

RIGHTS OF PERSONS UNDER ADMINISTRATIVE DETENTION IN TURKEY

QUESTIONS & ANSWERS

Mülteci
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Turkey

İDARİ GÖZETİMDE TUTULAN KİŞİLERİN HAKLARI

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İNGİLİZCE

I am under administrative detention. What are my basic rights?

Regardless of the reasons of detention, all persons under administrative detention in Turkey are entitled to fundamental rights and procedural safeguards. First and foremost, authorities are under the obligation to notify you or your legal representative or lawyer, in a language which you understand, about the reasons for detention. If you are not represented by a lawyer, authorities are also required to inform you about the consequences of administrative detention decisions, appeals and time limits.

In addition, the governorate which issues the administrative detention decision is under the obligation to carry out regular monthly reviews to establish whether there is a need to continue administrative detention. Where deemed necessary, this review may be carried out earlier and the authorities may order your release if the administrative detention is no longer considered necessary. Authorities are also required to communicate both the results of these monthly regular reviews and the decision of extending administrative detention to you or to your legal representative or lawyer.

Finally, you have the right to appeal against administrative detention decision before a court. Please refer to following sections for a detailed explanation on available legal remedies.

What is a removal center?

Removal centers are facilities where individuals who do not have any legal ground to stay in Turkey and will be deported and for whom an administrative detention order is issued are held. Removal centers are run by Directorate General of Migration Management (DGMM), the Turkish authority responsible of the procedures foreigners are subject to. The headquarter of Directorate General of Migration Management is in Ankara and there are Provincial Directorate of Migration Management (PDMM) in each province.

Over the course of your detention at a removal center, you have the right to have access to food, emergency and primary health care services, referral to a hospital where necessary, age and gender-appropriate accommodation, the telephone, and safe storage for your valuables. You are also entitled to request psychological support and assistance. In addition, you have the right to consular notification and to enjoy access to consular assistance.

Do I have the right to apply for international protection while I am under administrative detention?

Persons who have been forced to flee their home countries because of war or internal conflict or persecution have the right to apply for international protection in Turkey. As per applicable domestic regulations, regardless of the reasons for detention, all persons under administrative detention as well as persons deprived of their liberty have the right to seek international protection.

What is “asylum”?

Under international law, states have the obligation to provide legal protection to persons who have been forced to flee their home countries or former habitual residences because of war or internal conflict or persecution and who would be at risk of facing a threat against their life or liberty or persecution in the event of being returned. States are also under the obligation to receive asylum applications and give permission to these individuals to remain in the country once they meet certain criteria.

What is the difference between “asylum” and “international protection”?

The current domestic law in Turkey uses the term “international protection” to refer to asylum. Thus, these terms are synonymous.

However, Syrian nationals as well as refugees and stateless persons arriving from Syria are granted “temporary protection” status in Turkey.

Persons under “temporary protection” are also entitled to equal fundamental rights and procedural safeguards once they are placed under administrative detention. Please refer to following sections for detailed information on the rights of persons under “temporary protection” who are under administrative detention.

Who can benefit from international protection in Turkey?

If you believe that your reason of flight from your home country meets one or more of the following criteria, you can apply for international protection in Turkey:

- You have a fear of persecution for reasons of your race, religion, nationality, membership of a particular social group or political opinion and you cannot return to your home country or to your former habitual residence owing to this fear, or
- You risk facing one or more of the following situations if you are returned to your home country or to your former habitual residence:
 - Be sentenced to death or face the death penalty,
 - Face torture or inhuman or degrading treatment or punishment or
 - Face serious threats by reason of indiscriminate violence or armed conflict.

Which cases may not merit international protection?

If you do not fear a risk of persecution upon being returned to your home country or to your former habitual residence or you left your country for work opportunities or education, you may not benefit from international protection. Similarly, leaving your home country or your former habitual residence to escape a criminal prosecution for serious and non-political crimes may not make you eligible for international protection status.

In addition, under international law, several groups of persons are ex-

cluded from the scope of international protection. Persons who have committed crimes against humanity or peace as well as persons who have committed war crimes will be outside of the scope of international protection.

However, even if your personal situation falls into one of the above-mentioned categories, if you fear a risk of torture or inhuman or degrading treatment or punishment upon being returned, the Turkish authorities are under the obligation not to send you back to your home country or to your former habitual residence. This obligation also applies to persons who are at risk of being subjected to the death penalty. You may therefore be granted “subsidiary protection” which is also a form of international protection in Turkey.

I am under administrative detention. How can I apply for international protection?

As per the applicable domestic regulations, authorities are under the obligation to either process your international protection application or immediately communicate your request to the Directorate General of Migration Management.

If you have previously made an international protection application in Turkey, please communicate this to the authorities. If this shall be your first international protection application in Turkey, we recommend that you submit your international protection application without undue delay and where possible in writing. In your application, it is important to accurately share your key personal information such as name and surname, nationality, and date of birth as well as your explanation as to why you have a fear of returning to your home country or to your former habitual residence.

For more detailed information, you may call the Detention Hotline of Refugee Rights Turkey on +90 507 218 62 85.

I have family members with me under administrative detention. Can I make an international protection application on their behalf?

If your family members have fled from your home country or from your former habitual residence for the same reasons, it is possible to make an international protection application on their behalf. However, in order to make an international protection application on behalf of adult and core family members, they are required to give their consent to this.

Authorities are under the obligation to explain to your family members their rights and procedures before obtaining their consent. Authorities are also required to inform your family members that they have a right to make a separate international protection application and that, in any event, their international protection applications shall be examined on an individual basis.

Please bear in mind that even after giving consent, your family members have the right to withdraw this consent and request for a separate international protection application. Yet, such requests should be communicated in writing. Finally, in some cases, the authorities may decide to process international protection applications of family members separately should they deem this necessary.

I have submitted my international protection application while I was under administrative detention. What will happen?

As previously mentioned, the authorities are under the obligation to receive and process your international protection application.

As per applicable law in Turkey, international protection applications are adjudicated either under a “normal procedure” or an “accelerated procedure”. Regardless of the type of procedure, authorities receive international protection applications, carry out a status determination, and finally delivers a decision. However, under accelerated procedure, both

the evaluation of the applications, decision process and time limitation for appeal are much shorter.

Under the current legislation, the following grounds will allow migration authorities to recourse to “accelerated procedure”:

- If you have submitted your international protection application after being issued a deportation order,
- If the DGMM authorities have identified that you have deliberately destroyed your identity documents in order to mislead authorities regarding your identity or your nationality,
- If your previous international protection application was considered implicitly withdrawn for not fulfilling reporting requirements and you are making a new application, or
- If you have not mentioned any information indicating that you may have problems in your home country at the time of registration

If the authorities have decided to process your international protection application under the accelerated procedure, this does not necessarily mean that your international protection application shall be immediately rejected. Under this procedure, the authorities are required to carry out a personal interview with you within 3 days at the most. We recommend that you explain the reasons of your flight and the risks you may face upon being returned in detail. Similarly, should you have any documents regarding your personal situation, please also share these documents with the authorities.

Under the current regulations, it is stated that the assessment under the accelerated procedure should be finalized within 5 days. However, if the DGMM authorities have identified that the review of your international protection application will take longer, they may decide to assess your international protection application under the normal procedure.

Please bear in mind that the receipt of your international protection application does not directly end your administrative detention. Authorities shall reach a decision concerning your international protection applica-

tion after carrying out a status determination procedure. Please refer to the following sections to learn more about the possible impact of this decision on administrative detention.

I do not speak Turkish. Will I be able to have access to an interpreter?

If it is not possible for you to communicate with the authorities in Turkish or in any other common language, please be informed that you have the right to request interpretation assistance at every stage of your international protection application. Interpretation assistance shall be provided free of charge.

If you experience any difficulties in understanding either oral or written information, communications or notifications, please immediately share this with the authorities. As stated above, the right to have access to an interpreter is recognized and free of charge. Please also recall that you may request interpretation assistance at any stage.

Finally, if you have any disability which makes it difficult for you to understand either oral or written information, communications or notifications, you also have the right to request appropriate assistance for your special needs.

Will I be released after making my international protection application?

Submitting an international protection application does not directly end administrative detention. If the DGMM authorities have serious doubts concerning the accuracy of your identity or your nationality, they may decide to continue your detention. Similarly, the DGMM authorities may decide to extend the administrative detention of persons who were suspected to pose a serious threat to public order or public safety. Finally, the DGMM authorities may also decide that it would not be possible to identify the elements of the grounds for your application without administrative detention. In such cases, the DGMM authorities may also decide to continue administrative detention.

The authorities have received my international protection application. But they have not released me. Can I appeal against this?

As stated above, submitting an international protection application does not directly end administrative detention. However, you have the right to appeal against an administrative detention decision at any stage.

Under domestic regulations, there are mainly two legal procedures for the review of administrative detention decisions. The first is an administrative one and it is carried out by governorates. The governorate, which issues the administrative detention decision, is also under the obligation to review whether it is necessary to continue administrative detention. This review is the regular one and should be carried out on a monthly basis. The governorate may either decide to end or extend administrative detention. In either case, the DGMM authorities are required to communicate the results of these monthly and regular reviews, together with their reasons, to you or to your legal representative or lawyer.

You may also challenge the administrative detention before a court. This is the second type of review. As per current legislation, the Criminal Judgeships of Peace are the competent authority for such applications. Please be informed that a mere application to the Criminal Judgeship of Peace shall not directly result in your release from the removal center where you are detained. The current law requires authorities in removal centers to immediately communicate your application to the competent Criminal Judgeship of Peace. It is envisioned that the decision concerning your application to these courts should be finalized within 5 days. The decision of the Criminal Judgeship of Peace is final. Please also be informed that even if the final decision of the court is negative, you have the right to lodge another application with the Criminal Judgeship of Peace if the grounds for administrative detention are no longer valid or have changed.

I have submitted my international protection application under administrative detention and the authorities have released me. Does this mean that the authorities have received my application? What should I do?

You may be released mainly on three grounds. It is therefore very critical to understand the content of the official notification provided by the authorities upon your release.

The first possibility is that you might be summoned to leave Turkey. In other words, the authorities might have taken a deportation order against you and could have granted you 15-30 days to leave Turkey of your own volition. If you would like to comply with the summons to leave, but do not have necessary means to cover your return costs, please consult the following sections for detailed information on voluntary return assistance. However, if you fear risks upon returning to your home country or to your former habitual residence, it is possible to appeal against the deportation order.

The second possibility is that your international protection application has been processed, and you have been referred to a province to complete your registration with the Provincial Directorate of Migration Management whilst the decision of your application is pending. Please be aware that international protection applicants in Turkey are not allowed to choose their city of residence. Authorities retain this right and they shall refer you to a province. However, if you have a specific reason (such as presence of a close family member in a specific location), please communicate this to DGMM authorities. It is important to emphasize that this is merely a possibility and authorities may still assign you to another province.

Upon being referred to a province, you are required to approach to the Provincial Directorate of Migration Management for registration latest within 15 days. You will be expected to reside in the city of referral and report your continuing presence on a regular basis. Please be informed

that should you have a reason to travel outside of your city of referral, you are required to obtain a written permission from the PDMM. A failure to approach to assigned city within the time period, or a failure to comply with reporting duties, or a failure to obtain a travel permission document would lead the authorities to consider your international protection as withdrawn and discontinue the examination of your application.

The third and the final possibility is that you might have been granted international protection status and granted a release on this ground. If this is the case, please be informed that you shall also be assigned to a province and be required to register with the PDMM, again within 15 days at the most. We also would like to remind you that you shall also be required to report your continuing presence in the province on a regular basis.

Please do not hesitate to contact Refugee Rights Turkey for more detailed information about the process and the procedure after your release.

I am under administrative detention. The authorities have told me that the result of my international protection application is negative. What does this mean?

This means that your international protection application is rejected. The authorities are under the obligation to communicate this decision, together with its reasons, to you or to your legal representative or lawyer. You have the right to appeal against this decision.

As international protection applications made by persons under administrative detention are usually assessed under the accelerated procedure, the key legal remedy to challenge negative decisions is judicial.

Please also note that your international protection application might have been found “inadmissible” due to the following grounds:

- Repeating the same application without providing a different reason,
- Making a separate international protection application without

presenting a reasonably justified excuse after giving consent for your application to be made on your behalf,

- Making a separate international protection application without a different reason after the rejection of your international protection application,
- Arriving from a first country of asylum, and
- Arriving from a safe third country.

Please be informed that you also have the right to appeal against inadmissibility decisions before an administrative court.

It is imperative to appeal against a rejection decision taken under the accelerated procedure or an inadmissibility decision within 15 days at the most following the notification of the official decision to you or to your legal representative or lawyer. Please also recall that challenging these decisions before the competent administrative court shall not directly result in your release.

I arrived from Syria. Am I subject to a different procedure?

As previously stated, Syrian nationals as well as refugees and stateless persons arriving from Syria are granted “temporary protection” status in Turkey. The government of Turkey has declared that due to ongoing conflict in Syria, persons arriving from Syria shall not be returned.

However, persons who are under “temporary protection”, but who have breached the rules of entry to and exit from Turkey or who are identified to pose a serious threat to public security may be issued an administrative detention decision.

For detailed information, please contact Refugee Rights Turkey.

I am under 18 and I do not have family members with me. What should I do? Do I have the right to seek asylum?

Regardless of age, all persons who are forced to leave their home country or former habitual residence because of war or internal conflict or for the fear of persecution have the right to seek asylum. In other words, being under the age of 18 is no barrier for making an international protection application. Being under the age of 18 shall also not create any adverse effect on your international protection. We therefore recommend that you share your age accurately with the authorities.

Under Turkish law, individuals who are under the age of 18 are considered a minor. You have the right to benefit from the provisions of the Child Protection Law immediately after registering your international protection application. If you have been detained, please contact either Refugee Rights Turkey or other institutions from which you might have already been receiving legal assistance.

If you do not possess any document demonstrating your date of birth or age, the authorities may refer you to age assessment procedure. Please also be informed that should the authorities have doubts concerning the accuracy of your documents, they may also refer you to the same procedure. The age assessment procedure is composed of a set of physical and psychological tests. Authorities are under the obligation to inform you about the purpose and duration of this procedure. If the age assessment concludes that you are 18 years of age or older and if you would like to appeal against this assessment, you can contact Refugee Rights Turkey for further assistance.

I have a serious health problem. Can I get a medical treatment?

If you have a serious health problem or if you are pregnant or suspect yourself to be pregnant or if you have a disability, please share this information with the authorities in due time. Similarly, if you experience any

health issue while you are under administrative detention, please inform the authorities about your situation. You have the right to access emergency and primary health care services free of charge.

I have a special condition. Should I share this with the authorities?

If you have been a victim of torture, sexual assault or any other serious physical, psychological or sexual violence, we recommend you share this situation with the authorities. It is perfectly understandable that you may be reluctant to share these types of incidents with third parties. In such cases, you may ask the authorities to see a psychologist or a social worker. Under Turkish law, the authorities are also required to provide adequate treatment to persons who have been victims of these incidents.

I am under administrative detention. Do I have the right to receive visitors?

Persons who are under administrative detention in removal centers are entitled to have an opportunity to meet with their relatives and visitors. However, please be informed that your relatives or visitors may be required to demonstrate their kinship with an identification document.

Do I have the right to a lawyer? If yes, how can I exercise this right?

The current domestic regulations in Turkey enshrine the right to seek a legal remedy. Thus, you are entitled to seek the assistance of a lawyer. However, if you do not have the means to afford the lawyer fee for judicial appeals, you have the right to request to be assigned a lawyer under the Legal Aid Scheme.

In such cases, you are required to approach the bar association in the locality and request free of charge legal aid. Please be informed that the bar association shall make an inquiry about your financial condition and the problem that you have presented and make a decision whether or not they will be able to offer you free legal aid.

Who else can visit me while I am in detention?

As per the applicable law, persons under administrative detention have the right to have access to a notary, their legal representative or lawyer. In addition, persons under administrative detention also have the right to consular notification and access if they wish to do so. Finally, you are also entitled to request to meet United Nations High Commissioner for Refugees (UNHCR) officials.

I am not currently in detention. However, I have been informed that the authorities may detain me. Why? What should I do?

Under the current legislation, there are primarily two grounds for administrative detention.

The first ground is administrative detention for removal purposes. That is, the authorities might have issued a removal decision and the governorate might have taken an administrative detention decision for persons who

- Are considered to bear the risk of absconding or disappearing,
- Have breached the rules of entry into or exit from Turkey,
- Are considered to have used false or fabricated documents,
- Have not left Turkey after the expiry of the period of the summons to leave without an acceptable excuse,
- Have been considered to pose a threat to public order, public security or public health.

The second ground is the administrative detention of international protection applicants. If the DGMM authorities have serious doubts concerning the accuracy of your identity or your nationality, or if the authorities believe that it would not be possible to identify the elements of your international protection application unless you are subjected to administrative detention, you may be detained. Similarly, the authorities may decide to issue an administrative detention to prevent unlawful entry to

Turkey. Finally, international protection applicants who are suspected to pose a serious threat against public order or public safety may also be detained.

As previously stated, the authorities are under the obligation to provide the administrative detention to you or your legal representative or lawyer. Please refer to the previous sections for more information on appeals and time limits against administrative detention.

I was told that I have the opportunity to benefit from assisted voluntary return. What does this mean?

If you would like to return to your home country or to your former habitual residence on a voluntary basis, you may communicate your decision to the authorities. As this decision is a highly critical one, we recommend that you make your decision after thoroughly exhausting the possible implications of this choice. Please be informed that there is no time limit for communicating voluntary return requests.

As per the current legislation, you may be provided material or financial support to this end. Yet, please be informed that receiving this type of assistance may take some time. Similarly, if you do not have any documents demonstrating your nationality or facilitating your travel, the completion of any necessary proceedings may also require additional time.

How can Refugee Rights Turkey help me?

Refugee Rights Turkey provides free-of-charge information and assistance to persons seeking international protection and those under temporary protection in Turkey. You may approach our office with questions concerning access to protection mechanisms in Turkey and fundamental rights and freedoms, or you may call the Detention Hotline of Refugee Rights Turkey on +90 507 218 62 85. Our Detention Hotline operates during week days between 10.00 a.m. and 5.00 p.m. and all information and assistance services provided by Refugee Rights Turkey are free of charge.

Is Refugee Rights Turkey related to the Turkish government or to UNHCR?

No. Refugee Rights Turkey is an independent civil society organization. It is not an implementing partner of the Turkish government or UNHCR. However, Refugee Rights Turkey cooperates with the relevant Turkish authorities and UNHCR to ensure the legal protection of persons seeking protection in Turkey.

Do I need to pay for Refugee Rights Turkey's services?

All information, counselling and assistance services provided by Refugee Rights Turkey are free of charge. Should you become aware of any person or entity claiming to be acting in our name and requesting money or other financial benefit, please report them immediately to our organization. We will maintain your confidentiality.

Will Refugee Rights Turkey keep my information confidential?

Refugee Rights Turkey operates under a principle of strict confidentiality and respects the confidentiality of individuals. Thus, we do not, under any circumstances, share your information or documents with any third parties without your open and informed consent.

How can I contact Refugee Rights Turkey?

Wherever you may be in Turkey, you are welcome to visit our office or get in touch with us by telephone, fax or email all weekdays (Monday to Friday) from 10:00 AM to 5:00 PM.

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Refugee Rights
Turkey



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