy the criteria of necessity and proportionality, especially for vulnerable persons.<sup>79</sup> The amended LFIP and the 2022 ATD Regulation implicitly recognise that detention should be a measure of last resort, especially for vulnerable individuals.

Secondly, the LFIP does not refer to the vulnerability of migrants, but only asylum seekers and the law does not explicitly require an assessment of vulnerability as part of the decision on detention. However, the ATD Regulation introduced two new vulnerability categories, namely, 'individuals with special needs' and 'vulnerable individuals' that include migrants that can be accepted as vulnerable and obliges the administration to consider the vulnerability of the migrant as part of the assessment of detention, is another positive step forwards to align Turkish law and practice with the ECHR and the case law of the ECtHR.

Thirdly, compared to many European states that regulate ATDs in their national laws, including Austria, the Netherlands and Belgium, Turkish laws provide quite diverse and different forms of alternative measures. Turkish laws provide not just conventional ATDs such as reporting, residing at a designated place, and sureties but also measures that involve new technologies such as reporting by voice recognition and electronic monitoring through mobile phone applications. The introduction of both reporting through voice recognition and electronic monitoring through mobile applications, provided that respect for data protection and the privacy of individuals who are subject to these measures are ensured, is a positive development. For instance, reporting by voice recognition, which is modelled after the Canadian ATD policy, can eliminate the necessity for migrants and their families to travel long distances to fulfil reporting obligations.<sup>80</sup> Both of these measures can facilitate vulnerable individuals as well as individuals with care obligations complying with ATDs.

Fourthly, it is widely recognised that ankle monitors harm migrants' psychological health, create social isolation, inflict financial hardships, and undermine the security of families and entire communities.<sup>81</sup> In Turkish laws, although there is no clear hierarchy among the seven alternatives provided under the LFIP, electronic monitoring via ankle monitors is implicitly accepted as a last resort. This is because only individuals who pose a threat to national security and those associated with terrorist or criminal organisations can be subject to electronic monitoring through ankle monitors. It is also positive that a person who poses a threat to national security but who is vulnerable can be subjected to electronic monitoring through mobile phone applications specifically designed for vulnerable individuals for whom ankle monitors may be unsuitable or inconvenient.

<sup>79</sup> *Popov v France* App nos 39472/07 and 39474/07 (ECHR, 19 January 2012) para 119; Lorna McGregor, *Detention and Its Alternatives under International Law* (Oxford University Press 2023) p. 131.

<sup>80</sup> Cf. Ophelia Field and Alice Edwards, *Alternatives to Detention of Asylum Seekers and Refugees*, UNHCR Legal And Protection Policy Research Series, 2006, para 22; Lorna McGregor, *Detention and Its Alternatives under International Law* (Oxford University Press 2023) p. 132.

<sup>81</sup> Tosca Giustini and others, 'Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles' (2021) Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project; Lorna McGregor, *Detention and Its Alternatives under International Law* (Oxford University Press 2023) p. 133.

## **B. Weaknesses of the alternatives to immigration detention in Türkiye**

The first weakness is related to the capacity of the PMM to implement these alternatives, as, at the time of writing, not all alternative measures are being used in practice. The most used alternatives include reporting (*sans* reporting through voice recognition) and residing at a specific address. Meanwhile, financial guarantee can only be applied to migrants who can afford a hefty sum, around 3000 euros as of the end of 2023, and so far, financial guarantee has only been used in a few cases. Moreover, family-based return applies to migrants who have relatives in Türkiye who can cover the migrants' travel costs, and this measure is also seldom used. As mentioned above, volunteering in public services is not being applied in practice. Meanwhile, return counselling has yet to be implemented in a widespread manner. Finally, the technological infrastructure for reporting via voice recognition and electronic monitoring, both ankle monitors and mobile applications, has yet to be developed.

With regard to compliance of how ATDs are regulated under Turkish law with international law, at first blush, how ATDs are regulated in Türkiye is in line with international human rights standards. Compared to detention, alternatives to detention are usually less problematic in terms of human rights since ATDs typically do not interfere or interfere less with the right to liberty and security. However, sometimes ATDs can also create human rights risks in particular measures “where they entail surveillance, coercion, and significant restrictions to freedom of movement and can constitute net-widening measures,” such as the cases of electronic monitoring.<sup>82</sup> To make a full assessment of whether ATDs in Türkiye respect the fundamental rights of migrants and are all in line with Türkiye's international obligations, we need to see further evidence of how these newly introduced seven measures are being implemented and to what extent these measures will observe the necessity, proportionality and legitimacy principles. For such an assessment, we also need to see how the Turkish government will regulate the measure of ‘volunteering in public services’ and observe how the more potentially problematic measures, such as monitoring via ankle monitors, are applied in practice.

## **C. A few recommendations on the alternatives to immigration detention in Türkiye**

The introduction of a variety of ATDs is a step towards making Turkish asylum and migration laws more in line with international human rights. However, it is crucial that all ATDs in Türkiye are fully implemented and their application becomes widespread. It is also vital that all the ATDs are fully implemented in line with human rights guarantees so that they offer not substitutes but real alternatives to detention. As noted previously, sometimes ATDs can also create human rights risks and similar to immigration detention, alternatives to immigration detention should also be in line with principles of necessity, proportionality and legitimacy.<sup>83</sup> For instance, the UK Courts<sup>84</sup> concluded that ankle monitors, especially when they are applied together with other alternative measures such as residence restrictions or curfews, can be disproportionate and violate the right to human dignity, freedom of movement and right to private and family life. In light of this, it is crucial that alternatives to detention do not deprive migrants of their right to liberty, and these measures remain necessary, proportionate and legitimate.

82 Loma McGregor, *Detention and Its Alternatives under International Law* (Oxford University Press 2023) p. 5; Council of Europe, Legal and practical aspects of effective alternatives to detention in the context of migration, Analysis by the Steering Committee for Human Rights (CDDH), 7 December 2017, <<https://rm.coe.int/legal-and-practical-aspectsof-effective-alternatives-to-detentionin-th/16809e-358b>> accessed 5 January 2024, para 13.

83 Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons Geneva, Switzerland, 11-12 May 2011, Summary Conclusions <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/Events/SummaryConclusions.pdf> accessed 5 January 2024..

84 *DD v Secretary of State for Home Department* [2015] WLR 2217; *R (on the application of Abdiweli Gedi) vs Secretary of State for the Home Department*, [2016] EWCA Civ 409.

#### 4. In lieu of a conclusion: A discussion on the European Union's involvement in the establishment and application of alternatives to immigration detention in Türkiye

Alternatives to detention were first incorporated into the first Turkish National Irregular Migration Strategy Document and National Action Plan, which covered the period of 2015-2018.<sup>85</sup> Since then, several projects on ATDs funded or co-funded by the EU or the Member States have been implemented to support alternatives to detention in Türkiye. The Netherlands has funded the first project on the alternatives to detention in Türkiye through the IOM, namely 'Supporting Directorate General of Migration Management (DGMM) to Develop Alternatives to Immigration Detention (ATDs) System in Türkiye'.<sup>86</sup> Moreover, since 31 May 2021, UNHCR and IOM have been implementing a project, 'Supporting Removal Centres' Capacities and Fostering Alternatives to Administrative Detention', funded by the EU for a 36-month period.<sup>87</sup> There were ATD components of the 'Strengthening the human rights protection in the context of migration in Türkiye' project funded by the European Union and Council of Europe collaboration titled 'Horizontal Facility-II for the Western Balkans and Turkey 2019-2022' and implemented by the CoE in Türkiye.<sup>88</sup> More recently, the Switzerland government funded another project titled 'ENACT: Enforcing Capacities for Application of Alternative Measures To Detention in Türkiye' through the International Centre for Migration Policy Development (ICMPD).<sup>89</sup> Activities, training, and legal support provided within the scope of these projects have contributed to the building capacity of the Turkish migration agency in protecting the rights of migrants and reducing reliance on detention.

The main actors in developing and applying alternatives to detention (ATDs) in Türkiye are the Turkish authorities, especially the Presidency of Migration Management (PMM). However, as mentioned above, the EU and the Member States have also funded international organisations, such as IOM, UNHCR, Council of Europe and ICMPD, to support the establishment of a national legal framework on ATDs and the capacity development of the Turkish migration agency for effective implementation of the alternatives to detention. As a result of these projects, staff of the PMM and Provincial Directorates of Migration Management have received training on ATDs and the human rights framework concerning detention and its alternatives. In addition, within the scope of those projects, comparative reports, training modules and guidance documents on how to regulate and implement ATDs have been prepared and translated. These activities have helped the Turkish migration agency reduce its reliance on detention.

What is quite curious and perhaps puzzling for an academic like the author of this paper, who has been working on the EU-Türkiye cooperation in the field of migration within the ASILE project<sup>90</sup> (Horizon 2020) for more than four years and researching ATDs in Türkiye for a number of years, is that the projects funded by the EU or the Member States on ATDs are, on the first blush, at odds with the EU's support for detention in third countries.<sup>91</sup> This raises the question in this paper's title: 'What's

85 Meltem Ineli-Ciger, Meltem Hamit, 'Dünden Bugüne Türk Hukukunda Göç Bağlamında İdari Gözetime Alternatif Yükümlülükler' in Ayşe Dicle Ergin and Yigit Kader (eds) *6458 Sayılı 10. Yılında Türkiye'de Uluslararası Koruma ve Göç*, (Oniki Levha 2024 forthcoming).

86 IOM, 'The First Standalone Project on Alternatives to Immigration Detention in Turkey' (28 January 2020) <<https://turkiye.iom.int/news/first-standalone-project-alternatives-immigration-detention-turkey>> accessed 5 January 2024.

87 UNHCR, 'Turkey Operational Update, May 2021' (2021) <<https://reliefweb.int/report/turkey/unhcr-turkey-operational-update-may-2021-entr>> accessed 5 January 2024.

88 Council of Europe, 'Strengthening the Human Rights Protection in the Context of Migration in Türkiye' <<https://www.coe.int/en/web/ankara/strengthening-the-human-rights-protection-in-the-context-of-migration-in-t%C3%BCrkiye>>; Council of Europe, 'International Roundtable on Alternatives to Immigration Detention' (1 September 2022) <<https://www.coe.int/en/web/ankara/-international-roundtable-on-alternatives-to-immigration-detention>> accessed 5 January 2024.

89 ICMPD, 'ENACT: Enforcing Capacities For Application Of Alternative Measures to Detention in Türkiye' <<https://www.icmpd.org/our-work/projects/enforcing-capacities-for-application-of-alternative-measures-to-detention-in-tuerkiye-enact>> accessed 5 January 2024.

90 ASILE Project <<https://www.asileproject.eu/>> accessed 5 January 2024.

91 Gamze Ovacık and others, 'Country Report: Turkey' (2022) ASILE WP5 <[https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2\\_WP5-Turkey-Country-Report-Final.pdf](https://www.asileproject.eu/wp-content/uploads/2022/08/D5.2_WP5-Turkey-Country-Report-Final.pdf)> accessed 5 January 2024; B.A. Tinni, O Djurovic, R. Hamadou, M. Ineli-Ciger, G. Ovacık, F. Raach, H. Sha'ath, T. Spijkerboer, O. Ulusoy (2023). Asylum for Containment EU arrangements with Niger, Serbia, Tunisia and Turkey. ASILE, <https://www.asileproject.eu/asylum-for-containment/> accessed 5 January 2024.

the European Union got to do with alternatives to detention in Türkiye?'. It is nearly impossible to determine the exact motivation of the funders of these projects supporting ATDs in Türkiye. Yet, it is possible to come up with a few possibilities.

First, a reader who may not be familiar with the EU's externalisation policies in the field of migration may assume the European support for ATDs in Türkiye can be seen as a reflection of the EU's high respect for human rights as enshrined in the TFEU since "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."<sup>92</sup> However, this reasoning can be easily abandoned in light of the following fact: the EU has spent a lot of money to increase the detention capacity of Türkiye in recent years.<sup>93</sup> It is well documented that Türkiye is not the only country in the EU that has funded projects to increase its detention capacity or build new detention centres. A study commissioned by the LIBE Committee<sup>94</sup> noted in 2015 that the EU has been building capacity in Armenia and Azerbaijan to support the management of migrant detention centres. Another report<sup>95</sup> confirms that the EU has been supporting detention capacities of EU candidates such as Türkiye and others, including Tunisia, Libya, Mauritania, Jordan, Lebanon, Senegal and Sudan.

A second possible explanation may be that increasing Türkiye's capacity on ATDs can still be accepted as part of the EU's broader containment-driven agenda. The primary objective of the EU-third country cooperation arrangements in the field of migration, which is to contain migrants and refugees in the regions or countries of origin, as we have concluded in previous ASILE reports, can still be achieved by supporting the establishment of ATDs in third countries such as Türkiye. The more Türkiye implements ATDs more effectively, the more Türkiye can increase return rates with measures such as case management or keep migrants in its territories in a more humane manner (by not detaining them), and this also serves the EU interests since this can contribute to preventing new arrivals to the European Union. This is also a plausible argument.

What is clear to the author is that the support of the EU in increasing the capacity of Türkiye on ATDs can be regarded as a curious case, which is at odds with Europe's support for building and increasing detention capacity in Türkiye but aligns with the EU's externalisation policies and containment focus in these externalisation policies.

---

92 EU Commission, The European Union What it is and what it does, <<https://op.europa.eu/webpub/com/eu-what-it-is/en/>> accessed 5 January 2024.

93 Cf. Mark Akkerman, Outsourcing Oppression, How Europe externalises migrant detention beyond its shores, Transnational Institute, Amsterdam, April 2021 <<https://www.tni.org/files/publication-downloads/outsourcingoppression-report-tni.pdf>> accessed 5 January 2024.

94 European Parliament, 'EU Cooperation with Third Countries in the Field of Migration' Study for the LIBE Committee (2015) p. 67 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536469/IPOL\\_STU\(2015\)536469\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536469/IPOL_STU(2015)536469_EN.pdf)> accessed 5 January 2024.

95 Mark Akkerman, Outsourcing Oppression, How Europe externalises migrant detention beyond its shores, April 2021, <<https://www.tni.org/files/publication-downloads/outsourcingoppression-report-tni.pdf>> accessed 5 January 2024.

## Selected Bibliography

- Akkerman M, 'Outsourcing Oppression How Europe migrant detention beyond its shores' (2021) Border Wars Briefing <<https://www.tni.org/files/publication-downloads/outourcingoppression-report-tni.pdf>> accessed 5 January 2024
- Bloomfield A, 'Alternatives to detention at a crossroads: Humanisation or criminalisation?' (2016) 35(1) Refugee Survey Quarterly 29
- Bosworth M, 'Alternatives to immigration detention: a literature review' in Stephen Shaw (eds), *Assessment of Government Progress in Implementing The Report on The Welfare in Detention of Vulnerable Persons: A Follow-Up Report to The Home Office*, (2018) HMSO 213
- De Bruycker P and others (eds), *Alternatives to Immigration and Asylum Detention in the EU Time for Implementation* (2015) <<https://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>> accessed 5 January 2024
- Frelick B, Ian M. Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants' (2016) 4 JMHS 190
- Giustini T and others, 'Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles' (2021) Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project
- Haddad E, 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' 43 Government and Opposition 190
- Ineli-Ciger M and Özgenur Yiğit, 'An Assessment on The Role of the Turkish Ombudsman Institution and The Human Rights and Equality Institution of Turkey in Protecting Migrants in Detention' (2022) 12 Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi 502
- Kaytaz, E.S.' At the border of 'Fortress Europe': Immigration detention in Turkey' in S. J. Silverman and A. Nethery (eds), *Immigration Detention: The migration of a policy and its human impact*, (Routledge 2015) Ch 6
- McGregor L, *Detention and Its Alternatives under International Law* (Oxford University Press 2023)
- Ovacık G, *Turkish Judicial Practices on International Protection, Removal and Administrative Detention in Connection with the Safe Third Country Concept* (Oniki Levha Publications 2021)

## **Author**

### **Meltem Ineli Ciger**

Associate Professor at the Suleyman Demirel University Faculty of Law, and

Associate at the Migration Policy Centre at the EUI's Robert Schuman Centre

[meltemciger@sdu.edu.tr](mailto:meltemciger@sdu.edu.tr)

<https://orcid.org/0000-0003-4440-4042>