

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	531
Land:	Tyrkiet
Kilde:	Immigration and Refugee Board of Canada
Titel:	Summonses, arrest warrants, and other related police documents, including appearance, security features, issuance procedures, and samples (2017-December 2019)
Udgivet:	21. februar 2020
Optaget på baggrundsmaterialet:	11. maj 2020

Document #2025622

IRB – Immigration and Refugee Board of Canada

Turkey: Summonses, arrest warrants, and other related police documents, including appearance, security features, issuance procedures, and samples (2017-December 2019)
[TUR106398.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Summonses

1.1 Delivery

The Turkish Criminal Procedure Code provides that “[a]n individual who shall be interviewed or interrogated shall be summoned by a summons letter; in this written document the reason of his being summoned shall be openly declared, and indicated that if he fails to appear, he will be subpoenaed” (Turkey 2004, Art. 145(1)). The same source indicates that summons can be served “by communication means such as telephone, telegraph, fax, email. However, in such cases, the legal consequences of a summons are not applicable” (Turkey 2004, Art. 43(2)).

In correspondence with the Research Directorate, a representative of The Arrested Lawyers Initiative (TALI), a Brussels-based human rights advocacy group consisting of Turkish and UK lawyers reporting and publishing about the legal system in Turkey, indicated that while the law requires a written summons letter, phone calls and text messages are often used as well (TALI 23 Dec. 2019). The same source added that summons letters cannot be sent by police or gendarme, and must instead come from the prosecutor’s office (TALI 23 Dec. 2019). In correspondence with the Research Directorate, a New York-based human rights lawyer that has practiced law in Istanbul for over 15 years and is a director of the Turkey Human Rights Litigation Support Project, a project based at the Law Faculty of Middlesex University [in the UK] that supports human rights lawyers and advocates in Turkey (Turkey Human Rights Litigation Support Project n.d.), stated that the delivery method for summonses varies depending on factors including the type of the offence, the urgency of the situation, and the seriousness of the matter (Lawyer 13 Feb. 2020). The same source further explained the following:

In some instances, the police contact the person concerned by phone or text and invite them to the police station or headquarters at a certain date and time to give their statement. In some cases, the police send more formal notifications including a brief description of the reason for the summons and where and when the person should be present at the police station. But when the investigation concerns more serious allegations, e.g. anti-terror legislation and politically sensitive cases, and there is no arrest warrant; the police could physically go to locate the person and invite them to the police station. The police have discretion as to how to invite a person to the police premises for questioning if there is no arrest warrant. If there is an arrest warrant, the police would effectively look for the person concerned and carry out an operation to make the arrest. (Lawyer 13 Feb. 2020)

The website of the National Judiciary Informatics System of Turkey (Ulusal Yargı Ağı Bilişim Sistemi, UYAP) – as captured in 2019 by the Wayback Machine, a digital archive of the Internet – indicates that it is compulsory for witnesses to appear in court if they are required to do so (Turkey n.d.). Failure to appear in court might result in the use of force by the police, payment to the court of expenses related to the delay, and imprisonment (Turkey n.d.). The lawyer indicated that should a person refrain from appearing before the relevant authority following an invitation or subpoena, “the judicial authority could then issue an arrest warrant” (Lawyer 13 Feb. 2020).

1.2 Appearance and Content

The Turkish Criminal Procedure Code provides the following:

Article 43 – (1) Witnesses shall be invited to court by summons. The summons shall contain a caution about the consequences of a failure to appear. In cases where the suspect is under arrest, a subpoena order may be issued for the witnesses. The subpoena order shall contain an explanation of reasons for the direct application of the subpoena and such witnesses shall be subject to the equal interactions applicable to the witnesses, who appear upon summoning. (Turkey 2004)

The UYAP website indicates that summonses bear the name of the court and the time and day the witness is summoned to appear (Turkey n.d.).

A document prepared by the EU, the Council of Europe, and the government of Turkey indicates that

[t]he notification is sent in order to inform you on a judicial process. The State informs you when your testimony or help is needed concerning an issue which may be against or in favour of you and expects you to protect your own rights or tell about your information or experiences or submit your complaints. Do not forget that the notification may be about any subject. The notification may be sent for various reasons such as inviting you to the court as a witness, informing you that an enforcement (seizure) procedure has been initiated against you because of your unsettled debt or informing you on the date of a hearing and so on. The court or authority which sends the notification or its purpose is indicated on the document.

...

The name of the sender is written on the top left corner of the notification. For instance, the 2nd Civil Enforcement Office of Manavgat or Civil Court of First Instance of Mardin. Furthermore, there is a number indicating the type of action. This number is called registration number.

...

The courts give a separate number for each file in order to carry out the proceedings in an organised way. This number is called registration number and abbreviated as "E". There is a simple logic behind this number. The first part of the number shows the year in which the case is filed and the second part indicates the sequence number of that case among all the cases filed in the same year. It is indicated in this way: "E:2009/65" or "E:09/65". Since each court gives a separate number, the files are named with the name of the court. For instance, Assize Court of Rize E:08/103. (EU, et al. n.d.)

The TALİ representative indicated, however, that the reason for the summons "either is not expressed or expressed [in a] very abstract way" (TALİ 23 Dec. 2019).

Information on the security features of summonses could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Samples of summonses, as provided by the TALİ representative, are attached to this Response (Attachments 1 and 2).

2. Arrest Without Warrant (Yakalama, also Referred to as "Apprehension Order")

The Turkish Criminal Procedure Code provides the following:

Article 90 –

1. In the instances listed below, any individual is entitled to make an arrest of another person temporarily without a warrant:
 1. If the other person was seen committing an offense,
 2. If the other person was under pursuit after committing an offense, if there is the possibility of escape of the person under pursuit after committing an offense or, if the establishment of his identity rightaway [sic] is not possible.
2. In cases where an arrest warrant issued by the judge or issuance of an apprehension order is required, and there would be peril in delay; if there is no immediate possibility to ask permission from the public prosecutor or their superiors, the officers of the security forces shall be entitled to arrest the individual without a warrant.
3. Although [sic] the crime would only be investigated and prosecuted by a claim of the victim, such crimes detected in the act that are committed against children, or individuals, who are not capable of making determination [sic] about themselves because of a bodily or mental illness, are handicapped, or have limited physical strength, shall be arrested without a warrant and the claim is not required.

...

(Turkey 2004)

The Code also provides the following:

Article 98 –

1. During the investigation phase, if the suspect does not appear upon a summons, or if it is not possible to serve a summons on him, the Justice of the Peace may issue an apprehension order upon the motion of the public prosecutor. Additionally, if the motion on arrest with a warrant has been rejected and there is an opposition to this decision and the inspecting authority has rendered a decision on arrest with a warrant, the examining authority at the level of opposition is also entitled to issue an apprehension order.
2. Also, in cases where the suspect or unconvicted prisoner or convicted prisoner, who after seizure escapes from the hands of security forces or a prison or jail, the public prosecutors and the office of security forces are entitled to issue an apprehension order.
3. During the prosecution phase, the apprehension order against a fugitive accused shall be rendered either by the court's own motion, or by the motion of the public prosecutor, by the judge or trial court.
4. The apprehension order shall contain open descriptions and, if known, the identity of the individual, the offense the person is charged with, and where to take him in the case of the seizure. (Turkey 2004)

Information on the security features of apprehension orders could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the TALI representative,

[t]here is an official template [for] minute[s] common for procedural actions of "arrest without warrants" and "custody." However, it is not always the case that police or gendarme uses this official template. They often draft their own minutes written by hand or computer. (TALI 23 Dec. 2019)

The lawyer similarly indicated that although there are standardized forms for detention or extension orders, they are not the only forms used countrywide (Lawyer 13 Feb. 2020). The same source stated that "[i]t appears that [the] anti-terror branch of police, the prosecutor's offices and courts are more inclined to use unified forms" (Lawyer 13 Feb. 2020).

A sample of a template of an arrest without warrant and custody report, as provided by the TALI representative, is attached to this Response (Attachment 3).

Samples of minutes drafted by law enforcement officers for arrests without warrants, as provided by the TALI representative, are attached to this Response (Attachments 4, 5 and 6).

A sample of an apprehension order, issued by a criminal peace judge, as provided by the TALI representative, is attached to this Response (Attachment 7).

3. Arrest Warrants (Tutuklama, also Referred to as "Arrest with Warrant") 3.1 Legislation and Procedures

The Turkish Criminal Procedure Code provides the following:

Article 100 – (1) If there are facts that tend to show the existence of a strong suspicion of a crime and an existing "ground for arrest," an arrest warrant against the suspect or accused may be rendered. There shall be no arrest warrant rendered if arrest is not proportionate to the importance of the case, expected punishment or security measure.

...

Article 101 – (1) During the investigation phase, upon the motion of the public prosecutor, the Justice of the Peace in criminal Matters shall issue an arrest warrant for the suspect, and during the prosecution phase the trial court shall issue an arrest warrant for the accused upon the motion of the public prosecutor, or by its own motion. The afore mentioned motions must contain reasons and must contain an explanation for why the application of judicial control would not be sufficient in a given case, based on legal and factual grounds. (Turkey 2004)

The TALI representative indicated that during the investigation phase, an arrest warrant may only be issued by a criminal peace judge, or Sulh Ceza Hakimi, whereas during the prosecution phase, an arrest warrant can only be issued by the court that tries the defendant (Trial Court) (TALI 23 Dec. 2019). The lawyer similarly stated an arrest warrant is issued by the judicial authority (by the investigating judge at the investigating stage, or by the trial court at the trial stage) and is then transmitted to the prosecutor's office for implementation; the prosecutor then transmits the warrant to the police and mediates its implementation process (Lawyer 13 Feb. 2020). The same source added that although the law provides that an arrest warrant shall be issued for suspects or accused who have first been served a summons and subpoena but failed to appear, "in practice, the judicial authorities in Turkey do not duly follow this. In politically sensitive cases, particularly related to anti-terror legislations, the authorities issue arrest warrants without following other measures and providing sufficient reasons as to why there was need for issuing an arrest warrant" (Lawyer 13 Feb. 2020).

3.2 Appearance and Content

The TALI representative explained that

Turkey is a not a federal state; therefore, there are not any rules laying down different standard[s] according to regions and provinces.

Warrants issued by criminal peace judgeships and trial courts are almost identical. Court and judge issued warrants include [the] name and registration number of judge(s), name and registration number of [the] clerk, number of decision, date of decision, name of suspect, [and] title of the judgeship or court. (TALI 23 Dec. 2019)

Information on the security features of arrest warrants could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Custody Orders and Minutes

The Turkish Criminal Procedure Code provides the following:

Article 91 –

1. If the individual who has been arrested without a warrant is not released by the public prosecutor in accordance with the above mentioned Article, then it may be ordered that he be taken into custody with the aim of completing the related investigation. The duration of the custody shall not exceed 24 hours, beginning from the moment of the arrest; the necessary time for transporting the suspect to the nearest judge or court of the place where the arrest had occurred, shall not be included. The necessary time for transportation to the nearest judge or court where the arrest had occurred, shall not exceed 12 hours.
2. Taking an individual into custody requires that this measure is necessary in respect to the investigation and that evidence exists, which indicates the belief that the individual has committed an offense.
3. If the crime has been committed collectively and if there are difficulties in collecting evidence of the crime, or there are a large number of suspects, the public prosecutor may order in writing an extension of the custody period for 3 more days, not exceeding one day at a time. The order of extension shall immediately be notified to the individual who has been taken into custody.

... (Turkey 2004)

The website of the US embassy in Turkey indicates that under current Turkish law, authorities are allowed to detain subjects for several days before an arrest warrant has been issued (US n.d.).

Furthermore, the TALI representative indicated that

[a]fter a suspect is arrested without warrant, police or gendarme shall immediately inform the public prosecutor's office. The public prosecutor either orders to release the suspect or issues a custody order for him/her. [The] [c]ustody period is maximum 24 hours in principle; however, it can be extended to 4 days in case of offences committed collectively. For those investigated under Anti-Terror provisions, the maximum custody period is 12 days. (TALI 23 Dec. 2019)

The lawyer provided the same information regarding detention times and also stated that "the public prosecutor shall be immediately informed about [an] apprehension and the police shall act upon the orders of the public prosecutor" (Lawyer 13 Feb. 2020).

The TALI representative indicated that custody (gözetli), is, along with arrests with or without a warrant, one of the "three types of procedural actions which intervene [sic] the right to liberty of an individual" and is issued by a public prosecutor and "[i]n some cases, the designated police chief (Art. 13, Law 6638)" (TALI 23 Dec. 2019). The same source indicated that in "investigations which involve Anti-Terrorism charges or insulting the President, ministers, judges and prosecutors, suspects are apprehended under a custody order rather [than a] summons letter" (TALI 23 Dec. 2019).

Information on the security features of custody minutes could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A sample of an order for custody issued by the public prosecutor, as provided by the TALI representative, is attached to this Response (Attachment 8).

5. Decisions on Continuation of Detention or Denial of a Motion of Release from Detention

Article 101(2) of the Turkish Criminal Procedure Code provides the following:

The decisions on arrest with a warrant, continuation of the detention, or a decision denying the motion of release from detention, must be furnished with the legal and factual grounds and reasons. The contents of the decision shall be explained to the suspect or accused orally, additionally a written copy of the decision shall be handed out and this issue shall be mentioned in the decision. (Turkey 2004)

Further information, including information on the security features of decisions, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A sample of a decision from a criminal court extending pretrial detention, as provided by the TALI representative, is attached to this Response (Attachment 9).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

The Arrested Lawyers Initiative (TALI). 23 December 2019. Correspondence from a representative to the Research Directorate.

European Union (EU), Council of Europe and Turkey. N.d. A Document Came from the Courthouse! (Notification). (http://www.hukukiyardim.gov.tr/legal_aid/sayfalar/HowtoActAfterSummon.pdf) [Accessed 25 Nov. 2019]

Lawyer, Turkey Human Rights Litigation Support Project. 13 February 2020. Correspondence with the Research Directorate.

Turkey. 2004. Turkish Criminal Procedure Code (https://sherloc.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_) Translated by Feridun Yenisey. [Accessed 12 Nov. 2019]

Turkey. N.d. [as captured on 9 May 2019]. Ministry of Justice, Department of Information Technologies, National Judiciary Informatics System (UYAP). "Legal Aid (https://web.archive.org/web/20180914101438/http://www.hukukiyardim.gov.tr/legal_aid/sayfalar/legalaid.pdf)." [Accessed 7 Jan. 2020]

Turkey Human Rights Litigation Support Project. N.d. Home page. (<https://www.turkeylitigationsupport.com/>) [Accessed 19 Feb. 2020]

United States (US). N.d. US Embassy and Consulates in Turkey. "Victims of Crime (<https://tr.usembassy.gov/u-s-citizen-services/victims-of-crime/>)." [Accessed 25 Nov. 2019]

Additional Sources Consulted

Oral sources: academic specializing in criminal law at a Turkish university; law firms (7) in Turkey; professors of law (2) at Turkish universities; Turkey – embassy in Ottawa; US – embassy in Turkey.

Internet sites, including: Amnesty International; Canada – Immigration, Refugees and Citizenship Canada; ecoi.net; GAN Integrity; INTERPOL; Keesing Technologies – Document Checker; Organization for Security and Co-operation in Europe; Turkey – Ministry of Justice, National Intelligence Organization; Union of Turkish Bar Associations.

Attachments

1. Turkey. N.d. Sample of a summons letter. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
2. Turkey. N.d. Sample of a summons letter (Suspect). Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
3. Turkey. N.d. Template for arrest without warrant and custody report. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
4. Turkey. N.d. Sample of minutes drafted by law enforcement officers for arrest without warrant. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
5. Turkey. N.d. Sample of minutes drafted by law enforcement officers for arrest without warrant. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
6. Turkey. N.d. Sample of arrest without warrant and body search report. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
7. Turkey. N.d. Sample of an apprehension order issued by a criminal peace judge. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
8. Turkey. N.d. Sample of an order for custody issued by the public prosecutor. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.
9. Turkey. N.d. Sample of a decision by a criminal court extending pretrial detention. Sent to the Research Directorate by a representative of The Arrested Lawyers Initiative (TALI), 23 December 2019. Translated by the Translation Bureau, Public Services and Procurement Canada.

ecoi.net summary:

Query response on summonses, arrest warrants and other related police documents (2017 - December 2019)



Country:

Turkey

Source:

[IRB – Immigration and Refugee Board of Canada](#) (</en/source/11213.html>)

Original link:

<https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=458028&pls=1> (<https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=458028&pls=1>)

Document type:

Response

Language:

English

Published:

21 February 2020

Document ID:
2025622

Austrian Red Cross
Austrian Centre for Country of Origin and Asylum Research and
Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien
T (Telefon) +43 1 589 00 583
F (Fax) +43 1 589 00 589
info@ecoi.net

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

