

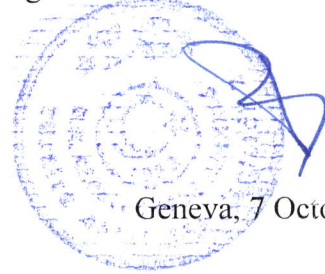


PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2013/62441669-BMCO DT/965991

The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's Note dated 17 June 2013 (ref: G/SO 218/2), has the honour to transmit herewith the reply of Turkey to "the questionnaire related to the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her release if the detention is not lawful".

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 7 October 2013

Encl: As stated

Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

OHCHR REGISTRY

10 OCT. 2013

Recipients : ..W.G.A.D.....

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Turkey's reply
to
the questionnaire related to the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her release if the detention is not lawful

1. Turkey is a party to the ICCPR.

The right to bring proceedings before a court (habeas corpus) is regulated by Articles 101, 104 and 105 of the Turkish Code of Criminal Procedure (CCP).

Article 101 § 5 provides that the decision on detention shall be subject to appeal.

Article 104 § 1 sets out that the suspect or accused is entitled to file a motion of release at any stage of the investigation and prosecution phases. Article 104 § 2 of the same law envisages that the judge or the court shall decide whether the suspect/accused should be released or period of detention should continue. This decision is subject to appeal.

In addition, Article 105 sets out that in cases where there is a request made according to the provisions of Article 104, the court or judge shall order a decision in three days.

2. The mechanism is also applied to the deprivation of liberty in criminal proceedings, namely detention under Article 40 § 2 of Law of Misdemeanours (detention of a person who does not give information about his/her identity).

However, the mechanism is not applicable to detentions for security reasons such as detention under Article 35 of Law of Misdemeanours (detention of drunken persons for people's security until the recovery).

3. There is no preventive detention measure in the Turkish justice system.
4. The mechanism provides release for unlawful detention. Nevertheless, compensation for unlawful detention is regulated in Articles 141-144 of the CCP.

Article 141 regulates that individuals who suffer losses during the investigation or prosecution and have been subject to the following interactions, may claim their pecuniary and non-pecuniary damages from the State: individuals

- a) who have been arrested without or with an arrest warrant against the provisions foreseen by the statutes,
 - b) or for whom the period of arrest has been extended against the regulations listed in statutes,
 - c) who have not been taken before a judge within the period of police detention, as foreseen in the statute, who have been arrested with an arrest warrant without being told his legal rights, or who, after his rights have been told, his request to use such rights had not been fulfilled,
 - d) even though they have been arrested with or without a warrant, in conformity with the statutes, were not tried within a reasonable time before the court and did not receive a judgment within a reasonable time,
 - e) After having been arrested legally without or with an arrest warrant, a decision on no ground for prosecution had been issued, or at the main trial had been acquitted
 - f) Were convicted, but the period they had spent in custody and in pre-trial arrest was longer than the period in the sentence, or were necessarily only fined, as the Criminal Code foresees a fine only for their conduct and no imprisonment,
 - g) Had not been given written documentation of grounds of arrest without or with an arrest warrant and of the charges against them; or, in cases where the written documentation was not possible, there was failure to provide the individual oral explanation about the above mentioned grounds
 - h) Have been arrested without or with an arrest warrant and their status had not been notified to their relatives
 - i) Who could not have benefit the appeal procedures enshrined under the Law (for example the individual whose application is not examined mistakenly)
5. In our system, only the defence counsel of the detainee could make an application on behalf of the detainee.
 6. There is no formal requirement to bring proceedings before a court. The court or judge shall decide about the application in three days in all situations.

7. There is no time or number limit in terms of applying for a release under Article 104 § 1 of the CCP. A detainee can only once appeal a decision of continuation of detention under Article 101. But it is possible to make a new application to be released under Article 104 § 1 of the CCP even if the request for appeal is rejected.

8. A constitutional amendment reform was realised with the referendum held in September 2010 where the system of individual application to the Turkish Constitutional Court was introduced. As from 23 September 2012, it has been possible for anyone to lodge an individual application to the Court with an arguable claim that their rights and freedoms as set forth in the Convention have been violated by a public authority.

In this regard, the Turkish Constitutional Court delivered several judgment on 2 July 2013, which concern allegations on unreasonable length of detentions period (see, Murat Narman, 2012/1137, 2 July 2013; Ramazan Aras, 2012/239, 2 July 2013; Burak Döner, 2012/521, 2 July 2013)