

# AN ASSESSMENT ON THE ROLE OF THE TURKISH OMBUDSMAN INSTITUTION AND THE HUMAN RIGHTS AND EQUALITY INSTITUTION OF TURKEY IN PROTECTING MIGRANTS IN DETENTION<sup>(\*)</sup>

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## Abstract

This article focuses on different mechanisms and procedures of the Turkish Ombudsman Institution and the Human Rights and Equality Institution of Turkey to protect the fundamental rights of migrants detained pending removal in Turkey. In particular, the article examines the role of both institutions and the effectiveness of their complaint and reporting mechanisms in protecting migrants in detention. In the first section, immigration detention in Turkey and challenges that foreigners face in removal centres are reviewed to emphasize the significance of the complaint and reporting mechanisms of both Institution's for the protection of detained migrants in Turkey. Whilst the second section examines the Ombudsman Institution and the effectiveness of its complaint's mechanism in the context of immigration detention, the third section focuses on the HREIT and its reporting mechanism and assesses the effectiveness of its

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reports on removal centers and other places where foreigners are deprived of their liberty. The article concludes with a number of recommendations on how both Institution's complaint and reporting mechanisms and their role in protecting migrants in detention can be improved.

**Keywords**

Immigration Detention, Turkish Ombudsman Institution, HREIT, Migrants in Detention, Removal Centres.

# **TÜRKİYE İNSAN HAKLARI VE EŞİTLİK KURUMU VE KAMU DENETÇİLİĞİ KURUMU'NUN İDARİ GÖZETİM ALTINDAKİ YABANCILARIN KORUNMASINDAKİ ROLÜNE İLİŞKİN BİR DEĞERLENDİRME**

## **Öz**

Bu makalede Türkiye'de sınırdışı edilmek üzere idari gözetim altında tutulan yabancıların temel haklarının korunması hususundaki farklı mekanizma ve prosedürler Kamu Denetçiliği Kurumu ve Türkiye İnsan Hakları ve Eşitlik Kurumu çerçevesinde ele alınmaktadır. Özellikle idari gözetim altında tutulan yabancıların korunması ve Geri Gönderme Merkezlerindeki şartların uluslararası insan hakları hukukunda öngörülen standartlara uygun olması konusunda bu kurumların rolü ve başvuru ve raporlama mekanizmalarının etkinliği incelenmektedir. Makalenin ilk kısmında Türkiye'de idari gözetim altında tutulan yabancıların karşılaştığı temel sorunlar ile Kamu Denetçiliği Kurumu ve TİHEK'in şikayet ve raporlama mekanizmalarının idari gözetim altında tutulan yabancıların korunması için neden önemli olduğuna ilişkin açıklamalar yer almaktadır. İkinci kısmında Kamu Denetçiliği Kurumu incelenirken üçüncü kısmında TİHEK ele alınmaktadır. Sonuç kısmında ise her iki kurumun şikayet ve raporlama mekanizmalarının ve bunların etkinliğinin nasıl iyileştirilebileceğine dair önerilere yer verilmektedir.

## **Anahtar Kelimeler**

İdari Gözetim, Kamu Denetçiliği Kurumu, Türkiye İnsan Hakları ve Eşitlik Kurumu, İdari Gözetim Altında Tutulan Yabancılar, Geri Gönderme Merkezleri.

## I. INTRODUCTION

The Turkish Ombudsman Institution and the Human Rights and Equality Institution of Turkey are national human rights institutions that seek to protect and promote human rights in Turkey through their application and reporting mechanisms.<sup>1</sup> This article focuses on the current state and capacity of the Turkish Ombudsman Institution and the Human Rights and Equality Institution of Turkey and the effectiveness of their complaint and reporting mechanisms in preventing unlawful and arbitrary detention and protecting the rights of migrants and vulnerable individuals in detention. In doing so, the report identifies the reasons that both the Ombudsman Institution and HREIT's capacity and effectiveness of their application and reporting mechanisms in protecting migrants in detention are rather limited.

Section 1 reviews immigration detention in Turkey, the main problems faced by detained migrants pending removal and the reasons that complaint and reporting mechanisms of the Turkish Ombudsman Institution and HREIT are important for the protection of migrants in Turkey. Whilst, Section 2 examines the Ombudsman Institution, its complaint mechanism and the effectiveness of its application procedure in protecting the rights of migrants in detention, Section 3 focuses on the Human Rights and Equality Institution of Turkey, its site visits and the effectiveness of its reporting mechanism in protecting migrants and vulnerable individuals in detention. The article concludes with a number of recommendations on how both Institution's complaint and reporting mechanisms and their role in protecting migrants in detention can be improved.

### A. Why Complaint and Reporting Mechanisms Matters for Detained Migrants in Turkey: An Overview of Immigration Detention and Challenges for Migrants in Accessing Fundamental Rights in Detention

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 (LFIP)<sup>2</sup>. The Presidency of Migration Management (PMM) runs 30 Removal Centres including 2 temporary centres in Iğdır and

<sup>1</sup> Bkz. Muharrem Kılıç, "İnsan Haklarının Kurumsallaşması: Ulusal İnsan Hakları Kurumları", Türkiye İnsan Hakları ve Eşitlik Kurumu Akademik Dergisi, 2022, 8(15), p. 26; Çağrı Çakır, "Institutionalisation of human rights in Turkey in the context of international assessment mechanisms" (MS thesis) Middle East Technical University, 2013.

<sup>2</sup> RG. 11.04.2013, S. 28615.

Malatya and the total capacity of all the Removal Centres is 15.908 persons.<sup>3</sup> An Implementing Regulation<sup>4</sup> on the LFIP has been adopted in 2016 and there are several circulars issued by the formerly the Directorate General of Migration Management (now the PMM), namely the Circular setting out guidelines on the operation of removal centres (dated 18 February 2016) and two subsequent Circulars issued on 12 and 13 October 2016 on access to subsistence.<sup>5</sup> The LFIP and the Implementing Regulation No. 29656 include crucial safeguards for asylum-seekers and migrants, including those relating to immigration detention, however not all these safeguards are respected in practice.<sup>6</sup>

The European Court of Human Rights (ECtHR) has decided that arbitrary detention practices and the detention of migrants in substandard conditions in Turkey violated Article 3, Article 5<sup>7</sup>, and Article 13 of the ECHR in many cases which concerned the period before the adoption of the LFIP.<sup>8</sup> In a number of recent cases following the adoption of the LFIP, the Court similarly concluded that violations of the ECHR took place in relation to deprivation of liberty of foreigners: the Court, in *GB and others v. Turkey*<sup>9</sup>, noted that the detention conditions in Kumkapı Removal Centre caused the applicants (a mother and her three children) distress which exceeded the unavoidable level of suffering inherent in detention and violated Article 3 of the ECHR whereas, material conditions in which the applicants were detained at the Gaziantep Removal Centre was not suitable for young children. More importantly, the Court provided that “*the detention of minor immigrants even for very short periods of time in unsuitable conditions gives rise to issues under Article 3*”. In this judgment, it is also noted that there is no effective remedy to challenge inadequate detention conditions in the migration context in Turkey.<sup>10</sup> In a recent case de-

<sup>3</sup> PMM, ‘Centres’, <https://en.goc.gov.tr/removal-centres>, (20.07.2022).

<sup>4</sup> RG. 17.03.2016, S. 29656.

<sup>5</sup> These Circulars are not publicly available.

<sup>6</sup> See ft (n 8), (n 9), (n 11).

<sup>7</sup> Bkz. Tolga Şirin, *Özgürlük ve Güvenlik Hakkı* (Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi-1), 2018.

<sup>8</sup> See for instance *Yarashonen/Turkey*, App. No: 72710/11, 24/06/2014; *Boudraa/Turkey*, App. No: 1009/16, 28/11/2017; *Khaldarov/Turkey*, App. No: 23619/11, 5/09/2017; *Alimov/Turkey*, App. No: 14344/13, 6/09/2016; *Abdolkhani and Karimnia/Turkey*, App. No: 30471/08, 22/09/2009; *Dbouba/Turkey*, App. No: 15916/09, 13/07/2010.

<sup>9</sup> *G.B. and others/Turkey*, App. No: 4633/15, 17/01/2020.

<sup>10</sup> Cf. Gamze Ovacık, “Compensation for Unlawful Practices related to Administrative Detention of Foreigners in Turkey”, *Public and Private International Law Bulletin*, 2021, 41(1), p. 58, 59.

cided in June 2022, *Akkad v. Turkey*<sup>11</sup>, the Court noted that “the legal safeguards afforded by the national legislation (LFIP)- designed to provide protection against arbitrariness to persons in detention pending their expulsion - had not taken effect in the applicant’s case” and concluded that Article 5§1 of the ECHR is violated. As illustrated by these cases, not all detention practices in Turkey are in line with the safeguards established under the LFIP as well as the ECHR and still today arbitrary and unlawful detention takes place.

A number of significant problems in relation to lawfulness and arbitrariness of detention exists: these include problems with regard to registration of international protection applications in Turkey leading asylum seekers to be apprehended as ‘irregular migrants’ and promptly detained pending removal in Removal Centres<sup>12</sup>, detention beyond 48 hours prior to transfer to a Removal Centre (although this is unlawful under the LFIP)<sup>13</sup>, absence of proper identification of vulnerabilities before the adoption of an administrative detention decision<sup>14</sup>, absence of due consideration of alternatives to detention which have been introduced by Art. 57/A in the LFIP in 2019 while deciding on whether a migrant should be detained.<sup>15</sup> Moreover, frequent use of adminis-

<sup>11</sup> Akkad/Turkey, App. No: 1557/19, 21/06/2022.

<sup>12</sup> European Commission, European Neighbourhood Policy and Enlargement Negotiations, ‘Turkey Report 2021’ 19.10.2021, [https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en), (20.07.2022), para 17.

<sup>13</sup> Turkish Constitutional Court, B.T., App. No: 2014/15769, 30/11/2017.

<sup>14</sup> Whereas, immigration detention of children and other vulnerable individuals can raise issues under Article 3 of the ECHR especially when the conditions of detention, its duration, the person’s particular vulnerabilities and the impact of the detention on the detained foreigner are taken into account. See 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” Information Documents SG/Inf(2021)35, 29.11.2021, <https://rm.coe.int/report-of-the-fact-finding-mission-to-turkey/1680a4b673>, (20.07.2022). 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”, CAT/C/TUR/CO/4, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/109/81/PDF/G1610981.pdf?OpenElement>, (20.07.2022).

<sup>15</sup> 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/Poland*, App. No: 14743/17, 03/03/2022, § 86 and 88; *Rahimi/Greece*, App. No: 8687/08, 05/07/2011) §§ 108-110.; *Yoh-Ekale Mwanje/Belgium*, App. No: 10486/10, 20/11/2011.; Council of Europe/European Court of Human Rights, “Guide on the case-law of

trative detention for minors accompanied by their family members and other vulnerable individuals<sup>16</sup> and the absence of adequate information provided to detained migrants in simple, non-technical language that they can understand although the essential legal and factual grounds for his deprivation of liberty.<sup>17</sup>

There are many cases decided by the ECHR<sup>18</sup> and Turkish Constitutional Court<sup>19</sup> in addition to the reports published by CPT<sup>20</sup> and others<sup>21</sup> that identify different challenges for the detained migrants in accessing fundamental rights in detention and inadequate or sub-par detention conditions in Removal Centres. These challenges include, *inter alia*, not enough information being provided to migrants in a language that they understand upon their arrival in the Removal Centres on their rights and entitlements including the right to apply for international protection, the right to appeal a removal or a detention decision<sup>22</sup>, problems with regard to access to legal counselling and interpreters<sup>23</sup>, overcrowded centres<sup>24</sup>, vulnerable individuals including children, pregnant women, persons with disabilities, single parents, elderly persons with health

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the European Convention on Human Rights Immigration” 30 April 2022, [https://www.echr.coe.int/Documents/Guide\\_Immigration\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf), (20.07.2022), para 27. See for problems relating to the Turkish practice see G.B. and others/Turkey; 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”, CMW/C/TUR/CO/1, 2016, p. 12.

<sup>16</sup> 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, <https://rm.coe.int/16809f209e>, (20.07.2022), para 38.

<sup>17</sup> See for this obligation see: *Khlaifia and others/Italy*, App. No. 16483/12, 15/12/2016 § 115.; for problem in this regard see Council of Europe, ‘Report of the fact-finding mission to Turkey by Ambassador Drahoslav Štefánek, para 82.

<sup>18</sup> See G.B. and others/Turkey, App. No. 4633/15, 17/01/2020.

<sup>19</sup> See for instance, B.T., App. No. 2014/15769, 30/11/2017.

<sup>20</sup> CPT, “Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017”.

<sup>21</sup> European Commission, “Turkey Report 2021”, [https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/turkey-report-2021_en), (20.07.2022), p. 12; Global Detention Project, “TURKEY: Joint Submission to the Committee on the Elimination of Discrimination against Women” 16 May 2022, <https://www.globaldetentionproject.org/turkey-joint-submission-to-the-committee-on-the-elimination-of-discrimination-against-women>, (20.07.2022).

<sup>22</sup> Council of Europe, “Report of the fact-finding mission to Turkey by Ambassador Drahoslav Štefánek”, para 84.

<sup>23</sup> Council of Europe, “Report of the fact-finding mission to Turkey by Ambassador Drahoslav Štefánek”, para 85.

<sup>24</sup> *Yarashonen/Turkey*, § 74-81.; *G.B. and others/Turkey* §103.

conditions, LGBTI, sex workers and victims of trafficking being held in immigration detention not receiving sensitive or appropriate treatment,<sup>25</sup> absence of suitable psychosocial and educational activities for the detained migrants particularly the absence of play areas, preschool and education activities for young children<sup>26</sup>, not enough access to outdoor activities, health care and recreational activities etc.<sup>27</sup> and limited access of the detained migrants to their countries' consulates, lawyers, UNHCR and sometimes family members and relatives.<sup>28</sup> Finally it is reported that detained migrants experience difficulties in applying for international protection in Removal Centres.<sup>29</sup> Although since the adoption of the LFIP both detention conditions and access to fundamental rights have been improved in Removal Centres, to a certain extent, many challenges persist today and Turkish practice of immigration detention is not fully in line with international legal norms provided under the ECHR and other international human rights instruments.

## II. THE OMBUDSMAN INSTITUTION

### A. The Ombudsman Institution, a Brief Introduction

The Ombudsman Institution is regulated by Article 74 of the Turkish Constitution titled "Right of Petition, Right to Information and Appeal to the Ombudsman" which provides that the Institution of the Ombudsperson (hereinafter the Ombudsman Institution), which is established as a constitutional public entity under the Grand National Assembly of Turkey, examines complaints on

<sup>25</sup> 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", para 12.; Global Detention Project, "TURKEY: Joint Submission to the Committee on the Elimination of Discrimination against Women".

<sup>26</sup> CPT, "Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017", para 116.

<sup>27</sup> CPT, "Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017", para 48.

<sup>28</sup> CPT, "Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017", para 72-75.; K. Biehl, M. Açıkgöz, "Migration and Asylum Sub-Sector Review and Gaps Assessment to Help Define Priorities of Future IPA III Programming in Turkey", <https://www.avrupa.info.tr/sites/default/files/2021-12/Final%20Report%20Sector%20Study%20Migration%20and%20Asylum.pdf>, (20.07.2022), p. 80.

<sup>29</sup> CPT, "Report to the Turkish Government on the visit to Turkey from 10 to 23 May 2017", para 95.



the functioning of the administration. The Institution and its mandate are governed by Law on the Ombudsman Institution No. 6328 dated 14 June 2012.<sup>30</sup>

The Institution has its own private budget that comprises the treasury funds which is allocated from the budget of the Parliament.<sup>31</sup> According to Article 5 of Law No. 6328, the Institution is responsible for examining, investigating and submitting recommendations to the administration regarding all acts and actions of the administration upon complaint on the functioning of the administration. It is regulated under article 6 of the Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution that “while conducting examinations and investigations, the Institution shall obey the good governance principles and monitor whether the acts and actions of the administration are fulfilled with an understanding of human rights-based justice and in conformity with principles of good governance such as compliance with laws, prevention of discrimination, proportionality, abuse of power, equality, impartiality, honesty, courtesy, transparency, accountability, compliance with the fair expectation, protection of vested rights, right to be heard, right to defense, right to be informed, taking a decision in a reasonable period, taking reasoned decisions, indicating remedies against decisions, notifying the decision without delay and protection of personal data.”<sup>32</sup>

The Institution consists of the office of the chief ombudsman and the office of the secretary general.<sup>33</sup> The Chief Ombudsman, five Ombudsmen work under the supervision of the Chief Ombudsman.<sup>34</sup> According to Article 11 of Law No. 6328, the Chief Ombudsman is elected by a 2/3 majority in the Parliament. Both the Chief Ombudsman and Ombudsmen are elected by the Parliament for four years and may be re-elected. The Chief Ombudsman is required to take an oath before the General Assembly of the Parliament and five ombudsmen shall also take an

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<sup>30</sup> RG. 29.06.2013, S. 28338.

<sup>31</sup> Article 1, 29 of Law No. 6328; The Ombudsman Institution, “Annual Report 2020”, [https://www.ombudsman.gov.tr/English/kdk-pdf/2020\\_anual\\_report/mobile/index.html](https://www.ombudsman.gov.tr/English/kdk-pdf/2020_anual_report/mobile/index.html), (20.07.2022).

<sup>32</sup> RG. 28.03.2013, S. 28601.

<sup>33</sup> Reşit Gürbüz, *İdare Hukuku*, Hür Yayıncılık, 2016, p. 551; Şükrü Mert Karıcı, *Ombudsman: İskandinav Modelleri ve Türkiye Uygulaması*, Seçkin Yayıncılık, 2016, p. 196.

<sup>34</sup> The Ombudsman Institution Organization Chart, <https://www.ombudsman.gov.tr/TeskilatSemasi>, (20.07.2022).

oath in commissions after their elections.<sup>35</sup> No authority or person can give orders to the lead auditor or auditors.<sup>36</sup> According to the Article 12 of Law No. 6328, “The Chief Ombudsman and ombudsmen must act in compliance with the principle of the independence and impartiality during the exercise of their duties.”

The Turkish Ombudsman Institution is a relatively young institution. The Parliament elected Turkey’s first Chief Ombudsman in November 2012 and the Institution became operational and started to receive complaints in March 2013.<sup>37</sup> As of 2021, the Ombudsman Institution has 272 staff including 153 permanent staff (this includes experts, assistant experts, admin and support staff) and 76 workers.<sup>38</sup> The applications submitted by the migrants in detention and other foreign nationals are to be examined by Refugee and Migrant Rights Department led by Ombudsman Fatma Benli Yalçın.<sup>39</sup>

## B. Application (Complaint) Mechanism

Applications to the Ombudsman Institution are free of charge and may be filed with the Institution via provincial or district governor’s offices and it is possible to lodge an application via website of the Institution, phone or fax<sup>40</sup>. Natural and legal persons whose interests, rights or freedoms are violated may apply (file a complaint) to the Ombudsman Institution against all kinds of acts, actions, attitudes and behaviours of the administration.<sup>41</sup> Turkish citizens, vul-

<sup>35</sup> Article 12 of the Law on the Ombudsman Institution.; Hasan Tahsin Fendoğlu, *Kamu Denetçiliği (Ombudsmanlık)*, Yetkin Yayınları, 2011, p. 162.

<sup>36</sup> Hasan Tahsin Fendoğlu, *Kamu Denetçiliği (Ombudsmanlık)*, p. 160.

<sup>37</sup> European Commission, ‘Turkey Report 2021’.; Büşra Bayan, “Ombudsman in Turkish Republic: The Ombudsman Institution” in Kadir Caner Dogan and Ömer Ugur (eds), *Public Administration and Public Finance Research*, Lyon, 2021, p. 205; Naomi Creutzfeldt, Nick O’Brien, Marek Nowicki, “A Comparative Review on Ombuds, Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities”, October 2021, <https://rm.coe.int/oi-report-web-2790-3490-7908-1/1680a45112>, (20.07.2022), p. 16.; Kemal Gözler, Gürsel Kaplan, *İdare Hukuku Dersleri*, Ekin Yayınları, 2021, p. 810.

<sup>38</sup> The Ombudsman Institution, “Annual Report 2021”, 2021, p. 544.

<sup>39</sup> The Ombudsman Institution, “Annual Report 2021”, 2021, p. 65. It is noted in a number of reports that the capacity of the Institution in particular the number of staff dealing with application procedure is not enough to decide on the applications in a swift manner. Cf. European Commission, “Turkey Report 2021’.; Büşra Bayan, “Ombudsman in Turkish Republic: The Ombudsman Institution”, p. 206.

<sup>40</sup> The Ombudsman Institution, “Annual Report 2021”, p. 54.

<sup>41</sup> The Ombudsman Institution, “What Do We Do and How Can We Help You”, <https://www.ombudsman.gov.tr/English/how-we-can-help-you>, (20.07.2022).

nerable groups in the society such as children, the disabled persons, refugees as well as legal entities such as associations and companies whose interest has been violated by the administration have right to apply to the Ombudsman Institution.<sup>42</sup> Violation of the applicants' own interests is not required if the complaint concerns fundamental rights and freedoms, women rights, rights of the children and general matters concerning the public. Applications may be kept confidential upon the request of applicants.<sup>43</sup>

The Ombudsman Institution including Chief Ombudsman and Ombudsmen is competent to investigate complaints submitted by persons deprived of their liberty including migrants in detention. The Ombudsman Institution has no *ex-officio* powers<sup>44</sup> which limits its effectiveness in protecting the fundamental rights of migrants and refugees.

Article 17(4) of the Law No. 6328 provides that *“Before any application is filed with the Institution, the administrative remedies listed in Administrative Jurisdiction Procedures Law dated 6/1/1982 and numbered 2577 and the man-*

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<sup>42</sup> Admissibility criteria for complaints made before the Ombudsman Institution can be summarized as follows: 1. Applicants should be natural and legal persons whose interests, rights or freedoms are violated. However, violation of interests of the applicant/s shall not be sought in the event that the complaint is about human rights, fundamental rights and freedoms, women rights, rights of children and general matters concerning the public. 2. An application should contain a specific matter. 3. An application should not concern the disputes which are being dealt with or have not been resolved by judicial organs. 4. An application should not concern the acts relating to the execution of the legislative power, the execution of the judicial power or the acts of the Turkish Armed Forces, which are of military nature. 5. An application shall be made with a petition which is written in Turkish and bears the full name, signature, residence or work address, the citizenship ID number for citizens of the Republic of Turkey, the passport number for foreign persons, or, if the applicant is a legal person, the title and residence of the legal person, and the title of the authorized person, and if any, central legal person number and authorization certificate. 6. The Ombudsman Institution is only obliged to accept applications in Turkish. If an applicant can express himself better in a language other than Turkish can also be accepted. 7. An application should not have the same subject-matter of a case/complaint that have been previously resolved. 8. Before application the administrative remedies listed in Administrative Jurisdiction Procedures Law dated 6/1/1982 and numbered 2577 and the mandatory administrative remedies specified under special laws must be exhausted. 9. Application may be filed with the Institution within six months following the date of notification of the response to the application filed with the administration or after the termination of the sixty-day period during which the administration fails to respond to the application.

<sup>43</sup> Article 17 of Law No. 6328.

<sup>44</sup> European Commission, “Turkey Report 2021”, p. 12.

*datory administrative remedies specified under special laws must be exhausted. Any application filed before exhausting administrative application remedies shall be sent to the relevant institution. However, in cases where it is likely to have damages which are hard or impossible to compensate, the Institution may accept applications even if administrative remedies are not exhausted.”* This means, the applicant needs to apply to the relevant administrative authority before applying to the Ombudsman Institution. If the applicant has not exhausted administrative remedies, the Ombudsman Institution sends the application to the relevant administrative authority which is called *a decision of referral*.<sup>45</sup>

The Institution is to finalise its examination and investigation within six months following the date of application. The Ombudsman Institution may adopt the following decisions upon investigating the complaint: the Institution may deem an application invalid or decide to merge or separate applications. Moreover, the Institution may issue a decision of referral or inadmissibility, an amicable settlement decision, a decision as to no ground exists for taking decisions, a decision of refusal, a partial recommendation partial refusal and recommendation.<sup>46</sup> The Ombudsman Institution’s decisions are not binding.<sup>47</sup>

### C. Site Visits, Special Reports and Other Activities

In 2021, the Ombudsman Institution experts together with Chief Ombudsman and Ombudsman Fatma Benli have visited Aydın and Izmir Harmandalı Removal Centres but the objective of this visit was to obtain information from detained migrants on pushbacks at the Aegean Sea by the Greek forces not to supervise detention conditions and/or investigate ill-treatment claims.<sup>48</sup> The Turkish Ombudsman Institution can issue reports, including special reports, and make appropriate recommendations to administrative authorities.<sup>49</sup> Accordingly, both Chief Ombudsman and Ombudsmen have the authority to prepare special reports on issues that they deem necessary. So far, the Om-

<sup>45</sup> Halil Kalabalık, *İdare Hukuku Dersleri Cilt II*, Seçkin Yayıncılık, 2021, p. 448.

<sup>46</sup> The Ombudsman Institution, “Annual Report 2021”, p. 66

<sup>47</sup> Onur Kaplan, “Kamu Denetçiliği Kurumu Tarafından Verilen Tavsiye Kararlarının Hukuki İşlevi ve Etkisi”, *Ombudsman Akademik*, 2020, sayı 13; Şükrü Mert Karıcı, “Ombudsman Tavsiye Kararları ve Türk Kamu Yönetiminde Uygulanabilme Sorunu”, *Ombudsman Akademik*, 2015, p. 43.

<sup>48</sup> The Ombudsman Institution, “Annual Report 2021”, p. 34, 489.

<sup>49</sup> Naomi Creutzfeldt, Nick O’Brien, Marek Nowicki, “A Comparative Review on Ombuds”, p. 89.

budsman Institution has prepared special reports on Syrians<sup>50</sup> and pushbacks in the Aegean.<sup>51</sup> However, there is no mention of the detention of migrants in Turkey in these reports.<sup>52</sup>

#### D. Why is the Ombudsman Institution's Contribution to the Protection of Migrants in Detention Limited?

Firstly, the limited visibility of the Turkish Ombudsman Institution especially in removal centres where migrants are deprived of their liberty can be accounted for the low number of applications hence, the decisions delivered by the Institution. As noted by 'A Comparative Review on Ombuds Project on Improving the Effectiveness of the Administrative Judiciary'<sup>53</sup>, it is estimated that only a relatively small number of people are currently aware of the Ombudsman Institution and that they can file a complaint especially outside of Ankara and other urban cities.<sup>54</sup> The absence of visibility of the Turkish Ombudsman Institution is one of the reasons that the number of applications submitted by migrants in detention is low.<sup>55</sup> Moreover, decisions of the Om-

<sup>50</sup> The Ombudsman Institution, "Syrians in Turkey: Special Report", 2018, <https://www.ombudsman.gov.tr/English/kdk-pdf/syrians/index.html#p=3>, (20.07.2022).

<sup>51</sup> Turkish Ombudsman Institution, "Pushback" of Human Rights, June 2022, <https://www.ombudsman.gov.tr/English/kdk-pdf/geri-itme-ozel-raporu-ingilizce/geri-itme-ozel-raporu-ing-v04tbmmsn.pdf>, (20.07.2022).

<sup>52</sup> A number of reports noted that the Turkish Ombudsman Institution cannot be accepted as operationally, structurally or financially independent moreover, its members are not appointed in compliance with the principles relating to the Status of National Institutions (The Paris Principles). It is claimed that this is one of the reasons that the Institution has remained silent on politically critical issues concerning fundamental rights. The fact that the Institution drafted special reports on pushbacks at the Aegean by the Greek forces but not on violations of migrant and refugee rights in Turkey can be regarded as a result of the Institution's absence of independence. European Commission, "Turkey Report 2021", p. 12.; European Commission Against Racism and Intolerance, "ECRI Conclusions on the Implementation of the Recommendations in Respect of Turkey Subject to Interim Follow-up", 2019, <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-5th-monitoring-cycle-/168094ce03>, (20.07.2022).; Silvia D'Elia, "Assessing the "Quality of Democracy" in Turkey", *Democracy and Security*, 2016, 12(3), p. 191.

<sup>53</sup> Naomi Creutzfeldt, Nick O'Brien, Marek Nowicki, "A Comparative Review on Ombuds", p. 66.

<sup>54</sup> Naomi Creutzfeldt, Nick O'Brien, Marek Nowicki, "A Comparative Review on Ombuds", p. 66.

<sup>55</sup> Ümran Güneş, "Türkiye'de İnsan Haklarının Korunmasına İlişkin Ulusal İnsan Hakları Kurumları: Kamu Denetçiliği Kurumu ve Türkiye İnsan Hakları ve Eşitlik Kurumu", *Trakya Üniversitesi Sosyal Bilimler Dergisi*, 2018, 20 (1), p. 183; Ümit Arkan, "Bir Kamu Denetim Sistemi Olarak Ombudsman ve Türkiye'de Uygulanabilirliği", *Selçuk Üniversitesi İletişim Fakültesi Akademik Dergisi*, 2013, 4(3), p. 98.

budsman Institution is non-binding so migrants in detention and their lawyers may prefer to apply before the courts rather than filing an application before the Institution.

Secondly, the Turkish Ombudsman does not have the power to act on his/her own initiative (*ex officio*) and visit prisons and detention places including removal centres without receiving an application. This is cited, even by the Institution itself as, an element that is contrary to Article 16 of the Principles on the Protection and Promotion of the Ombudsman Institution<sup>56</sup> (Venice Principles).<sup>57</sup> It is noted that the Institution's mandate if expanded to enable it to conduct such visits and act *ex officio*, will highly contribute to the protection of human rights in particular the rights of vulnerable groups.<sup>58</sup>

Thirdly, it can be argued that not all applications by migrants in detention is comprehensively examined and investigated by the Institution. So far, the Turkish Ombudsman Institution delivered a decision on only one application relating to administrative detention thus, the argument made here is based on this decision alone. The said application concerned detention conditions and treatment of migrants in Aydın Removal Centre (App No 2021/7021, 01/03/2022).<sup>59</sup> The applicant complained of inadequate detention conditions (overcrowded rooms, lack of hot water and unsuitable detention conditions for children) and made serious allegations of different forms of ill-treatment of migrants in Aydın Removal Centre, it is also argued that due to ill-treatment, an Afghan detainee had committed suicide.<sup>60</sup> The applicant asked the suicide case to be investigated, the detained migrants to be treated in humane manner and detention conditions to be improved.<sup>61</sup> To examine the investigation, Chief Ombudsman and other experts visited the Aydın Removal Centre and met with different stakeholders including Removal Centre's management and

<sup>56</sup> See for the principles: European Commission for Democracy Through Law (Venice Commission), Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles") Opinion No. 897 / 2017, Strasbourg, 3 May 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e), (19.08.2022).

<sup>57</sup> The Ombudsman Institution, "Annual Report 2020", p. 124.

<sup>58</sup> The Ombudsman Institution, "Annual Report 2020", p. 124.

<sup>59</sup> App. No: 2021/7021, (2022).

<sup>60</sup> App. No: 2021/7021, (2022), para 1.

<sup>61</sup> App. No: 2021/7021, (2022), para 15.

staff, detainees and a lawyer (who was at the time of the visit at the Removal Centre by chance). In the report, various ECtHR decisions, Turkish Constitutional Court decisions, and CPT conclusions were cited and detention standards prescribed by these reports and cases are summarized.

In this decision, it is noted that since the ill-treatment allegations lacked specifics such as names and dates, these claims cannot be investigated fully and that there will be no in-depth investigation of these concrete allegations. It is also noted that during their visit to Aydın Removal Centre none of the detainees complained of ill-treatment so the Ombudsman Institution simply concluded there was indeed no ill-treatment.<sup>62</sup> The Ombudsman Institution also found that there was no violation of the right to life in relation to the suicide of the detainee nevertheless, it recommended that additional risk assessment should be done and further measures should be adopted to prevent suicides at the centre. It also recommended the staff of the Aydın Removal Centre to be trained with regard to the suicide risk of migrants. Moreover, with regard to inadequate detention conditions, the Institution recommended Aydın Removal Centre and Aydın Office of Migration Management to provide detained children access to hot water. A CoE Report concludes that, *“Ombudsman reports resulting from the Ombudsman’s investigations should demonstrate that the case has been comprehensively and objectively investigated and the conclusions and recommendations have been formulated following thorough analysis.”*<sup>63</sup> The reviewed case above does not exactly demonstrate that the case has been comprehensively and objectively investigated by the Ombudsman Institution. The fact that the Ombudsman Institution has found no violation of fundamental rights, concluded that no ill-treatment took place solely by interviewing the administration and a few detainees during their visit and only made a number of recommendations to prevent suicide and to improve access to hot water for children in removal centres suggests that the case has not been comprehensively investigated. While drafting the report, the Ombudsman Institution experts did not meet with Aydın Bar Association, international organisations including UNHCR, non-governmental organisations working on human rights and migrants’ rights issues and other relevant stakeholders. In light of this, a final reason for the Ombudsman Institution’s contribution to the protection of migrants in detention being limited can be identified as the ab-

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<sup>62</sup> App. No: 2021/7021, (2022), para 47-52.

<sup>63</sup> Creutzfeldt, O’Brien, Nowicki, “A Comparative Review on Ombuds”, p. 90.

sence of cooperation between the Institution and bar associations, lawyers CSOs and International Organisations such as UNHCR in investigating applications.

### III. HUMAN RIGHTS AND EQUALITY INSTITUTION OF TURKEY (HREIT)

#### A. HREIT, a Brief Introduction

Human Rights and Equality Institution of Turkey (HREIT or TIHEK) was established in 2016 and the institution is governed by the Law on the Human Rights and Equality Institution of Turkey<sup>64</sup> (Law No. 6701). HREIT has administrative and financial autonomy and a private budget.<sup>65</sup> Duties of HREIT, as provided in Article 9 of Law no. 6701, include, *inter alia*, carrying out activities on the prevention of discrimination and examining, investigating, and deciding on the violations of non-discrimination in an *ex officio* manner or upon application. The HREIT also acts as a National Preventive Mechanism (NPM) within the framework of the provisions of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and has a clear mandate to visit places of detention.<sup>66</sup>

The Institution consists of a Board which works as a decision-making body of the institution and the Presidency. The Board consists of eleven members, including a Head and a Deputy Head. Members of the Board is to be selected by the President of the Republic of Turkey. According to Article 10 of the law no 6701 “No body, authority, office or individual shall give orders nor instructions nor recommendations or suggestions to the Board on matters falling under its mandate.” The Head of the Board shall also be the Head of the Institution can assign coordinators of service units and appoint other staff members of the Institution. As of 2021, the HREIT has 151 staff including 11 board members, 84 permanent and 18 temporary personnel.<sup>67</sup>

<sup>64</sup> RG. 20.04.2016, S. 29690.

<sup>65</sup> HREIT affiliated to the Ministry of Justice with Precidency Circular No 2018/1., <https://www.resmigazete.gov.tr/eskiler/2018/07/20180715-16.pdf>, (20.07.2022).

<sup>66</sup> Human Rights and Equality Institution of Turkey, “Protection and Promotion of Human Rights, Fighting Against Discrimination, National Prevention Mechanism Against Torture and Ill Treatment”, [https://www.tihek.gov.tr/upload/file\\_editor/2019/03/1551881762.pdf](https://www.tihek.gov.tr/upload/file_editor/2019/03/1551881762.pdf), (20.07.2022).

<sup>67</sup> HREIT, “Annual Report 2021”, p. 17.



HREIT can only issue a binding decision within the scope of the violation of the prohibition of discrimination among the investigations made within the scope of human rights violations.<sup>68</sup> According to Article 25 of Law no 6701 “*In case of violation of non-discrimination principle, an administrative fine ranging from one thousand Turkish lira to fifteen thousand Turkish lira depending on the gravity of the effects and consequences of such violation, the financial situation of the perpetrator and aggravating effect of the multiple discrimination, shall be imposed on the relevant public institutions and agencies, professional organizations with public institution status, natural persons and legal persons established under private law responsible for the violation.*” Applications may be lodged to the Institution through governorships in provinces and sub-provincial governorships in sub-provinces as well as by mail, electronic application system, e-mail, or fax.<sup>69</sup> According to Article 18 of Law No 6701, the Institution shall conclude applications and its *ex officio* inquiries within at latest three months following the date of application and *ex officio* inquiry decision. Such period may be extended by the Head of HREIT by a maximum of three months.<sup>70</sup>

## B. Site Visits and Reporting

The HREIT acts as a National Preventive Mechanism within the framework of the OPCAT and is authorized to conduct regular visits, with or without prior notice, to the places where persons deprived of their liberties or those under protection are held, and prepares reports which include recommendations to relevant authorities.<sup>71</sup> This means, the HREIT is also authorized to visit detention sites *ex officio* or to investigate a certain claim of ill-treatment. Each year HREIT plans visits to different places where persons are deprived of their liberty including prisons, Removal Centres and transit zones. All reports relating to

<sup>68</sup> Hulusi Alphan Dinçkol, “Türkiye İnsan Hakları ve Eşitlik Kurulu’nun Ayrımcılık Yasağının İhlali Kapsamında İdari Yaptırım Yetkisi”, *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, 2021, 27(1), p. 209.

<sup>69</sup> HREIT, “Annual Report 2021”, p. 22.

<sup>70</sup> The HREIT may adopt the following decisions: a) a decision of non-examination, b) a decision for justified inadmissibility, c) a decision for submission, d) a decision of violation, e) a decision of administrative sanction, f) a decision of conciliation, g) a rejection, h) a decision that there is no room for examination and decision. Cf. HREIT, “Annual Report 2021”, p. 24.

<sup>71</sup> Human Rights and Equality Institution of Turkey, “Protection and Promotion of Human Rights, Fighting Against Discrimination, National Prevention Mechanism Against Torture and Ill Treatment”.

visits to detention places are available in Turkish except one: 21-page report of the HREIT's and a number of Oxford-based researchers' visit to Gaziantep Removal Centre on 12 September 2018, which includes mostly positive outcomes of the announced visit, is available in English.<sup>72</sup> As shown below, the number of visits conducted by the HREIT experts to removal centres and other places where foreigners are deprived of their liberty has clearly risen in 2022.

Site visits	Date	Place	Report Number and Website
1	11 December 2018	Kayseri Removal Centre	2018/14 <a href="https://www.tihek.gov.tr/upload/file_editor/2019/02/1551179762.pdf">https://www.tihek.gov.tr/upload/file_editor/2019/02/1551179762.pdf</a>
2	December, 2018	Erzurum Aşkale Removal Centre	2018/16 <a href="https://www.tihek.gov.tr/upload/file_editor/2019/03/1551702339.pdf">https://www.tihek.gov.tr/upload/file_editor/2019/03/1551702339.pdf</a>
3	December, 2018	İzmir Harmandalı Removal Centre	2018/18 <a href="https://www.tihek.gov.tr/upload/file_editor/2019/02/1551172797.pdf">https://www.tihek.gov.tr/upload/file_editor/2019/02/1551172797.pdf</a>
4	February, 2019	Gaziantep Removal Centre	2019/05 <a href="https://www.tihek.gov.tr/upload/file_editor/2019/07/1562585466.pdf">https://www.tihek.gov.tr/upload/file_editor/2019/07/1562585466.pdf</a>
5	27 August 2019	Ankara Esenboğa Airport Transit Zone	2019/13 <a href="https://www.tihek.gov.tr/upload/file_editor/2020/06/1592476766.pdf">https://www.tihek.gov.tr/upload/file_editor/2020/06/1592476766.pdf</a>
6	7 January 2020	Muğla Ula Removal Centre	2020/01 <a href="https://www.tihek.gov.tr/upload/file_editor/2020/10/1601770225.pdf">https://www.tihek.gov.tr/upload/file_editor/2020/10/1601770225.pdf</a>

<sup>72</sup> Human Rights and Equality Institution of Turkey, "Report on Visit to Gaziantep Removal Centre", 2019, 2019/05, [https://www.tihek.gov.tr/upload/file\\_editor/2019/09/1569223007.pdf](https://www.tihek.gov.tr/upload/file_editor/2019/09/1569223007.pdf), (20.07.2022).

Site visits	Date	Place	Report Number and Website
7	31 March 2020	Van Kurubaş Removal Centre	2020/10 <a href="https://www.tihek.gov.tr/upload/file_editor/2020/11/1604605860.pdf">https://www.tihek.gov.tr/upload/file_editor/2020/11/1604605860.pdf</a>
8	20 October 2020	Ankara Akyurt Removal Centre	2020/20 <a href="https://www.tihek.gov.tr/upload/file_editor/2021/07/1625130267.pdf">https://www.tihek.gov.tr/upload/file_editor/2021/07/1625130267.pdf</a>
9	30 November 2021	Ağrı Removal Centre	2021/17 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/01/1643036153.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/01/1643036153.pdf</a>
10	4 January 2022	İzmir Adnan Menderes Airport Transit Zone	2022/01 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/03/1646379900.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/03/1646379900.pdf</a>
11	4 January 2022	Kocaeli Removal Centre	2022/02 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539622.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539622.pdf</a>
12	4 January 2022	Çanakkale Ayvacık Removal Centre	2022/04 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/03/1646143695.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/03/1646143695.pdf</a>
13	1 March 2022	Kayseri Removal Centre	2022/07 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539666.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539666.pdf</a>
14	2 June 2022	Antalya Removal Centre	2022/23 <a href="https://www.tihek.gov.tr/upload/file_editor/2022/07/1657107997.pdf">https://www.tihek.gov.tr/upload/file_editor/2022/07/1657107997.pdf</a>

In 2018, the HREIT published three reports on Izmir Harmandalı Removal Centre, Kayseri Removal Centre and Erzurum Aşkale Removal Centre. In 2019, the HREIT published reports on Gaziantep Removal Centre and Ankara Esenboğa Transit Zone. In 2020, the HREIT published reports on Muğla Ula Removal Centre, Van Removal Centre and Ankara Removal Centres.<sup>73</sup> In 2021, HREIT has visited Removal Centre in Ağrı.<sup>74</sup> In 2022 (as of July 2022), HREIT has visited 4 Removal Centres namely, those in Antalya, Kayseri, Çanakkale and Kocaeli in addition to the transit zone in Izmir Adnan Menderes Airport.<sup>75</sup> There is a significant increase in the number of Removal Centres that the HREIT visited in 2022.

There are four problems, that are identified and explained in detail below, which raise issues in relation to the quality of visits to Removal Centres by the HREIT Board members and experts and reports that are produced as a result.

First, the majority of the site reports are written in a descriptive manner, summarizing physical detention conditions and the services available for the detained migrants. Unlike the CPT reports, the reports usually do not include any critical assessment. The assessments (*değerlendirmeler*) section of the reports is usually brief (ranging from 2 paras in Antalya Removal Centre Report<sup>76</sup> and Kayseri Removal Centre Report<sup>77</sup> to 7 paras in Ağrı Removal Centre Report<sup>78</sup>).

Second, the HREIT reports are far from being uniform both in substance and style. While some reports point out significant problems in relation to detention conditions, others do not even mention or necessarily examine the same issues.

<sup>73</sup> Human Rights and Equality Institution of Turkey, "Report on Ankara Akyurt Removal Centre", 2020, 2020/20, [https://www.tihek.gov.tr/upload/file\\_editor/2021/07/1625130267.pdf](https://www.tihek.gov.tr/upload/file_editor/2021/07/1625130267.pdf), (20.07.2022).

<sup>74</sup> Human Rights and Equality Institution of Turkey, "Report on Ağrı Removal Centre", 2021, 2021/17, [https://www.tihek.gov.tr/upload/file\\_editor/2022/01/1643036153.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/01/1643036153.pdf), (20.07.2022).

<sup>75</sup> Human Rights and Equality Institution of Turkey, "Report on Izmir Adnan Menderes Airport Transit Zone", 2022, 2022/01, [https://www.tihek.gov.tr/upload/file\\_editor/2022/03/1646379900.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/03/1646379900.pdf), (20.07.2022).

<sup>76</sup> Human Rights and Equality Institution of Turkey, "Report on Antalya Removal Centre", 2022, 2022/23, [https://www.tihek.gov.tr/upload/file\\_editor/2022/07/1657107997.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/07/1657107997.pdf), (20.07.2022).

<sup>77</sup> Human Rights and Equality Institution of Turkey, "Report on Kayseri Removal Centre", 2022, 2022/07, [https://www.tihek.gov.tr/upload/file\\_editor/2022/04/1650539666.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539666.pdf), (20.07.2022).

<sup>78</sup> Human Rights and Equality Institution of Turkey, "Report on Ağrı Removal Centre", 2021, 2021/17, [https://www.tihek.gov.tr/upload/file\\_editor/2022/01/1643036153.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/01/1643036153.pdf), (20.07.2022).

For instance, the report relating to the Kayseri Removal Centre clearly points out that Kayseri PDMM has not issued any decisions on alternatives to detention and recommends the local bar association to improve legal aid for those detained in the Kayseri Removal Centre and these are very important points<sup>79</sup>, whereas other reports do not mention alternatives to detention at all. In relation to the style of the reports, whilst, Çanakkale Removal Centre Report does not have an assessment (*değerlendirme*) section<sup>80</sup> others do. The lack of uniformity between reports arguably lowers the quality of the HREIT reports.

Some reports do not identify any problems with the Removal Centre visited and make a number of weak recommendations whereas, others identify serious shortcomings in the visited centres.<sup>81</sup> Some reports are also clearly more critical than others; for instance, in the report relating to Antalya Removal Centre, it is pointed out that there is no room suitable for persons with disabilities, there are no emergency buttons in the rooms and there are many obstacles for the detained migrants to access legal aid.<sup>82</sup> Whilst, in the report concerning Removal Centre in Ağrı published in 2021<sup>83</sup>, detention conditions and treatment of detained migrants were deemed good however, there is no comprehensive assessment on the identification of vulnerable individuals among the detained and/or psychosocial support offered to detainees.<sup>84</sup>

Third, it is clear from these reports that during site visits, HREIT officials only meet with and get information from the PMM provincial offices, sometimes governorates, and the administration of the Removal Centres visited and they interview detained persons, they do not meet with CSOs, bar associations, lawyers, International Organisations including UNHCR. This also leads to one-sided reporting and can be presented as one of the reasons that lower the quality of the HREIT visits and reports produced as a result of these visits.

<sup>79</sup> Human Rights and Equality Institution of Turkey, "Report on Kayseri Removal Centre", 2022, 2022/07, [https://www.tihek.gov.tr/upload/file\\_editor/2022/04/1650539666.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/04/1650539666.pdf), (20.07.2022), para 85.

<sup>80</sup> Human Rights and Equality Institution of Turkey, "Report Çanakkale Ayvack Removal Centre", 2022, 2022/04, [https://www.tihek.gov.tr/upload/file\\_editor/2022/03/1646143695.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/03/1646143695.pdf), (20.07.2022).

<sup>81</sup> See Antalya Removal Centre and Çanakkale Removal Centre Reports.

<sup>82</sup> Human Rights and Equality Institution of Turkey, "Report on Antalya Removal Centre", 2022, 2022/23, [https://www.tihek.gov.tr/upload/file\\_editor/2022/07/1657107997.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/07/1657107997.pdf), (20.07.2022).

<sup>83</sup> Human Rights and Equality Institution of Turkey, "Report on Ağrı Removal Centre", 2021, 2021/17, [https://www.tihek.gov.tr/upload/file\\_editor/2022/01/1643036153.pdf](https://www.tihek.gov.tr/upload/file_editor/2022/01/1643036153.pdf), (20.07.2022).

<sup>84</sup> *ibid*, only para 70 of the Report mentions psychosocial support.

Finally, fourth, none of the site visit reports acknowledge or acknowledge the possibility that ill-treatment took place in the visited removal centers (despite many cases brought before the ECtHR and issues raised by CPT and other reports). Moreover, assessment of whether any ill-treatment took place is only done by conducting interviews with the detained migrants and since most of these reports are a result of announced visits, the limited assessments in these reports may not necessarily reflect the reality.

### C. Application (Complaint) Mechanism & Special Reports

The HREIT has the right to examine the allegations of violation of the right to equal treatment, discrimination or torture, and ill-treatment on the basis of the application. The application cannot be lodged in relation to other human rights violations although the HREIT has the authority to conduct an *ex officio* investigation on human rights issues if it considers necessary.<sup>85</sup> Every individual who claim to have suffered from violations of non-discrimination can apply to the HREIT however, the Institution only examines complaints in relation to the following discrimination grounds: “sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnic origin, wealth, birth, marital status, health status, disability and age”.<sup>86</sup> These grounds are exhaustive and notably, the discrimination grounds of citizenship, sexual orientation and gender identity are missing<sup>87</sup>; as a result, applications concerning alleged discrimination on the grounds of nationality, sexual orientation or gender identity are

<sup>85</sup> Human Rights and Equality Institution of Turkey, “Protection and Promotion of Human Rights, Fighting Against Discrimination, National Prevention Mechanism Against Torture and Ill Treatment”. Article 20(3) of Law on the Human Rights and Equality Institution of Turkey provides that the HREIT Board and other HREIT staff can hear witnesses or meet with relevant persons during investigation moreover, the said law requires that the information and documents requested by the Institution concerning the issue of investigation to be provided within 30 days by the relevant administrative authority (otherwise, an administrative fine can be imposed). Cf. Ulaş Karan, D. Çiğdem Sever, “National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey”, 2020, <https://www.esithaklar.org/wp-content/uploads/2021/04/ESHID-TIHEK-RAPORU-ENG.pdf>, (20.07.2022), p. 34.

<sup>86</sup> See Article 3 of the Law on the Human Rights and Equality Institution of Turkey.

<sup>87</sup> European Commission Against Racism and Intolerance, “ECRI Conclusions on the Implementation of the Recommendations in Respect of Turkey Subject to Interim Follow-up”, p. 6; see also Karan, Sever, “National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey”, p. 51.

not to be examined by the HREIT.<sup>88</sup> This limits the effectiveness of HREIT's application procedure for the protection of refugees, asylum seekers and migrants as well as preventing human rights violations in detention.<sup>89</sup> No decisions are available online on the applications by migrants so no assessment can be made on the level of quality of the HREIT's decisions.

The HREIT has so far issued two special reports on migrants and refugees. These reports concerned the principle of non-refoulement<sup>90</sup> and pushbacks at sea<sup>91</sup>. However, none of these reports examine in detail detention conditions and/or immigration detention in Turkey.

#### **D. Why is the HREIT's Contribution to the Protection of Migrants and Vulnerable Groups in Detention Limited?**

To begin with, similar to the Ombudsman Institution, accessibility to HREIT's application procedure and mandate as an NPM is generally considered limited.<sup>92</sup> The information on how to apply is only provided in English and Turkish and there is no office of HREIT outside of Ankara.<sup>93</sup> It is noted that HREIT's visibility is very limited<sup>94</sup>, many Turkish citizens let alone foreigners are not aware of the Institution and its mandate. Not just the Institution but also

<sup>88</sup> ECRI recommends discrimination grounds of citizenship, sexual orientation and gender identity to be included to the discrimination grounds and HREIT to examine applications relating to these discrimination grounds. See European Commission Against Racism and Intolerance, "ECRI Conclusions on the Implementation of the Recommendations in Respect of Turkey Subject to Interim Follow-up", p. 6.

<sup>89</sup> Karan, Sever, "National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey", p. 48.

<sup>90</sup> Human Rights and Equality Institution of Turkey, "Report on Deported Foreigners and the Principle of Non-Refoulement", 2022, <https://www.tihek.gov.tr/sinir-disi-edilen-yabancilar-ve-geri-gonderme-yasagi-raporu-yayimlandi/>, (20.07.2022). (Only available in Turkish)

<sup>91</sup> Human Rights and Equality Institution of Turkey, "Report on Evaluation the Pushback Actions Against Asylum-seekers and Irregular Migrants from a Human Rights Perspective", 2022, <https://www.tihek.gov.tr/siginmacilar-ve-duzensiz-gocmenlere-yonelik-geri-itme-eylemlerinin-insan-haklari-perspektifinden-degerlendirilmesi-raporu/>, (20.07.2022). (Only available in Turkish)

<sup>92</sup> Karan, Sever, "National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey", p. 38.

<sup>93</sup> ibid, p. 38.

<sup>94</sup> Haydar Albayrak, "Türkiye İnsan Hakları ve Eşitlik Kurumunun Türk Kamu Yönetiminin Dene-timindeki Yeri ve İşlevi", *Sayıştay Dergisi*, 2020, 31(119), p. 150; Güneş, "Türkiye'de İnsan Haklarının Korunmasına İlişkin Ulusal İnsan Hakları Kurumları", p. 183.

HREIT's visits and reports are not visible, there is no launch or promotion of these reports and they are not open to any comments and/or feedback from other institutions. Similar to the Ombudsman Institution, HREIT's site reports only include recommendations hence, these recommendations are not necessarily followed by the administrative authorities including the PMM and Removal Centre administrations.

There are a number of reasons related to capacity of the Institution and the members of the HREIT Board. It is submitted by the HREIT itself to the Turkish Parliament that it does not have the sufficient number of personnel to fulfil different duties assigned to the institution.<sup>95</sup> Moreover, it is argued by Committee against Torture that the selection method of HREIT members<sup>96</sup> undermines the independence of the Institution and Turkey is recommended to take appropriate legal measures to ensure the functional, structural and financial independence of HREIT and to guarantee that the appointment of its members is in full compliance with the Paris Principles.<sup>97</sup> This conclusion is also shared by many international institutions.<sup>98</sup> In a recent report, the composition of HREIT Board Members is found to be inadequate in terms of fulfilling the duties that the Institution undertakes.<sup>99</sup> Another reason for limited role that

<sup>95</sup> Grand National Assembly of Turkey, Journal of Minutes of the Human Rights Examination Committee, Period: 26, 2018, [https://www5.tbmm.gov.tr/develop/owa/komisyon\\_tutanaklari.goruntule?pTutanakId=2148](https://www5.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=2148), (20.07.2022).

<sup>96</sup> The HREIT Board, which consists of 11 members, constitutes the Institution's decision-making body. Members are directly appointed by the President and there is no limit on how long a member can serve. The previous 4-year time limit for a term has been abolished. See Karan, Sever, "National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey", p. 25.

<sup>97</sup> United Nations General Assembly Resolution 48/134, "Principles relating to the Status of National Institutions (The Paris Principles)", 1993, <https://ganhri.org/paris-principles/>, (20.07.2022).

<sup>98</sup> Cf. The Danish Immigration Service, "Country of Origin Information (COI) Turkey: Prison Conditions", 2021, <https://www.ecoi.net/en/file/local/2048256/Turkey+Prison+conditions+FINAL.pdf>, (20.07.2022), p. 59.

<sup>99</sup> Karan, Sever, "National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey", p. 26. It should be also noted that when the CVs of the Board Members, that are available on the HREIT's website are examined, it is seen that a considerable number of its members have no formal education and/or professional experience in protection of human rights. See Human Rights and Equality Institution of Turkey, "Board Members", <https://www.tihak.gov.tr/kategori/kurul-uyeleri/>, (20.07.2022). Moreover, a number of HREIT Board Members previously "demonstrated a negative attitude towards basic human rights, including gender equality,



the HREIT plays in protecting the rights of migrants in detention is that the absence of cooperation between the HREIT and other crucial stakeholders including civil society organisations. It is widely accepted that the cooperation of National Human Rights Institutions with CSOs holds great importance in promoting human rights of vulnerable groups (especially children, migrants and disabled persons) however, it seems that the HREIT does not work with CSOs and has any policy document on cooperation with CSOs.<sup>100</sup>

#### IV. CONCLUSIONS

The Law on Foreigners and International Protection introduced significant procedural safeguards to ensure protection against arbitrary detention. Yet, as illustrated by a number of ECtHR cases such as *GB and others v. Turkey* and *Akkad v. Turkey*, not all these safeguards are respected in practice. 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, the effectiveness of the complaint mechanism of the Turkish Ombudsman Institution and reporting procedure of the Removal Centres by the HREIT in protecting human rights in the context of immigration detention holds much importance.

The number of applications submitted by migrants in detention especially those deemed admissible by the Institution is very low, this relates to the lack of visibility of the Turkish Ombudsman in general and especially for migrants deprived of their liberty. Moreover, since the decisions of the Ombudsman Institution are not binding, many migrants/lawyers might prefer to apply before the courts. The low number of complaints made before the Ombudsman Institution in relation to immigration detention, and the limited investigation that the Institution conducted in a case concerning serious allegations of ill-treatment and poor detention conditions suggest that the effectiveness of the Ombudsman Institution in dealing with applications concerning detention and protection of vulnerable individuals in detention is rather limited. The Om-

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women's rights, LGBTQI rights, and expressed support for the withdrawal from the Istanbul Convention, all of which contradict the stated objectives of the institution. Cf. European Commission, "Turkey Report 2021", <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021SC0290&from=EN>, (20.07.2022), p. 12.

<sup>100</sup> Karan, Sever, "National Human Rights Institutions as a Human Rights Protection Mechanism the Cases of the Ombudsman and Human Rights and Equality Institution of Turkey", p. 37, 38.

budsman Institution's mandate is limited, it cannot act *ex officio* moreover, the Ombudsman Institution does not cooperate with Bar Association, CSOs, lawyers and other relevant stakeholders while investigating an application. The Ombudsman Institution has prepared special reports on Syrians and pushbacks in the Aegean yet, there is no mention of the detention of migrants in Turkey in these reports. It is recommended that activities to improve the visibility and accessibility of the Ombudsman Institution among migrant communities and among migrants in detention be further promoted. Moreover, the Ombudsman Institution can be encouraged to include CSOs, bar associations, lawyers, and other stakeholders in its activities, in particular in investigations relating to migrants in detention.

The HREIT does not examine applications concerning discrimination on the grounds of nationality, sexual orientation or gender identity and this limits the effectiveness of HREIT's application procedure for the protection of refugees, asylum seekers and migrants as well as preventing human rights violations in detention. The number of visits conducted by the HREIT to removal centres and other places where foreigners are deprived of their liberty has clearly increased in 2022. The main shortcoming of the reports in relation to the HREIT's visits to Removal Centres includes the fact, unlike the CPT reports, the reports usually do not include any critical assessment and reports are far from being uniform both in substance and style. Moreover, the fact that the visits and the reports produced as a result do not take into account the view of the civil society organisations, bar associations and lawyers is also identified as a shortcoming. It is recommended that the HREIT's method of conducting visits to removal centres and reporting is aligned with that of the CPT and views of bar associations, lawyers, International Organisations and civil society organisations are taken into account when drafting these site reports.

**ABBREVIATIONS / KISALTMALAR**

- CoE : Council of Europe
- CPT : European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CSO : Civil Society Organization
- ECHR : European Convention on Human Rights
- ECRI : European Commission Against Racism and Intolerance
- ECtHR : European Court of Human Rights
- HREIT : Human Rights and Equality Institution of Turkey
- IO : International Organization
- LFIP : Law on Foreigners and International Protection
- NPM : National Preventive Mechanism
- OPCAT : Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- PDMM : Provincial Directorate of Migration Management
- PMM : Presidency of Migration Management
- UNHCR : United Nations High Commissioner for Refugees

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