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Re: Access to acceptable rehabilitation services for victims of torture in Turkey

Dear Ms Tzeferakou:

Following your request for our expert opinion on whether the Republic of Turkey provides torture victims with legally and medically acceptable rehabilitation services, the International Rehabilitation Council for Torture Victims (IRCT) – the world’s largest institution providing rehabilitation to victims worldwide – hereby provides our expert remarks. As a network of 160 torture rehabilitation centres across 75 countries, treating over 60,000 victims each year, we are the world’s leading authority on the rehabilitation of torture victims.

In summary, it is our expert opinion that:

- 1) *The Government of the Republic of Turkey does not provide torture victims with any rehabilitation services that are available, appropriate and promptly accessible as required under law.*
- 2) *The Hellenic Republic (Greece) thereby violates its legal obligations to torture victims – to prevent their further torture and ill-treatment and to provide rehabilitation – by expelling victims to Turkey where they are unable to obtain the specialised medical and psychological support that they require from the State and may, as a result, experience intense suffering and additional ill-treatment or torture.*

The key considerations on this issue are presented below.

I. Greece is legally obliged to refrain from expelling individuals who are at risk of serious health consequences and intense suffering

Convention against Torture (UN CAT) and other international human rights instruments, including the International Covenant on Civil and Political Rights – to which Turkey and Greece are state parties – obliges states to prevent the torture and ill-treatment of all those under their jurisdiction, including both citizens and asylum seekers. States are thereby prohibited

from expelling individuals from their territory when there is a real risk that they may be subjected to torture or ill-treatment in the receiving country.

The European Court of Human Rights has held that the expulsion of individuals who are ill or require special treatment can violate this prohibition when the individual “would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment” of a serious detrimental decline in health causing intense suffering or a serious reduction in life expectancy.¹ In addition, the Court has found that a state may violate the torture prohibition when the conditions of stay or detention in the receiving country are incompatible with respect for human dignity and when individuals’ health and well-being are not adequately secured.²

II. Torture victims have the right and the need to specialised medical and psychological treatment

The Asylum Procedures Directive 2013/32/EU and the Reception Conditions Directive 2013/33/EU of the European Union recognises torture victims as vulnerable persons that require special protection and treatment due to the severe forms of physical, psychological and sexual violence that they have experienced and the likelihood of serious and long-lasting adverse effects, including the possibility of further- or re-traumatisation. Studies have shown that torture victims who are refugees may experience post-traumatic stress disorder (PTSD) at 10 times the rate of the general population.³ Some studies have identified PTSD in as many as 67% of torture victims.⁴

Accordingly, Article 14 of the UN Convention Against Torture establishes victims’ right to rehabilitation and requires states to “adopt a long-term, integrated approach and ensure that *specialist services* for victims of torture or ill-treatment are *available, appropriate and readily accessible*” (*emphasis added*).⁵ The UN Committee Against Torture notes that “[a] holistic approach to rehabilitation which also takes into consideration the strength and resilience of the

¹ European Court of Human Rights (ECtHR), Judgment of 13 December 2016, *Paposhvili v. Belgium*, No. 41738/10, para. 183.

² ECtHR, Judgment of 21 October 2014, *Sharifi and Others v. Italy and Greece*, No. 16643/09. Judgment of 21 January 2011, *M.S.S. v. Belgium and Greece*, No. 30696/09.

³ Ibramin H, Hassan CQ. Post-traumatic stress disorder symptoms resulting from torture and other traumatic events among Syrian Kurdish refugees in Kurdistan region, Iraq. *Front Psychol.* 2017;8:241. doi: 10.3389/fpsyg.2017.00241.

⁴ Moreno A, Grodin MA. Torture and its neurologic al sequelae. *Spinal Cord.* 2002;40:213-223. doi: 10.1038/sj.sc.3101284.

⁵ UN Committee Against Torture (CAT). General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties. 13 December 2012. CAT/C/GC/3. para. 13.

victim is of utmost importance. Furthermore, victims may be at risk of retraumatisation and have a valid fear of acts which remind them of the torture or ill-treatment they endured.”

The IRCT’s vast experience in the treatment of over 60,000 torture victims worldwide each year confirms these findings. In our experience, there is a broad incidence of PTSD and other severe or debilitating physical and psychological consequences of torture among victims, which require – as the UN Committee Against Torture has determined – specialised medical and psychological treatment. Absent specialised treatment that is available, appropriate, and promptly accessible, victims are at real risk of continuing or enhanced trauma and intense physical and mental suffering, especially as refugees, who may be uprooted from their individual, community and social support systems.

III. Depriving torture victims of treatment or support can cause them intense suffering constituting torture or other ill-treatment

Relevant legal authorities have held that the expulsion of torture victims to another country where they will be deprived of specialised treatment and/or social support can cause them intense suffering amounting to torture or other ill-treatment.

For instance, in a case involving a torture victim with severe PTSD and suicidal tendencies, the Court of Justice of the European Union affirmed that victims of torture “whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of trauma resulting from the torture,” are eligible for subsidiary protection when the victim faces a risk of being “intentionally deprived” of appropriate medical treatments to the aftereffects of torture.⁶ In determining whether a victim is “intentionally deprived” of appropriate medical treatment, the Court of Justice considered situations where the receiving country is “not prepared to provide for his rehabilitation” pursuant to Article 14 of the UN Convention Against Torture.⁷

Similarly, the UN Committee Against Torture has held that the deprivation of specialised treatment as well as stable social environment can together amount to torture. In *A.N. v. Switzerland*, the Committee found that the victim’s expulsion to Italy where treatment is unavailable, “the ill-treatment that he would be exposed to in Italy, together with the absence of a stable social environment provided by his brother, would entail a risk of his depressive state worsening to the extent that he would be likely to commit suicide and that, in the circumstances of this case, this ill-treatment could reach a level comparable to torture.”⁸

⁶ Court of Justice of European Union (CJEU), Judgment of 24 April 2018, *MP v. Secretary of State for the Home Department*, C-353/16, ECLI:EU:C:2018:276, para. 58.

⁷ *Id.*, para. 57.

⁸ UN CAT. *A.N. v. Switzerland* (Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 742/2016). 21 September 2018. CAT/C/64/D/742/2016. para. 8.10.

IV. Determining whether expelling a torture victim would result in torture or other ill-treatment requires an individualised assessment

In determining whether expelling a torture victim would result in torture and ill-treatment, the Greece authorities must conduct individualised assessments to determine: a) whether the receiving country provides available, appropriate and promptly accessible treatment to torture victims; and b) whether the victim is at risk of experiencing intense suffering amounting ill-treatment or torture as a result of the expulsion.

The Court of Justice of the European Union has ruled that Article 14 of the UN Convention Against Torture guaranteeing victims' right to rehabilitation requires that states ascertain whether the authorities of the receiving country are "prepared to provide for [the victim's] rehabilitation."⁹ Similarly, the UN Committee Against Torture has ruled that states must "sufficiently and individually assess [the victim's] personal experience"¹⁰ and the "foreseeable consequences" of expulsion when considering deportation of victims.¹¹

For example, in the case of *Adam Harun v. Switzerland*, the UN Committee against Torture found that "at no time did the State party take account of the fact that (...) it had not taken any measures to guarantee him access to rehabilitation services that are tailored to his needs, which would allow him to exercise his right to rehabilitation as a victim of torture."¹² The Committee ruled that "the State party has not examined in an individualized and sufficiently thorough manner the complainant's personal experience as a victim of torture and the foreseeable consequences of his forced return," and by doing so, the state violated the victim's right to be free from torture and other ill-treatment.

Furthermore, where the risk of torture or other ill-treatment is concerned, the European Court of Human Rights and Committee against Torture have repeatedly held that assurances and guarantees of the receiving state are insufficient to relieve a state from carrying out individualised assessment of the real likelihood that an individual will be subject to torture and ill-treatment.¹³ Therefore, irrespective of the agreement between the Republic of Turkey and

⁹ CJEU, Judgment of 24 April 2018, *MP v. Secretary of State for the Home Department*, C-353/16, ECLI:EU:C:2018:276, para. 57.

¹⁰ UNCAT. *A.N. v. Switzerland* (Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 742/2016). 21 September 2018. CAT/C/64/D/742/2016. para. 8.8.

¹¹ UNCAT. *Adam Harun v. Switzerland* (Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 758/2016). CAT/C/65/D/758/2016. 8 February 2019. para. 9.11.

¹² *Ibid.*

¹³ See, e.g. ECtHR, Judgment of 28 February 2008, *Saadi v. Italy*, no. 37201/06 (Italy was found liable for not complying with its obligation even though it obtained diplomatic guarantees from Tunisian government; ECtHR Judgment of 23 February 2012, *Hirsi Jamaa and Others v. Italy*, no. 27765/09 (The Court found that Italian government was not exempt from its responsibility to assess the risk of being

European Union to host asylum seekers, Greece is obliged to “undertake an individualized assessment of the personal and real risk” that each victim will experience torture or other ill-treatment by being expelled to Turkey.¹⁴

In relation to this risk of torture and ill-treatment, the UN Committee against Torture has noted that there is no assurance in Turkey that “applications for asylum and international protection will be individually reviewed and that individuals filing such applications will be protected from refoulement and collective return.”¹⁵ Thereby, torture victims who are expelled from Greece to Turkey may be at risk of blanket expulsion to their home country and thereby subject to torture or ill-treatment.

V. Turkey does not provide any available, appropriate and promptly accessible rehabilitation services for torture victims

In its state reviews before the UN Committee Against Torture, the Republic of Turkey has repeatedly offered no evidence that it provides any rehabilitation services to victims of torture. In its 2011 Concluding Observations, the Committee expressed concern at “the lack of comprehensive information and statistical data on reparation and compensation, including rehabilitation, for victims of torture and other cruel, inhuman or degrading treatment or punishment.”¹⁶ Again, in 2016, the Committee regretted “the limited amount of information available” regarding reparation, including compensation and rehabilitation measures from the State. The Committee also expressed concern that the “State party has presented no information on measures taken to support and facilitate the work of non-governmental organizations that seek to provide rehabilitation to victims of torture and ill-treatment.”¹⁷ To our expert knowledge, the Republic of Turkey does not provide any rehabilitation services to victims of torture nor provide any support to non-governmental organizations that offer rehabilitation to torture victims.

VI. Conclusion

The authorities of Greece are required to observe and comply with their state obligation to prevent torture and ill-treatment and guarantee rehabilitation to torture victims. Greek

subjected to treatment despite the bilateral agreement with Libya); also UNCAT. *Adam Harun v. Switzerland*. CAT/C/65/D/758/2016. 8 February 2019. para. 9.11.

¹⁴ UNCAT. *Adam Harun v. Switzerland* (Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 758/2016). CAT/C/65/D/758/2016. 8 February 2019. para. 10.

¹⁵ UNCAT. Concluding observations on the fourth periodic reports of Turkey, CAT/C/TUR/CO/4. 2 June 2016. para. 25.

¹⁶ UNCAT. Concluding observations of the Committee against Torture. CAT/C/TUR/CO/3. 20 January 2011. para. 14.

¹⁷ UNCAT. Concluding observations on the fourth periodic reports of Turkey. CAT/C/TUR/CO/4. 2 June 2016. para. 39.

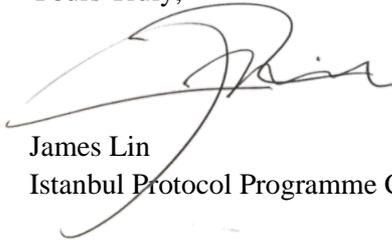
authorities are specifically obliged to ensure that appropriate rehabilitation services are available, appropriate, and promptly accessible in a receiving country before it expels torture victims to that country.

Prior to expelling individuals to Turkey, where authorities do not provide any specialised rehabilitation services for torture victims, Greece must conduct individualised assessments of whether each victim would experience intense suffering and detrimental health consequences as a result of their removal from Greece to Turkey. Given the absence of the provision of specialised rehabilitation by Turkish authorities, it is our expert opinion that Greece must refrain from expelling torture victims with physical and/or psychological trauma to Turkey.

Of additional concern is the concern raised by the UN Committee Against Torture that individuals in Turkey may be subject to blanket expulsion, without individualised review of their asylum claims and may, thereby, be subject to illegal refoulement and placed at risk of torture and ill-treatment.

The IRCT remains at your disposition should you have any further queries.

Yours Truly,



James Lin
Istanbul Protocol Programme Coordinator