UNION OF TURKISH BAR ASSOCIATIONS
MIGRATION AND ASYLUM COMMISSION

REPORT ON UNLAWFUL DEPORTATION PROCEEDINGS

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LEGAL JUSTIFICATION CONCERNING THE REPORT

The Union of Turkish Bar Associations (UTBA) fulfils the duties specified in Article 110 of the Code of Lawyers, alongside those undertaken as the umbrella organisation of the Bar Associations. One of such duties defined as 'defending and safeguarding the supremacy of the law and human rights, and promoting the functionality of these concepts'.

In addition to the bodies established by law, the UTBA takes on the abovementioned duties through the centres and commissions established within the UTBA per the decisions of its Executive Board.

The Migration and Asylum Commission of the UTBA is one such commission established in line with this purpose, whose duties include, as per Article 4 (i) of the commissions directive laying down the related duties and operations, 'Coordinating the monitoring and reporting activities among the members of the Boards, Commissions and Centres on refugee rights of Bar Associations in order to ensure the follow-up of refugee rights violations and the applications to national and international judicial authorities'. By the UTBA's duty to 'defend and safeguard the supremacy of the law and human rights, and promoting the functionality of these concepts', this report was compiled in line with Article 4(i) of the Directive of the Migration and Asylum Commission.

CAUSE AND METHODOLOGY

In August 2023 and the following weeks, numerous lawyers contacted the UTBA to report that their clients of foreign nationalities had been forcibly deported against their will,

despite the period for filing a lawsuit before the administrative courts against the deportation order not having expired or having filed for lawsuits to revoke the deportation orders before the administrative courts and notified the administration of these lawsuits.

Since the notifications made to our commission, the news released to the public, and the cases in which members of our commission have been directly involved were of similar nature, a short message (SMS) was sent on 10.10.2023 at 13:39 to the lawyers registered with the Bar Associations upon the request of the UTBA's Migration and Asylum Commission, forwarding a survey link for colleagues who have complaints of related violations to be fill out by 11.10.2023 at 18:00.

The survey listed the subject on which information was requested from lawyers as follows:

"**SMS:**

In the context of the recent increase in unlawful deportations, our colleagues are kindly asked to fill in the survey below by 11.10.2023 at 18:00.

SURVEY LINK:

Bar Association: Mandatory

First and Last Name: Optional

QUESTIONS:

1. *Have you encountered a case of deportation without being able to exercise the right of litigation within the period of filing for revocation of deportation (7 days)? Yes / No*

2. *If yes, please specify the number of such cases / the RC / Nationality concerned (Iraq, Syria, Iran, Afghanistan or other) / Country of deportation (Iraq, Syria, Iran, Afghanistan or other,*
3. *In the last two months, have any of your clients been deported by the Presidency of Migration Management despite having a case pending against the deportation order that is notified to the institution? Yes/ No*
4. *If yes, please specify the number of such cases / the RC / Nationality concerned (Iraq, Syria, Iran, Afghanistan or other) / Country of deportation (Iraq, Syria, Iran, Afghanistan or other,*
5. *Have you taken any legal action against the deportation that you think is unlawful? Complaints to the Prosecutor's office / applications to the Constitutional Court / other (please specify)*
6. *If there are any other issues you would like to add regarding the recent unlawful deportations, please describe (optional).*
7. *Please provide your contact details if you would like the UTBA to contact you regarding the work to be carried out on this issue (optional)."*

Within 29 hours, following the initial monitoring and statistical study of the responses to the survey, a press statement was first made on 22.10.2023 regarding the violations identified (https://www.barobirlik.org.tr/Haber-ler/yabanci-muvekkillerinhaklarinda-kesinlesmis-bir-karar-olmaksizin-sinir-disi-edilmelerine-iliskin-ac-84217). On the same dates,

Izmir Bar Association, Ankara Bar Association and Şanlıurfa Bar Association also made press statements on the issue.

The responses were then examined in detail, and the 156 lawyers who have answered the 7th question *'Please provide your contact details if you would like the UTBA to contact you regarding the work to be carried out on this issue (optional)'* of the survey were forwarded the following short message (SMS):

"SMS:

Dear colleague, based on your response to the survey regarding unlawful deportation proceedings on 10 October 2023, kindly provide your answer to the question in the link by 05.02.2024.

SURVEY LINK:

We would like to extend our thanks for agreeing to contribute to the report to be drafted by the Migration and Asylum Commission of the UTBA, and inform you that the information you provide will be anonymised before use.

First and Last Name

.....

Please provide a summary of the unlawful deportation proceedings you mentioned including the following information:

- *Having special needs,*
- *Damage suffered by clients during or after deportation proceedings (becoming victims of human trafficking, death, injury, deprivation of liberty, torture, ill-treatment),*
- *Means of application regarding the violation, if any, and the current stage of such application.*

The data subject to this report were obtained through the analysis of the results of the abovementioned surveys and the information provided by the responding lawyers. After the compilation of data, an e-mail containing information and questions regarding the data was sent to the Presidency of Migration Management on 06.05.2024, stating that the answers to be provided within 15 days would be included in the report. No response was received from the Presidency of Migration Management regarding the questions forwarded.

LEGAL SITUATION

The Law on Foreigners and International Protection (LFIP) no 6458 of 04.04.2013, which is Türkiye's first and only legal regulation in the field, entered into force on 04.04.2014, excluding the fifth section regulating the organisational structure of the Presidency of Migration Management. Following the Decree Law issued during the State of Emergency and the subsequent legal regulations, today, Article 53 of the LFIP is as follows:

Removal decision

ARTICLE 53 –

(1) A removal decision shall be issued either upon instructions of the Directorate General or ex officio by the governorates.

(2) The [removal] decision together with its reasons shall be notified to the foreigner, in respect of whom a removal decision has been issued or, to his/her legal

representative or lawyer. If the foreigner, in respect of whom the removal decision has been issued, is not represented by a lawyer, the foreigner or his/her legal representative shall be informed about the consequence of the decision, procedures and time limits for appeal.

(3) The foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within seven days as of the date of notification. **The applicant shall also inform the authority that has ordered the removal regarding the appeal.** Such appeals shall be decided upon within fifteen days. The decision of the court on the appeal shall be final. **Without prejudice to the foreigner's consent, the foreigner shall not be removed during the judicial appeal period or in case of resort to the judiciary until the finalisation of the proceedings.**

As can be seen, the legal regulation that entered into force in 2014 provides for an 'automatic effect of stay' without the need for a Stay of Execution (SA) decision within the scope of Article 27 of the Procedure of Administrative Justice Act No. 2577 in the cases filed before administrative jurisdiction in order to ensure that the revocation cases filed in relation to deportation orders are concluded unsuccessfully and that the deportation proceedings do not cause irreparable damages. This legal provision is a substantial procedural safeguard that protects persons against whom an administrative deportation order is given. In a significant body of related case law of the ECtHR, the automatic effect of stay of the proceedings against deportation orders is an important feature sought for

the existence of 'effective domestic remedies' in the country. after its submission to the Turkish Grand National Assembly (TGNA), the draft LFIP was therefore included in the paragraph of the law during the studies of the TGNA Commission and the regulation was enacted as such.

The provision **"The applicant shall also inform the authority that has ordered the removal regarding the appeal"** is included in the related paragraph of the law due to the **GÖÇ NET database used by the Presidency of Migration Management not being compatible and accessible in relation to UYAP (National Judiciary Informatics System) at the effective date of the law**. It must be noted that this provision is imperative rather than being in the nature of a recommendation for practitioners. This is because, normally, it is only possible to be informed of a revocation case filed against the deportation order of the Migration Management when the local Administrative Court communicates the lawsuit petition to the respondent administration. This can take weeks, sometimes months, depending on the Court. The administration must therefore be informed that a lawsuit has been filed in order to ensure that the person concerned is not deported on the grounds of expiration of the period for filing a lawsuit. With this provision, the legislator has imposed the obligation to notify on the person who filed the lawsuit (the foreigner, their legal representative or lawyer). Upon receiving the notification, the Migration Management, upon being notified, is thus obligated not to deport the person concerned until the finalisation of the case filed before the administrative court. **The law does not stipulate a requirement as to the form of the notification.**

The practice has advanced accordingly since the law entered into force: **the foreigner**, their legal representative or lawyer filing for revocation at the local Administrative Court notifies the Provincial Directorate where Removal Centre (RC) the person concerned is held under administrative detention as soon as possible. Since the law does not stipulate a requirement as to form, notifications have been submitted in person through recording in the document registry of the Provincial Directorate, sending a fax or e-mail to the numbers and addresses on the website of the Presidency of Migration Management. In practice, e-mail is the most preferred method, as it is quick and simple forwarding the 'case information form' and the power of attorney, which must be included in the documents attached. In certain provinces, it is difficult and inconvenient to physically access the Provincial Directorates of Migration Management or the RCs, which are built in locations far away from settlements in the first place. Therefore, the said practice has been the most convenient solution for all parties. Considering the potential crowd with the lawyers and secretaries at the Provincial Directorates and the employment of personnel to deal with the arrivals, it is acknowledged that this long-standing practice is a quite convenient solution for the Migration Management.

With an amendment made by Decree Law No. 676 of 29.10.2016 and enacted by Law No. 7070 in 2018 during the State of Emergency, the automatic stay of execution effect of filing a lawsuit in deportation orders under Article 54/1-b, d and the newly introduced paragraph k of the LFIP was terminated. However, after the Constitutional Court's Y.T. judgement and

before the expiration of the one-year period provided, it was removed from the text with Article 75 of Law No. 7196 of 06.12.2019 and returned to the systematics in the initial drafting phase of the Law. Throughout this entire process, the imperative provision of the law has been implemented to a great extent.

Another aspect worth noting is the '**voluntary return**' practice, which is implied in the expression **'without prejudice to the foreigner's consent**' in the last sentence of Article 53/3 of the LFIP as the sole exception to the automatic effect of stay of the revocation lawsuit. As such, should the person concerned have no objection to the deportation order and willingly agree to being returned to their country or to a third one, they may be deported without the need for any administrative judicial process by all means. However, in practice, complaints have been received that some foreigners are deported with documentation somehow issued without their will and consent. In the period following the law's entry into force, such complaints have been raised occasionally, and numerous reports criticizing the issue have been produced by several national and international organisations working in the field.

The Circular No. 2017/10 of the Ministry of Interior on the Procedures and Principles for Foreigners under Temporary Protection stipulates that 'the related documentation shall be signed, alongside the foreigner who wishes to make a voluntary return, by a United Nations High Commissioner for Refugees representative, and in the absence of a UNHCR representative, by a Turkish Red Crescent representative, and in the absence a

TRC representative, by a representative of a non-governmental organisation deemed appropriate by the governorates or by the governorate officials of the board for human rights and equality'. However, there have been complaints that these procedural requirements are often not properly followed.

Although there have been complaints of practices and deportations contrary to the imperative provisions of the law in transitory periods in terms of socio-political climate and in certain RCs, one can say that the practice has been carried out in accordance with the imperative legal provisions for the most part. However, the complaints that formed the basis for this report arose outside of this general administrative practice. The large number of such complaints being received from numerous individuals in the RCs in various provinces of Türkiye within a relatively short period of time cannot be regarded merely as a coincidence. It seems quite unusual that on the same day, hundreds of people, who had hired private lawyers and paid for powers of attorney in order to have the deportation orders issued against them revoked, and whose families are still living in our country, agreed to return to their countries together, with many buses swiftly transferring them from the RC to the borders. This is also not consistent and in line with the 'voluntary return' statistics observed in the country. The prevalence of the complaints indicates an extraordinary situation. As such, our Commission felt the necessity to investigate the issue.

DATA CONCERNING THE UNLAWFUL DEPORTATION PROCEEDINGS

1154 lawyers from 47 different Bar Associations responded to the survey conducted by the UTBA on violations regarding deportation proceedings that took place on October 10, 2023 and two months prior, and 491 lawyers reported that at least one of their clients had been subjected to a violation.

While detailed information is presented below, most of the deportations subject to the survey were carried out through 'voluntary' return documents that were signed or forged against the consent of foreigners, as explained in the content. Therefore, although their removal from the country cannot be considered 'deportation' in the narrow sense in relation to the provisions of Article 53 et seq. of the LFIP, they were characterized as deportees, as they could not be considered to have voluntarily returned given the allegations that the relevant voluntary return documents were signed or forged against their consent.

The data obtained through the responses to the survey are presented below, with the first part containing rather quantitative data, while the second part listing the data includes the assessment of the lawyers' responses to the sixth question of the survey dated 11.10.2023, which reads "*If there are any other issues you would like to add regarding the recent unlawful deportations, please describe (optional)*" and the survey sent on 22.01.2024.

QUANTITATIVE DATA CONCERNING UNLAWFUL DEPORTATION PROCEEDINGS

1. 1154 lawyers from 47 Bar Associations responded to the survey.
2. 491 of the lawyers who completed the survey stated that at least one of their clients were deported either before the seven-day period, or while their case for the revocation of the deportation order was pending, within two months prior from the date of the survey.
3. When lawyers were asked about the number of clients deported as such, it was stated that at least 1772 foreigners had been deported without waiting for the end of the seven-day period for filing a lawsuit, and other responses contained wording such as 'several', 'countless', 'dozens', 'many times', 'high in number' and 'repeatedly'. As of the survey date, at least 696 foreigners had been deported in the two months prior, despite having filed for revocation and their cases still pending.
4. The majority of the foreigners deported were Syrian, Afghan, Iranian, Iraqi and Turkmen nationals. The remaining included nationals of Algeria, Azerbaijan, Bangladesh, Bulgaria, Colombia, Egypt, Georgia, Kazakhstan, Kyrgyzstan, Libya, Moldova, Morocco, Nigeria, Pakistan, Palestine, Russia, Sierra Leone, Somalia, Sudan, Ukraine, Uzbekistan, and Zambia.
5. Although it was reported that the majority of the deportations were carried out from the RCs in Gaziantep,

Şanlıurfa, and Adana, where the individuals were transferred in the last place, it was also stated that many other RCs, including those in İstanbul, Ağrı, Ankara, Aydın, Bursa, Çanakkale, Çankırı, Erzurum, Iğdır, İzmir, Kahramanmaraş, Kayseri, Kırklareli, Kilis, Kocaeli, Malatya, Manisa, Muğla and Van carried out such deportations.

6. It was stated that, in relation to the proceedings subject to the survey, 229 lawyers filed a criminal complaint to the relevant public prosecutor's office, 113 made an individual application to the Constitutional Court, 15 applied to administrative judicial remedies, 8 applied directly to the relevant administration (governate, provincial directorate of migration management, Directorate of the RC), 6 submitted a statement to the bar association of the province where the RC is located or the lawyer is registered with, 5 applied to *CİMER*[1], 2 consulted with non-governmental organisations operating in the field of asylum and migration, and 1 applied to the Ombudsman Institution.
7. As of the date of this report, the Commission has not been notified of any positive outcome concerning any of these applications.

1 t/n. CİMER stands for *Cumhurbaşkanlığı İletişim Merkezi* (Presidency Communication Centre), a platform through which Turkish citizens (and residents) can directly submit complaints, requests, suggestions, and inquiries regarding various government services.

QUALITATIVE DATA CONCERNING UNLAWFUL DEPORTATION PROCEEDINGS

The above-mentioned data were obtained from the answers provided in response to the direct questions in the survey, and the responding lawyers noted some similar practices in different locations in the comments section and in their answers in the survey of 22.01.2024. Similar comments regarding the situation in various places in the country and certain individual cases worth noting are compiled below:

1. Most of the lawyers stated that even when the criminal complaints were related to torture, the relevant prosecutor's office requested permission for investigation, which the relevant governorates did not grant, otherwise deciding for non-prosecution. The responses included that many foreigners who were deported as such refrained from making legal applications, sometimes out of fear, and sometimes because they were exhausted and do not want to deal with the process, and that some were also concerned about action being taken against their relatives in Türkiye, especially in case of an application or complaint. The survey respondents also stated that in many cases, people who were deported without being able to issue a power of attorney were unable to carry out the complaint and application process due to the difficulties they experienced in obtaining a power of attorney in the country they were sent to.
2. More than half of the lawyers who responded to the comment section emphasised that their clients were

made to sign a voluntary return form against their will, where the methods used to get the foreigner to sign this form varied. Accordingly, the documents to be signed were piled on top of one another, with a voluntary return form in between without the foreigner noticing it, or telling the foreigner that there is another document to be signed and obtaining their signature without allowing them to read it. In addition, another issue that stands out according to the responses is that sometimes the foreigners were made to sign the voluntary return forms, and even waivers from legal action, by providing false legal information, and sometimes through the use of psychological and/or physical violence or denying water or food.

3. The comments received included incidents such as that some RC officers have told the foreigner to 'go now and then return via a smuggler' before or after obtaining the relevant signature, or covered the text in a way that only leaves the part to be signed open, or had non-Turkish speakers sign a voluntary return petition in their own hand writing. Another significant issue raised was that although the persons concerned were not asked to sign the voluntary return form, a private security guard forged signatures on behalf of a large number of persons.
4. The responses also included that there were foreigners who were psychologically exhausted and forced to sign a voluntary return form due to the constant relocation of those held under administrative detention, who missed the deadline for filing a revocation case against the deportation order due to such relocations, and who were

unable to access a notary public because they could not stay in a RC for a long time. Furthermore, it was reported that there were significant problems in informing the relatives and lawyers about the whereabouts of foreigners who have been constantly relocated.

5. There are also instances where relatives of foreigners who have been unlawfully deported have targeted the lawyer, presuming that the deportation was due to the lawyer's negligence.

6. According to one response, a foreigner under administrative detention in Gaziantep RC, one of the RCs frequently mentioned in the responses received, called their lawyer from Syria and informed that they had been deported without having signed any documents. Several lawyers stated that although the RCs in Gaziantep, Şanlıurfa and Adana were established for the purpose of holding foreigners for a certain period of time in order to implement administrative detention measures pursuant to legal grounds, these RCs have turned into places where clients are subjected to ill-treatment and psychologically forced to sign a voluntary return form against their will. One lawyer stated that their client, who did not want to sign the voluntary return form, forced to press their finger on the form, with officials holding their hands and arms.

7. One of the lawyers who responded to the survey on violations conveyed that foreigners were made to sign a voluntary return form through assault and force in Şanlıurfa RC.

8. Some lawyers reported that within the last month, a number of foreigners were deported although they had not signed the voluntary return form, that the related signatures were forged by the officers, and that criminal complaints were filed in many cases for this reason.
9. Similar to the answers, it was also mentioned in the comment section that deportations have been frequently carried out through unlawful procedures. It was reported many times that foreigners, especially Afghan nationals, as there are no direct flights to Afghanistan, were left at the mountainous Iran-Türkiye border, where there is no customs gate or Iranian law enforcement officials, without implementing any legal procedures, and asked to cross the border themselves. It was reported that foreigners who were thus pushed beyond the border were captured by human trafficking gangs, who have seized their money, telephones and valuable items, blackmailed their families and demanded ransom, and otherwise subjected them to various kinds of torture and inhumane treatment. The comments highlighted that such cases included amputation of limbs such as ears, noses and fingers, and killings. In relation to one such case of deportation to Iran, one responding lawyer stated that their client's family had videos and text messages of the violence inflicted on the client sent by criminal groups, as well as bank transaction records of ransom payments.
10. Detention in the RC without an administrative detention order and the implementing the deportation despite

the revocation of the deportation order by the relevant administrative court were also among the issues frequently emphasised by the lawyers who provided their comments. In particular, it was noted that the uncertainty concerning the judicial remedies for foreigners detained without an administrative detention order has resulted in loss of rights.

11. The comments also suggested other practices that paved the way for unlawful deportations. Several lawyers mentioned attempts to dissuade them from interviewing their clients by telling them that the client was not there, citing typos or spelling errors in the client's name. Furthermore, it was reported that the clients were transferred to other RCs quite far from the one where the client was initially held under administrative detention immediately after the lawyer commenced the procedures for interviewing the foreigner or issuing a power of attorney, and that requests to examine the file, take a document sample, meet with the foreigner, receive information about the process, and obtain a proof a receipt for the petition submitted were rejected on unlawful grounds. Nevertheless, it was also noted that related objections are made immediately, and that these requests are met upon insisting on the legal grounds, especially upon the lawyer starting to issue a report. The comments indicate that a common demand of the lawyers is that RC officers be trained on the relevant legislation and human rights, ensuring that they understand that lawful requests must be accepted without such insistence.

12. It was frequently mentioned in the comments that while some provincial directorates accepted the information forms regarding the revocation lawsuits filed by lawyers being forwarded to the official e-mail address of the relevant directorate of migration management, certain provincial directorates required written notifications personally delivered, although the legislation does not provide for specific requirements as to form. It was reported that, especially in RCs requesting written notifications personally delivered, foreigners have been deported outside working hours, even though submission of the written notifications is only accepted during working hours, which has caused loss of rights.

13. The rude and firm attitude displayed by some officials towards both lawyers and persons under administrative detention in some departments of migration management and especially RCs was also highlighted several times.

    On the other hand, the lawyers who shared individual cases noted the following:

14. Several lawyers conveyed that some migration specialists and the administration of Malatya RC arbitrarily prevented them from meeting with their clients. Another lawyer who responded to the survey stated that the submission of documents at Malatya RC was not carried out in accordance with the procedures, and that Malatya RC officials made statements such as '*I institute the unlawful procedure, and if you have any objections, you can take it wherever you want, lawyers cannot do anything unless*

I let them'. A similar comment was made about Ankara Akyurt RC. Accordingly, authorised personnel have failed to provide the necessary information and documents within the time limit for filing a lawsuit, which results in the expiration of the time limit before filing the case.

15. One of the responding lawyers conveyed that RCs fail to provide adequate food, and their client's basic needs were not met, and added that their client had stated that the institution's officers offered the foreigners a blanket in exchange of agreeing to get deported, that they would sleep on the floor and not on a bed, and that they were repeatedly subjected to physical violence by the officers. The responding lawyer underlined that they had difficulties in acting on these issues both due to the reluctance of their clients and the administration not processing the petitions, which constituted a violation of both refugee rights and lawyers' rights.

16. Another lawyer who submitted a statement on the violations noted that approximately 40 foreigners, including one of their clients, who were detained a week before the survey and released without their statements taken by the prosecutor's office, were forced to voluntary returns without their consent, subjected to ill-treatment, and deported.

17. Another lawyer responding to the survey explained that by use of force and threats, voluntary return forms were given to some clients, including one family in Silivri Selimpaşa RC one client in Tuzla RC, who had given a

power of attorney to the lawyer just half an hour ago, and those who refused to sign were deported, and that such procedures were carried out forcibly and unlawfully even half an hour after the power of attorney being received, that the incident took place on 13 September 2023. In another incident reported by the same lawyer, the client was beaten and forced to sign a voluntary return form, despite the fact that a revocation case against the deportation order had been filed and was pending before the relevant administrative court.

18. One lawyer stated that their client was provided with a form for filing an administrative lawsuit, however, the relevant officials told the client that the lawyer was defrauding them and it was a false document, thus damaging both the reputation of lawyers and the principle of the constitutional state.

19. In one of the responses received, a lawyer stated that their client, who had been given a deportation order, was being held at the RC with their two-year-old child, when they were both killed in an accident on 17.09.2023 during their transfer to another RC.

20. Another lawyer stated that a foreigner who was beaten and irregularly deported from Gaziantep RC was shot and killed while trying to irregularly return to Türkiye, where their family is, and the family received the body from Kilis, and the perpetrator remained unidentified.

21. One of the responses expressed that the foreigner, for whom a lawsuit was filed on the grounds that they were

in risk of torture and persecution in the event of being deported to the country of origin, met with the consular representatives of the country of origin in person at the RC, and that it was highly likely that the foreigner was subjected to pressure during this meeting, immediately after which the foreigner was deported to the country of origin.

22. One lawyer stated that their client, an Afghan national, had been unlawfully deported to Iraq, where they had been subjected to violence and had his mobile phone and money stolen.

23. Another lawyer who provided a statement regarding the violations explained that recently, the Afghanistan Consulate has not issued travel documents to those who do not want to be deported upon their own request, and that for this reason, directorates of migration management have been systematically transferring all Afghan nationals to the RCs in Van and Ağrı, which are close to the Iranian border, from where foreigners have been taken to and released in locations without state control on the Iranian border, subsequently including decisions of 'termination of administrative detention' in the files of foreigners released on the Iranian side, and that when asked for information about the client, they responded that '*we released them, and they must have left on their own*'. Furthermore, since there has been a high number of transfers to these RCs from all over the country in recent months, forms regarding the termination of administrative detention are no longer included in the

clients' files, which itself is in fact proof of the RCs' unlawful procedures, as written statements concerning two foreigners who were left in Iranian territories in this way were received from the RC they were in, stating that they were transferred to Van RC, and again from Van RC stating that they were not there, clearly indicating unlawful proceedings.

24. One lawyer informed that money and valuable items of foreigners under administrative detention were confiscated under the pretence of airfares, amounting to sums much higher than the average airfare, and were not returned.

25. One lawyer highlighted that the system itself produces discrepancies because it fails to abide by its own rules, explaining that their client, who was an irregular, was taken under administrative detention due to not yet having been registered at the time of their application to the relevant provincial directorate of migration management for a humanitarian residence permit, to which those in an irregular situation may apply.

26. One lawyer reported that their client, who was under administrative detention, and other foreigners with them, were taken to the border crossing by bus and released with a decision to terminate their administrative detention. The lawyer commented that accordingly, it was made to look like as if the foreigner, who had a release document, had been released by the administration and had crossed the border at their own will.

RELEVANT INTERNATIONAL JURISPRUDENCE

The existence of an automatic effect of stay in regards to deportation orders is a procedural safeguard which, according to the ECtHR standards, must be included in the legislation of Party States. The absence of such safeguard will render applying to judicial remedies against the deportation order ineffective. (Abdolkhani and Karimnia v. Türkiye 30471/08 01.03.2010 P.58; Conka v. Belgium 51564/99 P.79; N.A. v. United Kingdom 25904/07 P.90)

In the judgement Akkad v. Türkiye (1557/19 p.83 et seq.), those that were deported by forcing them to sign voluntary return forms against their will and making them appear to have voluntarily returned were brought to the ECtHR's attention. The judgement includes as the factors undermining the credibility of the voluntary return form the fact that the applicant was not provided with a copy of the form, that he had no contact with the outside world due to the detention being continued after the form was signed and therefore did not have any realistic means of appealing to the process, and that the form was not signed by a UNHCR or NGO representative, as stipulated by the relevant legislation. With regard to the last factor, the ECtHR found that this signature, which is evidence that a person not affiliated with the administration had witnessed the applicant's genuine intention to return to their country, constituted a formal and legal safeguard against attempts by state officials to abuse their powers.

Moreover, in its assessment of the implementation of the legal safeguards relating to the procedure for the applicant's

return to their country of origin, the Court took into account the hasty nature of his removal to Syria following the arrest in north-west Türkiye near the Greek border. According to the applicant's claims, migration management officials returned him to Syria within two days of his arrest. The ECtHR also held that this hastiness had an impact preventing the applicant from utilising remedies for stay of execution before he was sent back to Syria.

In regards the content of the voluntary return form, it was found that Türkiye, which had deported the applicant to the country of origin, did not appear to have had properly assessed the risks that the applicant might encounter there, that although it was true that the form, which was printed and signed by the applicant, included that the applicant had been 'informed in detail by the authorities about the overall situation and security in the country of origin', this form, which the applicant refused to having read, did not contain any specific details concerning the applicant's personal situation in Syria and did not describe why the potential risk justifying the applicant's temporary protection was no longer valid. As far as the ECtHR was concerned, the authorities made the applicant sign a pre-printed form for voluntary return to Syria and immediately returned him to that country without further consideration of his fate. Even assuming that the rights guaranteed by Article 3 ECHR on prohibition of torture, can be waived, it was found that, in any case, the applicant could not have knowingly and consciously waived the protection afforded by Article 3 by leaving Türkiye.

Keeping in mind all the above-mentioned factors, the ECtHR analysed the guarantees of automatic stay-of-execution effect in conjunction with the voluntary return proceedings that were not duly conducted, and concluded that it is of the opinion that the applicant had not been able to benefit remedies with such effect, which would have enabled him to appeal the deportation prior to his return to his country of origin and that the evidence on the file did not establish in a convincing manner that the applicant had explicitly, i.e. in a conscious and informed manner, waived his right to appeal. The ECtHR held that the applicant had been prevented from using the remedies available under Turkish law before his removal through the hasty and misleading actions of the authorities. In fact, the ECtHR regarded the problem not as the applicant withdrawing his signature, but rather as the authorities' failure to implement all these legal safeguards, which rendered the procedure applied in the present case incompatible with the ECHR.

In its Abdülkerim HAMMUD judgement of 02.05.2023 concerning the Individual Application no. 2019/24388, published in the Official Gazette No. 32308 on 13.09.2023, the Constitutional Court, also by referring to the abovementioned Akkad v. Türkiye judgement of the ECtHR, ruled for a detailed and justified violation concerning the very act that is the subject of this report and ordered compensation. Nevertheless, it was tragic that, in the weeks following the publication of this Constitutional Court decision in the Official Gazette, complaints regarding the same issue have significantly increased.

The Constitutional Court puts forward quite substantial findings and assessments on the violations addressed within the scope of our report in its Abdülkerim HAMMUD judgement, which must be taken into consideration by the Migration Management:

"59. Upon the applicant's request for legal assistance following the issuance of a deportation order against him, the respective bar association assigned a counsel for him on 17 July 2019. Although the counsel submitted a copy of the decision on legal assistance, as a substitute for a power of attorney, to the Provincial Directorate of Migration Management on the date when he was assigned, he was not notified of signing of the "voluntary repatriation request form" dated 18 July 2019. Therefore, the form does not bear the signature of the applicant's defence.

60. *The applicant requested legal assistance immediately after the deportation order. Following the applicant's contact with the counsel on 17 July 2019, the latter brought an action for quashing of the deportation order before the incumbent administrative court on 18 July 2019, namely on the very next day. In this sense, there must be highly strong evidence to conclude that the applicant volunteered his return, with his own consent and in an informed manner, only one day after his consultation with the counsel, that is, the same day when the action for quashing of the deportation order apparently brought on his instruction.*

61. *Even if it may be assumed that the rights enshrined in Article 17 of the Constitution may be derogated, it appears that the*

applicant was not informed, to a sufficient degree, of the real risk that went beyond a mere probability in the country of origin, which is also acknowledged in the deportation order. It is unreasonable to suggest that the applicant, who had asked his counsel the day before his voluntarily return to bring an action for quashing of the deportation order against him, agreed to voluntarily return his country of origin along with his family after having signed a form in the absence of his counsel or any representative of an international and national non-governmental organisation, which is against the ordinary course of life.

62. *In the light of the foregoing, it must be held that the right to life and the prohibition of ill-treatment safeguarded by Article 17 of the Constitution was violated"*

...

72. *It has been observed that the applicant against whom a deportation order had been issued but who could not be, as a rule, deported until the finalisation of the proceedings was nevertheless deported immediately, without the proceedings being concluded, on the basis of "his consent", which is an exception laid down in Article 53 § 3 of Law no. 6458.*

73. *The applicant's departure from the country on the same day that he signed the voluntary repatriation request form prejudiced the effectiveness of the remedy envisaged in Law no. 6458 against the deportation procedure, which affords protection even within the time-limit prescribed for filing an action. The applicant could not avail himself of the available remedies having suspensive effect whereby he*

could challenge his repatriation to Syria prior to his return. Nor was it demonstrated in a convincing manner that he had waived his right to challenge explicitly, in other words in a conscious and informed manner.

74. *In the light of the foregoing, it must be held that the right to an effective remedy, safeguarded by Article 40 of the Constitution, when taken in conjunction with the right to life and the prohibition of ill-treatment was violated*

...

77. *In the present case, it has been concluded that there were violations of the right to life, the prohibition of ill-treatment; as well as of the right to an effective remedy in conjunction with the former right and prohibition, which stemmed from the repatriation procedure conducted by the administration.*

78. *It must be held that the applicant be awarded a net amount of TRY 50,000 for non-pecuniary damage which cannot be compensated by the mere finding of a violation.*

RECOMMENDATIONS

1. Deportation proceedings may take place at any time, provided that the necessary procedural safeguards are compiled with in accordance with the LFIP and judicial review procedures have been exhausted. In this context, some foreigners under administrative detention in RCs may choose to return to their country voluntarily. However, the deportation of persons who have applied to judicial review mechanisms per legal regulations

to appeal to the deportation orders without waiting for the outcome of the proceedings, or before the expiration of the seven-day period for filing a lawsuit, or through other irregular proceedings of voluntary return, contradicts with the principle of the rule of law. No such action should be taken for any reason or motive, and disciplinary and criminal proceedings must be initiated against officials who take such action immediately and without leniency.

2. The prohibition of torture and ill-treatment is one of the most fundamental principles of law, and torture and ill-treatment cannot be considered legitimate even at times of war. In this regard, the State bears positive and negative responsibilities. As such, violating the prohibition of torture and ill-treatment, or turning a blind eye, should not even be an issue. The answers provided in the survey have shown that the Presidency of Migration Management must immediate take relevant measures, take into account all notifications it has received and take action, report directly to the relevant Prosecutor's Office upon finding such a violation, regularly conduct spot checks, and ensure that all personnel are trained on the prohibition of torture and ill-treatment.

3. Non-refoulement is one of the most fundamental, crucial and deep-rooted principles of universal law, such as the principle of the individuality of crime and punishment, and is one that every state that defines itself as a state of law must adhere to, regardless of

the international conventions to which it is a party. Moreover, Türkiye is committed to adhere to this principle, both through the international instruments to which it is a party (particularly the Geneva Convention of 1951, and Articles 2 and 3 of the ECHR) and its national legislation. In this context, Articles 4 and 55 of the LFIP affords quite comprehensive legal protection. The Constitution defines the Republic of Türkiye as a state of law. Nevertheless, deportations carried out in violation of the non-refoulement principle despite the international conventions and legal procedural safeguards constitutes the basis for the report at hand. All kinds of such procedures violating the non-refoulement principle must immediately be brought to a halt, and necessary measures must be taken in this direction to prevent the recurrence of similar incidents.

4. One of the most frequent responses in the survey was that although criminal complaints of torture are not subject to an investigation permit, the related process for obtaining such permit has been carried out in relation to criminal complaints of this kind. In this context, the Ministry of Justice must forward an official letter to all public prosecutors instructing them not to take action in this direction, and conduct the necessary investigations on the procedures carried out in this way, whereas the Presidency of Migration Management must draw attention to the issue and notify the authorities when it is asked to provide information regarding the investigation permits against allegations of torture.

5. As can be understood upon examining the report in its whole, many complaints involved the irregular signing of voluntary return documents in an irregular manner, and failure to present these documents to the lawyers despite their request. As mentioned above, there are international standards on the content of voluntary return forms. Accordingly, a uniform voluntary return form must be drafted, taking into consideration all of these standards, an independent and objective human rights organisation must be present at the time of signing of these documents, the relevant individual's lawyer, if any, must be informed about the situation and included in the process, and their signature must be on the form as well. Following such a process will also prevent complaints against the Presidency of Migration Management concerning irregularities in voluntary return forms.
6. Another one of the issues frequently mentioned in the survey was the conditions of the detention centres, which are incompatible with human dignity. Detaining people in such conditions constitutes a clear violation of the prohibition of torture and ill-treatment, and the removal centres must be urgently inspected, individuals' basic needs must be met, and cooperation must be established with other relevant official institutions to address spatial and economic deficiencies.
7. Many lawyers whose experiences were included in the report have complained that the personnel of the relevant

provincial migration management departments and RCs do not possess basic legal knowledge, unlawfully try to prevent lawyers' access to the persons of concern and related information, and have a rude attitude towards rude to lawyers and foreigners. Accordingly, the persons employed in these institutions must receive the necessary training on basic legal knowledge, the rights and powers of the lawyer and communication. Furthermore, since the personnel of these institutions face challenges of working in the field of migration, constant exposure to secondary trauma and intense workload, taking steps to provide them with regular psychosocial support would contribute to eliminating such problems.

8. Due to the lack of coordination and contact between GÖÇ NET, the database used by the Migration Management, and UYAP at the effective date of the Law, the obligation to notify the administration of the filing of a lawsuit in the administrative jurisdiction as regulated in Article 53/3 of the LFIP, being of great importance, is stipulated in a special and imperative manner under the law (a detailed explanation on the necessity of this situation is provided under the section 'legal situation' above). However, since it is known that technical coordination has been established between the systems GÖÇ NET and UYAP, and that the Migration Management has immediate access to all criminal, civil, enforcement or administrative cases against the person concerned. Therefore, the Migration Administration can access information on whether the person concerned

has filed a revocation case before the administrative judiciary at any time by checking UYAP through GÖÇ NET. As such, due to the availability of such technical facilities, which were not available at the effective date of the law, the imperative regulation imposed on the person concerned, their legal representative or lawyer to notify the administration of the filing of a revocation case for the deportation order before the administrative jurisdiction is no longer actually necessary. The Migration Management must be obliged to carry out *ex officio* the related checks through its access to UYAP, and the related legal amendments must be implemented immediately.

9. It is known that in practice, lawyers have faced problems concerning the petitions that they wish to submit to the Directorates of Migration Management both in relation to the notification obligation under Article 53/3 of the LFIP and other issues. Accordingly, -apart from the legal arrangement proposed in the above paragraph concerning the notification obligation under Article 53/3 of the LFIP- the Migration Management must adopt the Registered Electronic Mail (*KEP*) application as a whole, including its central and provincial units, the necessary legislative amendments must swiftly be implemented and announced on the website of the Presidency of Migration Management. It is hoped that transitioning to this system will resolve many of the existing issues.