



HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE

THE REPORT ON  
**DEPORTED  
FOREIGNERS AND  
THE PRINCIPLE OF  
NON-REFOULEMENT**







**HREIT**

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## FOREWORD

Numerous institutions and organizations have been established at national and international level to protect and promote human rights. In this context, national human rights institutions, which became widespread in the post-Cold War period, were institutionalized to fulfill this mission. The Paris Principles, which constitute the “minimum set of requirements” for such institutional structures, were adopted by the United Nations General Assembly in 1993. The Paris Principles function as authoritative international “standards” or “a minimum” set of requirements” defining national human rights institutions. National human rights institutions that comply with the Paris Principles have been recognized as important institutional actors for the protection and promotion of human rights.

Institutionalized as a national human rights institution, the Human Rights and Equality Institution of Türkiye (HREIT) operates in the fields of *“protection and promotion of human rights, prevention of discrimination and effectively fight against torture and ill-treatment”*.

Acting as an equality body and human rights institution, the HREIT exercises its legal duties and powers as a “*National Preventive Mechanism*” as well. Within the framework of its mission to protect and promote human rights, the HREIT has multiple duties and powers defined in the relevant legislation.

This Report on deported foreigners and the principle of non-refoulement has been prepared in accordance with the provisions of Article 9 of HREIT Law No. 6701 titled “Duties of the Institution”, which states “Working to protect and promote human rights, prevent discrimination and remedy violations” and “Providing information to the public opinion, publishing special reports on matters falling under its mandate in addition to regular annual reports when deemed necessary”.

Under international law, every state has “full and exclusive sovereignty” over its territory. Within the scope of this sovereignty, states can make regulations regarding the entry-exit and residence of foreigners. This authority makes it possible for states to deport foreigners in the presence of certain reasons defined in the relevant legislation. However, at this point, it is important to take into account the principle of “non-refoulement” in order to prevent torture and ill-treatment of foreigners who are/will be deported. Therefore, the restriction codes used as grounds for deportation decisions need to be addressed separately.

The report presents findings and recommendations on the elimination of the risk of torture and ill-treatment of deported foreigners in the country of removal and on the threat of torture and ill-treatment that deported foreigners may face in compliance with the requirements of the rule of law.

“The Report on Deported Foreigners and The Principle of Non-Refoulement”, prepared within the determined methodological framework, aims to objectively identify the current situation and offer solutions to problem areas. I would like to express my gratitude to the valuable members of all public institutions, representatives of non-governmental organizations (NGOs), academicians and valuable staff of our Institution who contributed and supported the reporting process with their opinions and evaluations on the basis of a pluralistic methodological approach and participatory stakeholding.

**Prof. Dr. Muharrem KILIÇ**  
**Chairman of the Human Rights and Equality Institution of Türkiye**

## ABBREVIATIONS

<b>AA</b>	Anadolu Agency
<b>a.</b>	article
<b>ACCORD</b>	Austrian Centre for Country of Origin and Asylum Research and Documentation
<b>AI</b>	Amnesty International
<b>AIHRC</b>	Afghanistan Independent Human Rights Commission
<b>BBC</b>	British Broadcasting Corporation
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CC</b>	Constitutional Court of Türkiye
<b>COI</b>	Country of Origin Information
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>D.A.</b>	Date of Access
<b>Daesh</b>	Al Devlet - Al - Islamiyya Fil Irak Wel Şam (Islamic State of Iraq and the Levant)
<b>Daesh-K</b>	Daesh – Khorasan
<b>ECtHR</b>	European Court of Human Rights
<b>ECHR</b>	European Convention of Human Rights
<b>Ed.</b>	Editor
<b>GNAT</b>	Grand National Assembly of Türkiye
<b>HRW</b>	Human Rights Watch
<b>Ibid</b>	ibidem (in the same place)
<b>IED</b>	improvised explosive device
<b>Institution / HREIT</b>	Human Rights and Equality Institution of Türkiye



<b>IOM</b>	International Organization for Migration
<b>is.</b>	issue
<b>KRG</b>	Iraqi Kurdish Regional Government
<b>LFIP</b>	Law on Foreigners and International Protection No. 6458
<b>Mazlumder</b>	The Association for Human Rights and Solidarity for the Oppressed
<b>NDS</b>	National Directorate of Security
<b>No.</b>	number
<b>O.G.</b>	Official Gazette
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>p.</b>	page
<b>para.</b>	paragraph
<b>SETA</b>	Foundation for Political, Economic and Social Research
<b>SNHR</b>	Syrian Network for Human Rights
<b>T.C.</b>	Republic of Türkiye
<b>TPC</b>	Turkish Penal Code No. 5237
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNAMA</b>	United Nations Assistance Mission in Afghanistan
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>USA</b>	United States of America
<b>USDOS</b>	United States Department of State
<b>Vol.</b>	volume

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## EXECUTIVE SUMMARY

Prepared by the HREIT, in this Report, a number of observations have been made regarding the risk of torture and ill-treatment of deported foreigners in the country to which they are sent. The addressees of deportation procedures are non-citizens of the Republic of Türkiye; in other words, foreigners. Indeed, Article 23 of the Constitution stipulates that citizens shall not be deported or deprived of their right of entry into the homeland. Although there is no consensual definition of the concept of foreigner in international law,<sup>1</sup> according to subparagraph (ü) of the first paragraph of Article 3 of the Law No. 6458 on Foreigners and International Protection (LFIP), which entered into force upon publication in the Official Gazette dated 11/04/2013 and numbered 28615, a foreigner is defined as “a person who does not have citizenship bond with the Republic of Türkiye”. In this sense, deportation refers to the prohibition of a person who is not a citizen of a state to remain in the territory of that state. In this respect, it is first necessary to examine the phenomenon of migration, which is the basis of the concept of “foreignness” carried by the persons who are the addressees of deportation proceedings.

People have moved throughout history for various reasons. These reasons can sometimes be war, civil unrest, natural disasters, drought, and sometimes the demand for more comfortable living conditions. As a matter of fact, human mobility that occurs due to these reasons is characterized as forced or voluntary migration. Although the reasons for migration are different, this is a phenomenon that humanity has faced throughout history and may face in the future.<sup>2</sup> People who are subjected to migration for various motives and reasons may face many difficulties and victimization during and after this process. Therefore, migrants, refugees and asylum-seekers are considered as vulnerable groups in terms of human rights.

In this respect, the concepts of migrant, refugee and asylum-seeker need to be defined. The concepts of “migrant”, “refugee” and “asylum-seeker” are controversial in the doctrine in terms of the masses they cover. The concept of *migrant* refers to persons who voluntarily relocate without any external coercion. The concept of *refugee*, on the other hand, refers to a person who is outside his/her country of nationality because of a well-founded fear of persecution on account of his/her race, religion, nationality, membership of a particular social group or political opinion and who is unwilling to avail himself/herself of the protection of that country because of that fear.<sup>3</sup> Although there is an opinion in the doctrine that the concept of asylum-seeker is the Turkish equivalent of the concept of refugee,<sup>4</sup> the general acceptance is that this concept is the title that the person bears in the country of destination during the period from the time

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<sup>1</sup> Ertuğrul Yazar, *Foreign Terrorist Fighters in Europe in the Context of Human Rights*, Adalet Publishing House, 2021, p. 37.

<sup>2</sup> A typical example of the continuity of events leading to migration and refugees is the Russia-Ukraine war that started on 24 February 2022. In this context, more than 3 million Ukrainians became refugees due to the aforementioned war. Anadolu Agency, “UN: At least 726 civilians killed in Ukraine, 3 million 63 thousand refugees crossed to neighbouring countries”, <https://www.aa.com.tr/tr/dunya/-bm-ukraynada-en-az-726-sivil-oldu-3-milyon-63-bin-multeci-komsu-ulkelere-gecti/2537247>, (D.A: 16.03.2022).

<sup>3</sup> International Organization for Migration, *Dictionary of Migration Terms*, Ed. Bülent Çiçekli, No: 18, 2009, p. 43.

<sup>4</sup> Hüseyin Pazarıcı, *International Law*, 16th Edition, Ankara, Turhan Publishing House, 2017, p. 203.

he/she applies for asylum until he/she is granted refugee status.<sup>5</sup> In this sense, asylum-seeker means de facto refugee. When refugee status is acquired, the rights that a person obtains are broader than those of asylum-seekers.

In this Report, the term “refugee” is used as an umbrella concept to cover all persons who migrated for compelling reasons, and it is not taken into account whether these persons have been granted “refugee” status in the sense of international law.

Refugees can be deported from Türkiye and persons with migrant status can also be subject to deportation orders. However, considering that refugees are mostly deported in practice, there is a need to examine the background of the increase in the number of refugees that Türkiye has faced in recent years.

In 2010, with the impact of the Arab Spring, which refers to the anti-government uprisings that started in Tunisia with “demands for democracy, freedom and human rights” and spread to many countries in a short time, the peoples of the region started a serious migration movement. Especially the countries neighboring the regions where the uprisings took place were naturally more affected by these migration movements. In particular, due to the civil unrest that started in Syria in 2011, our country has been subjected to an intense influx of refugees.

In this context, there are a total of 3.750.462 registered Syrian nationals under temporary protection in our country, 50.983 of whom are in temporary accommodation centers.<sup>6</sup> As the country hosting the highest number of refugees in the world in 2020<sup>7</sup> as in 2021,<sup>8</sup> Türkiye fulfills its humanitarian responsibility for refugees within its social and economic means.<sup>9</sup> A successful attitude is followed in meeting the daily needs of refugees in our country,<sup>10</sup> and in this context, a number of aid activities are carried out by social assistance and solidarity foundations, social service centers and municipalities.<sup>11</sup>

On the other hand, migration movements can sometimes be seen as a security threat for states. The change in the perception of security at the global level, especially after the September 11 attacks, has also affected the phenomenon of migration. In this context, the risks posed by migration should not be ignored. As a matter of fact, states try to protect their national security by deporting foreigners who pose a threat to national security and public order. One of the reasons for deportation decisions based on na-

<sup>5</sup> International Organization for Migration, Dictionary of Migration Terms, Ed. Richard Perruchoud, Jillyanne Redpath-Cross, 2nd Edition, p. 74; Deniz Servantie, Türkiye-EU Dictionary for Refugee, Economic Development Foundation, İstanbul, 2017, p. 41.

<sup>6</sup> These numerical data are valid as of 10 March 2022. The Presidency of Migration Management, “Temporary Protection”, <https://www.goc.gov.tr/gecici-koruma5638>, (D.A: 16.03.2022).

<sup>7</sup> Amnesty International, “2020/21 Report - State of Human Rights in the World”, 2021, p. 66, <https://www.amnesty.org/en/wp-content/uploads/2021/06/POL-1032022021TURKISH.pdf>, (D.A: 14.03.2022).

<sup>8</sup> Human Rights Watch, “World Report 2022-Events of 2021”, 2022, p. 670, [https://www.hrw.org/sites/default/files/media\\_2022/01/World%20Report%202022%20web%20pdf\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf), (D.A: 25.02.2022).

<sup>9</sup> United Nations High Commissioner for Refugees, Refugees and Asylum Seekers in Türkiye, <https://www.unhcr.org/tr/turkiyedeki-multeciler-ve-siginmacilar> (D.A: 30.10.2021).

<sup>10</sup> HREIT Report on the Protection and Promotion of Human Rights 2020, p. 22, [https://www.HREIT.gov.tr/upload/file\\_editor/2022/02/1644846431.pdf](https://www.HREIT.gov.tr/upload/file_editor/2022/02/1644846431.pdf), (D.A: 18.03.2022).

<sup>11</sup> UNHCR Türkiye, “Social and financial aid”, <https://help.unhcr.org/Türkiye/tr/social-economic-and-civil-matters/social-and-financial-assistance/>, (D.A: 08.03.2022).

tional security is the restriction codes. In this context, in practice, it is claimed that certain unlawfulness arises in deportation procedures carried out due to the restriction code.

In this respect, in an application made to our Institution, the applicant briefly stated that "his client was detained by Iraqi special forces during his second university education in Mosul, was detained for two years without any legal proceedings and was subjected to severe torture, took refuge in Türkiye in 2015 after Daesh took control of Mosul, and was granted a humanitarian residence permit and after the law was enacted, he became a legal international protection applicant.

He was detained by the Ankara Anti-Terror Branch Directorate as a result of slander in 2019 when he asked for his receivables due to being defrauded, and a report was prepared against him that he was in contact with Daesh members, Ankara 2nd Criminal Judge of Peace accepted his objection and lifted the administrative detention order, and Ankara 1st Administrative Court rejected his request for cancellation of the deportation order. The Constitutional Court (CC) decided on a cautionary measure at this stage due to the need for information and documents, and that "there is a risk of execution, torture and ill-treatment if he is returned to Iraq."<sup>12</sup>

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<sup>12</sup> HREIT, Application No. 1323 dated 27.11.2020







# I

INTRODUCTION

# I. INTRODUCTION

## A. Aim

This Report prepared by the HREIT aims to evaluate deportation procedures in terms of human rights, to determine the situation in Türkiye, and to propose solutions to problem areas in this field.

## B. Legal Basis

The first paragraph of Article 9 titled “Duties of the Institution” of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye, which entered into force after being published in the Official Gazette dated 20/04/2016 and numbered 29690, contains the following provisions:

*“The duties of the Institution are as follows: a) Working to protect and promote human rights, prevent discrimination and remedy violations, ..., f) Inquiring into, examining, taking a final decision on and monitoring the results of violations of human rights - ex officio, ..., l) Providing information to the public opinion, publishing special reports on matters falling under its mandate in addition to regular annual reports when deemed necessary.”*

Article 3 of the Paris Principles contains the following provisions of the same nature as above.

*“A national institution shall, inter alia, have the following responsibilities: a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights...”*

This Report has been prepared by the HREIT in line with the fulfilment of these duties.

## C. Method and Limitations

In the preparation of this Report, reference has been made to the international conventions to which Türkiye is a party and the reports and assessments of their supervisory and monitoring bodies, the case law of the European Court of Human Rights (ECtHR), doctrine, our national legislation, the minutes of the Grand National Assembly of Türkiye and the work of national and international non-governmental organizations. In addition, official correspondence and interviews were conducted with relevant individuals and organizations, and information obtained from the press and media was used.

This Report on the risk of torture and ill-treatment in the country of deportation of foreigners who are deported due to the imposition of a restriction code on them consists of seven chapters. The first part of the Report discusses the purpose, legal basis, methodology and limitations. The second part of the Report examines the entry, exit and residence of foreigners within the scope of the principle of state sovereignty, the third part examines the deportation procedure in the light of national and international legislation, and the fourth part examines the principle of non-refoulement within the scope of deportation procedures.

In the fifth part of the Report, some country examples are discussed in the context of the evaluation of the country to which the foreigner will be deported. Within the scope of the volume of this Report, it has become necessary to select a number of countries to constitute an exemplary evaluation. The countries to which they are deported have different socio-political structures. In this Report, four of the countries to which foreigners deported from Türkiye are frequently sent, which are frequently the subject of applications made by foreigners to national or international judicial authorities, or where incidents that are reflected in the reports of non-governmental organizations take place will be discussed.<sup>13</sup> These countries are the Islamic Republic of Afghanistan, the Republic of Iraq, the Arab Republic of Egypt and the Syrian Arab Republic. In the sixth part of the Report, the findings on the restriction codes and in the last part titled "General Evaluation and Recommendations", some evaluations and recommendations are made in order to prevent human rights violations that may occur within the scope of deportation procedures in the perspective of the principle of non-refoulement and the prohibition of torture and ill-treatment.



<sup>13</sup> For sample evaluations here: Mazlumder, "Victims of the Restriction Code Report", 2020, <https://drive.google.com/file/d/1Cay5e5hkHT5RQUf5HWtyIL36l-9ARm-Gh/view>, (D.A: 08.03.2022).





# II

**ENTRY, EXIT AND RESIDENCE OF  
FOREIGNERS WITHIN THE SCOPE OF  
STATE SOVEREIGNTY**

## II. ENTRY, EXIT AND RESIDENCE OF FOREIGNERS WITHIN THE SCOPE OF STATE SOVEREIGNTY

The elements that make up a state are territory, human community, political authority and sovereignty, and the principle of state sovereignty is one of the fundamental principles of international law. In this context, sovereignty refers to the independence of the state in its internal and external affairs without being subject to any superior authority. States have exclusive sovereignty over their territories. A consequence of the principle of sovereignty of states is the non-interference and non-intervention in the internal affairs of states. Without prejudice to the provisions of the international treaties to which they are subject, states are the sole decision-makers on whether foreigners may enter or leave the country, and the entry, exit and permission procedures of foreigners are within the exclusive jurisdiction of states.<sup>14</sup>

It is important to explain the concept of “margin of appreciation” in terms of migration, which is within the sovereign powers of states, and to reveal the limits of this concept in order to prevent the occurrence of human rights violations. The margin of appreciation is a doctrine that expresses an area of assessment left to national legislative, executive and judicial bodies when examining violations in the jurisprudence of the ECtHR and is accepted due to the principle of subsidiarity. Accordingly, states have a margin of appreciation in the formulation of legal rules, the interpretation and application of the law, and the necessity and proportionality of the interference with the relevant right.<sup>15</sup> Migration is one of the areas where states have a wide margin of appreciation. However, it should be noted that there are some difficulties in determining the limits of this margin of appreciation.

The issue of state sovereignty over the entry, exit and residence of foreigners has also been the subject of ECtHR proceedings. The ECtHR emphasizes the difficulties that states must overcome in order to protect their citizens against terrorist violence and to combat terrorism effectively, and notes that states should not face disproportionate difficulties in interpreting the provisions of the Convention.<sup>16</sup> Indeed, it is seen that the frequency, lethality and prevalence of terrorist acts have increased; in other words, terrorism constitutes a global problem area today.<sup>17</sup>

The ECtHR has stated that the national authorities must provide the addressee of the proceedings with access to the material elements of the foreigner’s case that are deemed to constitute a threat to national security and to the content of the information and documents used as a basis for deportation, but that these rights are not absolute; a balance must be struck between the interests of the foreigner and those of national security, the protection of witnesses against the risk of reprisals and the confidentiality of police investigation methods.<sup>18</sup>

<sup>14</sup> Melda Sur, *Fundamentals of International Law*, 12th., İstanbul, Beta Releases, 2018, p. 117, 118.

<sup>15</sup> Hasan Tahsin Gökcan, “The Principle of Subsidiarity in Individual Application and the Problem of Limits of Supervision Authority”, *Union of Turkish Bar Associations Review*, is. 135, 2018, P. 17-18.

<sup>16</sup> ECtHR, *Muhammad and Muhammad v. Romania*, Judgment of 80982/12, 15 October 2020, para. 132.

<sup>17</sup> Yazar, *Foreign Terrorist Fighters in Europe in the Context of Human Rights*, p. 413.

<sup>18</sup> ECtHR, *Regner v. Czech Republic*, Judgment of 35289/11, 19 September 2017, s.148; in criminal proceedings, ECtHR, *Jasper v. the United Kingdom*, Judgment of 27052/95, 16 February 2000, para. 52.



In this context, the European Convention on Human Rights (ECHR), to which Türkiye is a party, does not guarantee the right of foreigners to enter or reside in a country.<sup>19</sup> The ECtHR recalls that states have the right to control the entry, stay and expulsion of foreigners, without prejudice to their treaty obligations under established principles of international law.

The Constitution does not regulate the entry, residence and expulsion of foreigners. The decisions of the CC have also stated that these matters are within the sovereign authority of states.<sup>20</sup> Therefore, the state undoubtedly has the discretion to admit or expel foreigners. However, if the procedures established for the entry, residence and exit of foreigners constitute a restriction on the fundamental rights and freedoms regulated under the ECHR, foreigners who are the addressees of the procedure may apply to the ECtHR with the claim that their fundamental rights and freedoms have been violated.

<sup>19</sup> ECtHR, *Muhammad and Muhammad v. Romania*, Judgment of 80982/12, 15 October 2020, para. 114; ECtHR, *De Souza Ribeiro v. France*, Judgment of 22689/07, 13 December 2012, para. 77; ECtHR, *Ilias and Ahmed v. Hungary*, Judgment of 47287/15, 21 November 2019, para. 125.

<sup>20</sup> CC, *Yusuf Ahmed Abdelazim Elsayad Decision*, 2016/5604, 24 May 2018, para. 51.



As a matter of fact, it is also possible for the aforementioned procedures to be subject to an individual application to the CC if they constitute an interference with the fundamental rights and freedoms guaranteed by the Constitution and other necessary conditions are met.<sup>21</sup>

The distinctive feature of the entry and residence of foreigners also comes to the fore in terms of applications to the HREIT in respect of combating discrimination and ensuring equality. In this context, subparagraph (g) of the first paragraph of Article 7 of Law No. 6701 states that discrimination cannot be claimed in case of different treatment arising from the conditions and legal status of non-citizens regarding their entry and residence in the country. In other words, the margin of appreciation of states on this issue is also confirmed in the Law on the Establishment of our Institution.

For the first time, in *Soering v. the United Kingdom*<sup>22</sup> the ECtHR held that the extraditing State was responsible under Article 3 of the Convention for returning the applicant to a country where he was at risk

<sup>21</sup> CC, Yusuf Ahmed Abdelazim Elsayad Decision, 2016/5604, 24 May 2018.

<sup>22</sup> In the *Soering v. the United Kingdom* judgment of the ECtHR, Series A, 161, 07 July 1989, the ECtHR ruled that the extradition of the applicant by the Home Office of the United Kingdom to the state of Virginia in the United States of America (USA), where he would face the death penalty, would violate Article 3.



of torture and ill-treatment. After this judgment, the Court has ruled that violations of Articles 2 and 3 of the Convention may occur in the expulsion of foreigners.

Therefore, the State may be liable for the deportation of a foreigner who shows substantial grounds for fear of being subjected to a risk of being subjected to treatment contrary to the right to life or the prohibition of torture and ill-treatment in the country of destination.

Again, according to ECtHR jurisprudence, although the deportation of foreigners is subject to the discretionary power of states, this power cannot be exercised in a way that violates the human rights of the foreigner.<sup>23</sup> In this context, the right to life, especially the prohibition of torture and ill-treatment, may be violated for a foreigner who is deported.

In the light of these explanations, while it is accepted that states may take certain measures against foreigners on security grounds or in the exercise of their sovereignty for the maintenance of public order, the act of expulsion by a state party may give rise to a problem under Article 3 and therefore the ECHR imposes an obligation on that state **where there are good grounds for believing that the person in question faces a serious risk of being subjected to the treatment referred to in Article 3 if expelled.** In such a case, Article 3 implies an obligation not to expel that person to that country.<sup>24</sup>

In summary, it should be noted that migration is essentially an area where states exercise their sovereign powers, but this is without prejudice to human rights protection. In other words, the authority of states in this area is not unlimited. As stated by the United Nations Human Rights Committee, this authority is currently limited by the provisions of human rights law on the "prohibition of torture, inhuman or degrading treatment or punishment."<sup>25</sup>

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<sup>23</sup> ECtHR, *Bolat v. Russia*, Judgment of 14139/03, 05 October 2006, , para. 81; ECtHR, *Nolan and K. v. Russia*, Judgment of 2512/04, 12 February 2009, para. 112; ECtHR, *Muhammad and Muhammad v. Romania*, Judgment of 80982/12, 15 October 2020.

<sup>24</sup> ECtHR, *Saadi v. Italy*, Judgment of 37201/06, 28 February 2008, para. 124-125; ECtHR, *F.G. v. Sweden*, Judgment of 43611/11, 23 March 2016, para. 111 and ECtHR, *J.K. and Others v. Sweden*, Judgment of 59166/12, 23 August 2016, para. 79.

<sup>25</sup> Salih Efe, Orçun Ulusoy, "Refugee Rights in 117 Questions", Human Rights Agenda Association, 2013.



# III

DEPORTATION

## III. DEPORTATION

### A. Deportation of Foreigners and Regulations on Deportation

The concept of “deportation” includes any measure, other than extradition, that requires the removal of a foreigner who is lawfully residing in the territory of the country. Both national and international legislation have regulated deportation procedures and set legal standards for the deportation of foreigners.

Although there are provisions on deportation in various legal regulations in our national legislation, the most comprehensive provisions are found in the LFIP. Article 54 of the LFIP specifies the persons for whom a deportation decision will be taken:

*“(1) A removal decision shall be issued in respect of those foreigners listed below who/whose:*

- a) are deemed to be removed pursuant to Article 559 of the Turkish Penal Code No. 5237;*
- b) are leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation;*
- c) submit untrue information and false documents during the entry, visa and residence permit actions;*
- ç) made their living from illegitimate means during their stay in Türkiye;*
- d) pose a public order or public security or public health threat;*
- e) has overstayed their visa or the visa exemption period for more than ten days or, whose visas are cancelled;*
- f) residence permits are cancelled;*
- g) overstayed the expiry date of the duration of their residence permit for more ten days without an acceptable reason;*
- ğ) are determined to be working without a work permit;*
- h) breach the terms and conditions for legal entry into or exit from Türkiye or those attempting to violate these terms and conditions;*
- ı) are determined to have entered into Türkiye despite an entry ban to Türkiye;*
- i) international protection claim has been refused; are excluded from international protection; application is considered inadmissible; has withdrawn the application or the application is considered withdrawn; international protection status has ended or has been cancelled, provided that pursuant to the other provisions set out in this Law they no longer have the right of stay in Türkiye after the final decision.*
- j) fail to leave Türkiye within ten days in cases where their residence permit renewal application has been refused.*

k) are evaluated as being associated with terrorist organizations which have been defined by international institutions and organizations.

(2) A removal decision may be issued at every stage of international protection proceedings in respect of international protection applicants or international protection beneficiaries who are evaluated as being within the scope of (b), (d) and (k) subparagraphs of the first paragraph of this Article.”

As seen in the relevant regulation, foreigners who are executives, members, supporters of terrorist organizations or executives, members or supporters of interest-based criminal organizations; who pose a threat to public order or public security or public health; or who are considered to be associated with terrorist organizations defined by international institutions and organizations may be deported at any stage of international protection proceedings if they are international protection applicants or international protection status holders.

Under Articles 52 and 53 of the LFIP, foreigners can be deported to their country of origin or transit destination or to a third country upon the order of the Presidency of Migration Management<sup>26</sup> or with an ex officio deportation decision taken by governorship.

Pursuant to the LFIP, the deportation decision is notified with its grounds. The notification can be made to the foreigner, his/her legal representative or his/her lawyer. Article 53 of the LFIP also regulates the procedures to be carried out in case the foreigner against whom a deportation decision is taken is not represented by a lawyer. Accordingly, the foreigner or his/her legal representative is informed about the outcome of the decision, appeal procedures and deadlines.

Under Article 53 of the LFIP, the foreigner or his/her legal representative or lawyer may apply to the administrative court against the deportation decision. The 15-day application period was reduced to 7 days by Law No. 7196 dated 06/12/2019. When the justification of the amendment to the relevant provision of the LFIP is examined, it is stated that waiting for the completion of the 15-day period for filing a lawsuit requires foreigners to stay in removal centers for at least 15 days, this restricts the freedom of foreigners and increases accommodation costs, and that the 15-day period for filing a lawsuit is regulated as 7 days in order to prevent this situation with the new regulation.<sup>27</sup> Although the regulation aims to prevent the restriction of the freedom of foreigners, the shortening of the period for filing a lawsuit restricts access to the court. Shortening the time to file a lawsuit against an administrative act with severe legal consequences such as deportation is likely to cause disadvantageous situations for foreigners.

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<sup>26</sup> With the Presidential Decree No. 85 on the Amendment of Certain Presidential Decrees published in the Official Gazette dated 29/10/2021 and numbered 31643, the Directorate General of Migration Management was elevated to the status of 'Presidency' and in this context, the name of the Institution, which was "Republic of Türkiye Ministry of Interior Directorate General of Migration Management", was changed to "Republic of Türkiye Ministry of Interior Presidency of Migration Management." Pursuant to Article 31 of Presidential Decree No. 85, since the references made to the Directorate General of Migration Management in the legislation shall be deemed to be made to the Presidency of Migration Management, the authority to give instructions in terms of the decision to deport foreigners belongs to the Presidency of Migration Management.

<sup>27</sup> GNAT, Legislation Information System, <https://mevzuat.tbmm.gov.tr/mevzuat/faces/kanunmaddeleri?pkanunlarno=260281&pkanunnumarasi=7196>, (D.A: 07.03.2022).

According to the said regulation, the person who makes an application within 7 days from the notification shall also notify the authority that made the deportation decision. The administrative court has 15 days to finalize the application.

On the appeal against the deportation, decision of the administrative court decision is final. It should be noted that the foreigner cannot be deported within the period of filing a lawsuit or in case of a judicial remedy, until the judgment is finalized.

In accordance with the LFIP, foreigners who are among the persons for whom a deportation order can be taken cannot be deported in some exceptional cases. Accordingly, if there is a serious indication that the foreigner will be subjected to the death penalty, torture, inhuman or degrading punishment or treatment in the country of deportation, the foreigner cannot be deported. This is a reflection of the principle of non-refoulement, which will be discussed in detail in the fourth chapter of the Report.

Those who pose a threat to public order, public security or public health may be subject to administrative detention, which, according to Article 57 of the LFIP, may not exceed 6 months. However, this period may be extended for a maximum of 6 months if the deportation proceedings cannot be completed due to the foreigner's non-cooperation or failure to provide correct information or documents regarding his/her country of origin. Foreigners subject to administrative detention are taken to removal centers. There are currently 25 removal centers in Türkiye, 2 of which are temporary, with a total capacity of 15.908.<sup>28</sup>

CC considers that in cases where it is decided to send deported foreigners to a country where there is a risk that their life may be endangered or that they will be subjected to ill-treatment, the fact that the deportation decision has been implemented or that there is no obstacle to its implementation is a condition for the examination of the violation allegations in this direction.<sup>29</sup>

## **B. Procedural Safeguards for the Deportation of Foreigners and Appeals against Deportation Procedures**

There is a need to ensure certain procedural safeguards in the deportation of foreigners. Accordingly, under Article 32 of the 1951 Convention Relating to the Status of Refugees (1951 Geneva Convention), States Parties may not expel a refugee lawfully present in their territory except for reasons of national security or public order. In addition, the decision to expel such a refugee must ensure compliance with the relevant legal process. Under the same article, the refugee shall be allowed to present evidence to explain his or her situation, to appeal decisions, and to be represented for this purpose before a competent authority or a person or persons specially appointed by the competent authority, except where compelling reasons of national security require otherwise. Another procedural safeguard in the relevant provision is that States Parties must allow a refugee a reasonable period of time to be legally admitted to another country. It is envisaged that States Parties shall reserve the right to take any measures related to internal affairs deemed necessary within this reasonable period.

<sup>28</sup> The Presidency of Migration Management, Centres, <https://www.goc.gov.tr/geri-gonderme-merkezleri33> (D.A: 28.10.2021).

<sup>29</sup> CC, A.S. Decision, 2018/2021, 26 May 2021, para. 19.

Article 13 of the International Covenant on Civil and Political Rights, entitled “Procedural safeguards against the expulsion of foreigners”, states that a foreigner lawfully present in the territory of a State may be expelled only if certain conditions are met.

Accordingly, firstly, there must be a deportation order issued in accordance with the law. The other requirements are that the foreigner must be given the opportunity to appeal against the expulsion order and to have this appeal reviewed by a competent authority or a person or persons appointed by the competent authority before whom he or she may be represented, except in circumstances compelling national security.

Article 1 of Additional Protocol No. 7 to the ECHR<sup>30</sup> also sets out procedural safeguards for the expulsion of foreigners. In this context, although states have the authority to control the entry, residence and expulsion of foreigners, states that are party to the aforementioned Protocol are obliged to provide certain minimum procedural guarantees to foreigners in terms of expulsion. The relevant provision has the function of complementing the protection provided by Article 3 of the ECHR.

The relevant provision also states that a foreigner lawfully residing in the territory of a State may not be expelled therefrom unless it is necessary for the enforcement of a decision taken in accordance with the law. Furthermore, such a person must be given the opportunity to present the grounds for his or her expulsion, to have his or her case reviewed, and to be represented for these purposes before a competent authority or a person or persons designated by that authority. However, the aforementioned provision states that if the deportation of a foreigner is necessary in the interests of public order or if the deportation decision is based on national security grounds, the foreigner may be deported before exercising the aforementioned rights.

In the case-law of the ECtHR, a number of criteria regarding the legal safeguards for the expulsion of foreigners are set out. In this context, one of these criteria is the limits of the competence of the national authority as a judicial authority to which the foreigner may appeal against the deportation decision, in particular the administrative courts in Türkiye, which are competent for the annulment cases filed against the deportation decision.

In this context, it should be assessed whether the national authority has the power to control the need to maintain the confidentiality of the information in question, for example if there is confidential information which forms the basis for the expulsion decision. If the national authority has concluded that such confidential information should not be shared with the applicant, then it must be questioned whether the



<sup>30</sup> Türkiye signed Additional Protocol No. 7 to the ECHR on 14 March 1985 and the Protocol entered into force for Türkiye on 1 August 2016.

national authority has identified conflicting interests in the case it is examining.<sup>31</sup> According to the ECtHR, merely stating the provisions of the law in relation to the acts justifying the foreigner's deportation does not provide a minimum level of information as to the alleged offenses.<sup>32</sup>

It will not be possible to protect constitutional rights and freedoms in a concrete and effective manner if the judicial authorities only examine the formal aspects. Judicial authorities should examine the reasons for the interventions made by public authorities to fundamental rights and freedoms and should set out in their decisions the reasons for the acceptance or rejection of the statements put forward on the subject.<sup>33</sup> In this respect, it is important that the accuracy of the allegations put forward is meticulously examined and the conclusions reached are reflected in the decisions during the examination of the objection to deportation decisions in administrative courts.

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<sup>31</sup> ECtHR, *Muhammad and Muhammad v. Romania*, Judgment of 80982/12, 15 October 2020, para. 142-146.

<sup>32</sup> ECtHR, *Muhammad and Muhammad v. Romania*, , para. 168.

<sup>33</sup> CC, A.G. Decision, 2018/6143, 16 December 2020, para. 54.









# VI

**THE PRINCIPLE OF NON-REFOULEMENT IN  
THE CONTEXT OF DEPORTATION  
PROCEEDINGS**

## IV. THE PRINCIPLE OF NON-REFOULEMENT IN THE CONTEXT OF DEPORTATION PROCEEDINGS

### A. The Principle of Non-Refoulement as One of the Fundamental Principals of Refugee Law

A number of rules regulating the rights and freedoms of foreigners in international law have been codified, especially in the post-World War II period.<sup>34</sup> Especially after this period, a number of international legal regulations have been introduced to prevent violations of the rights of foreigners. The 1951 Geneva Convention enabled an important step forward in terms of the protection of refugees. The 1951 Geneva Convention is of particular importance as it includes the principle of non-refoulement. Non-refoulement in the Convention covers all asylum seekers without geographical reservation.<sup>35</sup>

Article 33 of the 1951 Geneva Convention regulates the principle of non-refoulement as follows:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

In addition, the relevant Convention provision provides for exceptions to the principle of non-refoulement in cases where there are serious reasons to consider the refugee a danger to the security of the country to which the principle of non-refoulement applies, and where the refugee continues to pose a danger to the population of the country because he or she has been convicted of a serious criminal offense with a final judgment. However, in line with the case-law of the ECtHR, in the investigation of these exceptions, the situation and circumstances of the foreigner must be assessed individually, whether there is a mass influx or an individual migration.

Article 33 of the 1951 Geneva Convention entrusts the United Nations High Commissioner for Refugees (UNHCR) with the task of monitoring the implementation of this obligation. In its document on international protection of September 13, 2001 (A/AC.96/951, art.16), UNHCR stated the principle of non-refoulement as follows:

*“The obligation of States not to expel, return of refouled refugees to territories where their life of freedom would be threatened is a cardinal protection principle enshrined in the [Geneva] Convention, to which no reservations are permitted. In many ways, the principle is the logical complement to the right to seek asylum recognised in the Universal Declaration of Human Rights. It has come to be considered a rule of customary international law binding on all States. In addition, international human rights law has established non-refoulement as a fundamental component of the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. The duty not to refoule is also recognised as applying to refugees irrespective of their formal recognition, thus obviously including*

<sup>34</sup> Levent Korkut, “The Effect of the Decisions of the European Court of Human Rights on the Sovereign Power of States to Deport Asylum Seekers: The Case of Türkiye”, Ankara Bar Association Review, is. 4, 2008, p. 23.

<sup>35</sup> Korkut, “The Effect of the Decisions of the European Court of Human Rights on the Sovereign Power of States to Deport Asylum Seekers: The Case of Türkiye”, p. 25.

*asylum-seekers whose status has not yet been determined. It encompasses any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect refoulement, whether of an individual seeking asylum or in situations of mass influx.”<sup>36</sup>*

In Türkiye, there are refugees from Europe who are covered by the 1951 Geneva Convention and benefit from full protection, as well as refugees who are not covered by the Convention but are in Türkiye due to non-refoulement.<sup>37</sup> Asylum-seekers in Türkiye whose legal status is not refugee are under subsidiary protection - temporary protection.

The Republic of Türkiye accepted the 1951 Geneva Convention to recognize refugee status only for those coming from Europe and signed the 1967 Additional Protocol on the Status of Refugees (1967 Additional Protocol) with this reservation. Therefore, contrary to what is frequently stated in the media, the only people in Türkiye who have been granted “refugee” status in the legal sense are those who have come to Türkiye from Europe due to the reservations in the Convention. Even if the grounds in the 1951 Geneva Convention are present, persons coming to Türkiye from outside Europe are not included in this scope. Therefore, the number of people who are legally recognized as refugees in Türkiye is quite limited. Nevertheless, as stated in the introduction of the Report, the term refugee is used in this Report to refer to all foreigners in Türkiye under non-refoulement, regardless of whether or not they have acquired the relevant legal status.

Although the ECHR does not directly regulate refugees and asylum-seekers, in the context of the protection of human rights, the relevant articles of the Convention apply to the protection of the rights of refugees and asylum-seekers.<sup>38</sup> States Parties have undertaken to ensure that everyone within their jurisdiction enjoys the rights and freedoms recognized in the Convention. The ECtHR functions as an effective judicial authority for the protection of the rights of refugees and asylum seekers, in particular through its judgments under Articles 2, 3, 5, 8 and 13 of the ECHR and Article 4 of Protocol No. 4.

According to the case-law of the ECtHR, if there is a serious risk that the person will be subjected to torture, inhuman and degrading treatment or punishment in the country to which he/she will be deported, the deportation of the person concerned will violate the prohibition of torture and ill-treatment under Article 3.<sup>39</sup> Article 3 of the ECHR clearly states what is protected under the regulation on the prohibition of torture. When Article 3 of the ECHR is examined, it will be seen that the provision prohibits not only torture but also inhuman and degrading treatment and punishment. This provision also covers the principle of non-refoulement, and since the prohibition of torture and ill-treatment set out in the Convention provision is absolute, it is seen that the exceptional provisions in the 1951 Geneva Convention cannot find an area of application for States Parties to the ECHR.<sup>40</sup>

National legislation contains a number of provisions related to non-refoulement.

<sup>36</sup> ECtHR, M.S.S. v. Greece and Belgium, Judgment of 30696/09, 21/01/2011.

<sup>37</sup> Korkut, “The Effect of the Decisions of the European Court of Human Rights on the Sovereign Power of States to Deport Asylum Seekers: The Case of Türkiye”, p. 25.

<sup>38</sup> Neslihan Özkerim Güner, “The Role of the European Court of Human Rights in Protecting the Rights of Refugees”, The Journal Of Migration Studies ,Vol. 2, is. 2, July-December 2016, p. 214.

<sup>39</sup> Güner, “The Role of the European Court of Human Rights in Protecting the Rights of Refugees”, p. 220.

<sup>40</sup> Nuray Ekşi, Exclusion of Offenders from the Asylum System in the Light of Court Decisions, Istanbul, Beta Publishing, 2017.

In this context, Article 4 of the LFIP titled “Non-refoulement” states that no one within the scope of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. Article 4 of the Implementing Regulation on the Law on Foreigners and International Protection which entered into force upon its publication in the Official Gazette dated 17/03/2016 and numbered 29656, underlines that the principle of non-refoulement shall apply to all foreigners<sup>41</sup> falling within the scope of the LFIP.

Non-refoulement also applies to persons under temporary protection<sup>42</sup> in Türkiye. Article 6 of the Temporary Protection Regulation, which entered into force upon its publication in the Official Gazette dated 22/10/2014 and numbered 29153, states that no one within the scope of this Regulation shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

Article 55 of the LFIP states that even if they are covered by Article 54; those who have serious indications that they will be subjected to the death penalty, torture, inhuman or degrading punishment or treatment in the country of deportation, those with serious health problems, those whose travel is deemed risky due to their age and pregnancy status, those who do not have the opportunity to receive treatment in the country of deportation while their treatment for life-threatening diseases is ongoing, victims of trafficking in human beings who are benefiting from the victim support process, victims of psychological, physical or sexual violence until their treatment is completed, they cannot be deported. In particular, the principle of non-refoulement is related to the non-exportation of foreigners who have serious indications that they will be subjected to the death penalty, torture, inhuman or degrading punishment or treatment in the country of deportation.

In addition, in Article 63 of the LFIP titled “Subsidiary Protection”; it is stated that *a foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would be sentenced to death or face the execution of the death penalty; face torture or inhuman or degrading treatment or punishment; face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [former] habitual residence.*<sup>43</sup>

In this context, since the principle of non-refoulement is mostly related to the prohibition of torture and ill-treatment, it will be useful to examine the content and scope of the prohibition of torture and ill-treatment in order to understand the issue.

<sup>41</sup> Article 2 of the LFIP states that this Law covers the affairs and procedures related to foreigners; international protection to be provided upon individual protection requests of foreigners at borders, border gates or within Türkiye and temporary protection to be provided urgently to foreigners who cannot return to the country they were forced to leave and who arrive in Türkiye en masse.

<sup>42</sup> Article 3 of the Temporary Protection Regulation, which entered into force upon its publication in the Official Gazette dated 22/10/2014 and numbered 29153, defines temporary protection: “Temporary protection: Protection status granted to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment.”

<sup>43</sup> The same regulation is also included in Article 63 of the Implementing Regulation on the Law on Foreigners and International Protection, which entered into force upon publication in the Official Gazette dated 17/03/2016 and numbered 29656.

## B. Scope and Application of the Prohibition of Torture and Ill-Treatment

Although a complete and definitive solution to the issue of torture and ill-treatment has not been found as of today, there has been an undeniable level of progress and development against torture. The prohibition of torture has been included in many of the documents adopted at the national and international level from past to present and special importance has been attached to this issue. The 1948 Universal Declaration of Human Rights (UDHR), the 1950 ECHR,<sup>44</sup> the 1966 International Covenant on Civil and Political Rights,<sup>45</sup> the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture),<sup>46</sup> and the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>47</sup> are among the main norms in this field. The prohibition of torture is one of the rules of international law that are considered **jus cogens**, in other words, as a peremptory rule that renders provisions contrary to them null and void.<sup>48</sup>

One of the most important features of the UN Convention against Torture is its definition of torture. Article 1 of the Convention defines the term torture as follows:

*“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”<sup>49</sup>*

In the UN Convention against Torture, torture is based on three main elements: the infliction of severe mental pain or suffering, the intentional and deliberate infliction of pain, and the pursuit of a specific purpose, such as obtaining information, punishment or intimidation.<sup>50</sup> The prohibition of torture and ill-treatment is absolute in all situations and circumstances, including war. Accordingly, the prohibition of torture and ill-treatment cannot be violated even if the act committed or suspected by the victim is a terrorist offense. It protects everyone within the jurisdiction of the State, regardless of nationality. The first paragraph of Article 2 of the same Convention stipulates that States Parties shall take effective legislative, administrative, judicial or other measures to prevent torture in countries under their jurisdiction.

The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which Türkiye signed on 14 September 2005 and completed the ratification process with the decision of the Council of Ministers dated 15/06/2011 and numbered 2011/1962, aims to “establish a system whereby independent international and national bodies

<sup>44</sup> Article 2: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

<sup>45</sup> Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

<sup>46</sup> Briefly referred to as the “Convention Against Torture (CAT)” in the literature.

<sup>47</sup> The Convention refers to Article 3 of the ECHR and provides for the establishment of a “European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment” (CPT).

<sup>48</sup> Ömer Anayurt, “The Concept of Torture in the Jurisprudence of the European Court of Human Rights”, Journal of Gazi University Faculty of Law, 12/1, 2008, p. 421.

<sup>49</sup> Cüneyd Er, “United Nations Convention Against Torture”, Union of Turkish Bar Associations Review, is. 60, 2005, p. 170.

<sup>50</sup> Aisling Reidy, Guidance on the Application of Article 3 of the European Convention on Human Rights, Human Rights Handbooks, No. 6.

shall make regular visits to places where persons are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

The HREIT, as the National Preventive Mechanism, carries out regular visits to places where persons deprived of their liberty are located in order to prevent torture and ill-treatment.<sup>51</sup>

In order to prevent torture and ill-treatment, it is not enough to have legal regulations in place; since the risk of violation is always present, it is necessary to be constantly on the move and to fulfill a national monitoring function.<sup>52</sup> Institutions acting as National Preventive Mechanisms (the HREIT in Türkiye) work to proactively prevent torture and ill-treatment in detention center.<sup>53</sup>

In addition to these duties, the HREIT is also responsible for fighting against torture and ill-treatment and conducting studies in this regard, publishing special reports on its field of duty when deemed necessary and informing the public. As part of these duties, the HREIT makes visits to centers where persons deprived of their liberty are accommodated, and in this context to removal centers, which are of particular importance in the case of foreigners, and prepares reports on whether the conditions of detention comply with the standards in order to prevent ill-treatment.<sup>54</sup>

In addition to international law, the prohibition of ill-treatment is also included in domestic legal systems and in this context in Turkish Law. The third paragraph of Article 17 of the Constitution, which also regulates the prohibition of ill-treatment, contains similar provisions with the ECHR. As a matter of fact, the jurisprudence of the CC on the scope of the prohibition is largely in line with the jurisprudence of the ECtHR.<sup>55</sup>

Article 15 of the Constitution states that even in times of war, mobilization, martial law or states of emergency, the integrity of the material and moral existence cannot be touched. In addition, it is not enough for the state not to ill-treat individuals; it also has an obligation to protect individuals against the acts of public officials and third parties that may constitute ill-treatment. In this sense, it is seen that the state has a positive obligation as well as a negative obligation.<sup>56</sup>

Article 94 of the Turkish Penal Code No. 5237 (TPC), which entered into force upon its publication in the Official Gazette dated 12/10/2004 and numbered 25611, regulates the crime of torture. The scope of the crime of torture includes acts that are incompatible with human dignity and cause physical or mental suffering, affecting the ability to perceive or will, and humiliation by a public official against a person through acts that are systematic and spread over a certain period of time. The main legal benefit protected by the prohibition of torture is human dignity. Therefore, while evaluating whether the crime has occurred or not, it should be considered as a basic principle whether the acts committed by the perpetrator are compatible with human dignity or not. In addition, the fourth paragraph of Article 94 of the TPC stipulates that if persons other than public officials participate in the commission of the crime of torture as an aider or abettor, they will be punished like the perpetrator.

<sup>51</sup> For details here. [www.tihk.gov.tr](http://www.tihk.gov.tr)

<sup>52</sup> CPT 2003-2004, 14th General Annual Report, p. 15.

<sup>53</sup> Article 1 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye titled “Objective and Scope”.

<sup>54</sup> For details here. [www.tihk.gov.tr](http://www.tihk.gov.tr)

<sup>55</sup> Abdulkadir Yıldız, Bibliography of Turkish Court Judgments on the Obligation to Investigate Allegations of Abuse Effectively, Council of Europe, 2019.

<sup>56</sup> Anayurt, “The Concept of Torture in the Jurisprudence of the European Court of Human Rights”, p. 454.



The case-law of the ECtHR provides guidance on how to distinguish between torture and other forms of ill-treatment. Accordingly, the distinction in question is evaluated by indicators such as the intensity of the treatment inflicted on the victim, the physical and mental effects of the treatment, the gender of the victim, the manner and method of the treatment, the duration of the torture, the state of health and age of the victim. However, the above-mentioned indicators should not be accepted as the sole determinant in determining which act constitutes torture. Objectively painful violence can be considered as torture regardless of the gender or health status of the victim. As a matter of fact, in the case of *Selmouni v. France*, the ECtHR evaluated that the painful act committed against the victim in the case in question would be considered as torture in any case.<sup>57</sup>

Beyond all these, in terms of removal centers, the physical conditions in the center constituting degrading treatment for the foreigner deprived of his/her liberty, the painful effects of the conditions in the center on the foreigner, the prolongation of the deportation process of the foreigner, the prolongation of the detention periods despite the lack of sufficient findings and evidence against the foreigner are other issues that can be considered as ill-treatment. The ECtHR draws attention to the 2001 Periodic Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Turkish Government, which emphasized that forced deportations that expose refugees to dangers and put their lives at risk may amount to inhuman and degrading treatment.<sup>58</sup>

Article 3 of the ECHR, which regulates the prohibition of torture and ill-treatment, does not contain a definition of torture and ill-treatment and imposes on Contracting States the obligation not to ill-treat persons within their jurisdiction, as well as the obligation to protect persons from ill-treatment. Unlike many provisions in the Convention, this provision contains no exceptions, except for the use of necessary and proportionate force, which has been developed in case law. According to the case-law of the ECtHR, even in extraordinary circumstances such as the fight against terrorism, organized crime or child abduction, no exception can be made to the ban on set out in Article 3.<sup>59</sup> In *Gaefgen v. Germany*, the ECtHR stated that no exception can be made to the prohibition of torture and ill-treatment as follows:

*"In this connection, the Court accepts the motivation for the police officers' conduct and that they acted in an attempt to save a child's life. However, it is necessary to underline that, having regard to the provision of Article 3 and to its long-established case-law (see paragraph 87 above), the prohibition on ill-treatment of a person applies irrespective of the conduct of the victim or the motivation of the authorities. Torture, inhuman or degrading treatment cannot be inflicted even in circumstances where the life of an individual is at risk. No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances, even the most difficult. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue."<sup>60</sup>*

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<sup>57</sup> ECtHR, *Selmouni v. France*, Judgment of 25803/94, 28 July 1998.

<sup>58</sup> ECtHR, *Moghaddas v. Türkiye*, Judgment of 46134/08, 15 February 2011.

<sup>59</sup> Hasan Mutaf, "Scope of Prohibition of Ill Treatment and Principle of Subsidiarity", *Constitutional Jurisdiction*, Vol. 37, is.1, 2020, p. 237–279.

<sup>60</sup> ECtHR, *Gaefgen v. Germany*, Judgment of 22978/05, 1 June 2010, para. 131.

## C. Obligations of the State in the Deportation of the Foreigner

At the intersection of the principle of non-refoulement and the prohibition of torture, there are “potential victims”. The ECtHR’s decision in *Paposhvili v. Belgium* is a precedent in this sense. In the concluding part of this judgment, the ECtHR ruled that Article 3 would be violated if the refoulement procedure is implemented in cases where the applicant is likely to be ill-treated in the country of origin.<sup>61</sup>

The ECtHR’s judgment in *Amerkhanov v. Türkiye* is also noteworthy. The Court examined whether the Turkish authorities had “adequately assessed” the foreigner’s claim that he faced a real risk of ill-treatment if deported to Kazakhstan before his deportation from Türkiye to Kazakhstan on March 19, 2012. The ECtHR also noted the high number of allegations of ill-treatment by law enforcement officials in Kazakhstan, as evidenced by publicly available information and materials accessible to the administrative authorities at the relevant time. It found that cases of ill-treatment did not occur in “exceptional or rare circumstances” and that law enforcement officials in that country “targeted members of Islamic groups in their counter-terrorism efforts”.<sup>62</sup> The Court’s examination is limited to whether the State authorities fulfilled their procedural obligations under Article 3 of the Convention.<sup>63</sup>

The ECtHR found that the domestic authorities were or should have been aware of facts indicating that the applicant might be exposed to a risk of ill-treatment if returned to Kazakhstan. The ECtHR therefore emphasized that the domestic authorities had an obligation to address the applicant’s allegations in order to dispel any suspicion of possible ill-treatment and to carefully assess the risk of ill-treatment to which the applicant might be exposed if returned to Kazakhstan.

In sum, the ECtHR considers that the applicant’s deportation to Kazakhstan on 19 March 2012 constituted a violation of Article 3 of the Convention on the grounds that the applicant’s allegation that he would face a real risk of ill-treatment contrary to Article 3 if returned to Kazakhstan was not sufficiently examined by the domestic authorities and that there was no legal process to challenge the unlawful deportation.<sup>64</sup>

When a state party to the ECHR executes a decision to expel or extradite foreigners, the responsibility of the country carrying out the expulsion arises if there is a possibility that the life of the persons concerned may be endangered or ill-treated in the country to which they are to be sent. Examples of such risks include being sentenced to the death penalty or life imprisonment without possibility of release,<sup>65</sup> being accused of membership of an organization,<sup>66</sup> belonging to an ethnic minority that is mistreated,<sup>67</sup> being persecuted for their beliefs or race,<sup>68</sup> being subjected to ill-treatment<sup>69</sup> by relatives or the community.<sup>70</sup>

<sup>61</sup> ECtHR, *Paposhvili v. Belgium*, Judgment of 41738/10, 13 December 2016.

<sup>62</sup> ECtHR, *Amerkhanov v. Türkiye*, Judgment of 16026/12, 05 June 2018; ECtHR, *Babajanov v. Türkiye*, Judgment of 49867/08, 10 May 2016, para. 42.

<sup>63</sup> ECtHR, *F.G. v. Sweden*, Judgment of 43611/11, 23 March 2016, para. 117.

<sup>64</sup> ECtHR, *Amerkhanov v. Türkiye*, Judgment of 16026/12, 05 June 2018.

<sup>65</sup> ECtHR, *Trabelsi v. Belgium*, Judgment of 140/10, 4 September 2014, para. 110-139.

<sup>66</sup> ECtHR, *Abdolkhani and Karimnia v. Türkiye*, Judgment of 30471/08, 22 September 2009, para. 7 and 77-92.

<sup>67</sup> ECtHR, *Makhmudzhan Ergashev v. Russia*, Judgment of 49747/11, 16 October 2012, para. 64-77.

<sup>68</sup> ECtHR, *M. E. v. France*, Judgment of 50094/10, 6 June 2013, para. 46-53.

<sup>69</sup> ECtHR, *Sufi and Elmi v. the United Kingdom*, Judgment of 8319/07, 28 June 2011, para. 293-296, 301-304 and 309-312.

<sup>70</sup> Hasan Mutaf, *Scope of Prohibition of Ill Treatment and Principle of Subsidiarity*.

The ECtHR has stated that the obligation not to expel a foreigner to a country where there is a risk of torture and ill-treatment also applies to foreigners who pose a risk to public order or public security, and that this obligation must be fulfilled even in cases where there is a danger of international terrorism. In addition, the Court stated that the magnitude of the danger posed by a foreigner who poses a risk to society does not reduce the risk of torture and ill-treatment if he is deported.<sup>71</sup>

The ECtHR emphasized that a real risk of ill-treatment, based on serious and indisputable grounds, is necessary and sufficient for the deportation to constitute a violation of the ECHR. If the applicant provides material grounds that he or she faces a “real risk” of being subjected to ill-treatment, the State may be held responsible. If there is a defensible claim by the applicant regarding the risk of ill-treatment, it is first examined whether the procedural safeguards are fulfilled. If procedural safeguards are not fulfilled, as a rule, a decision of violation is rendered in accordance with the principle of subsidiarity. If procedural safeguards are met, it is further assessed whether the foreigner would face ill-treatment if returned.<sup>72</sup>

As stated in the decisions of the CC, in line with procedural safeguards, the foreigner, who is the addressee of the deportation decision, should be given an effective “opportunity to challenge” the deportation decision. Within the scope of positive obligations, procedural guarantees should be fulfilled by giving the foreigner the opportunity to have his/her “claims investigated” and the deportation decision “fairly examined”.<sup>73</sup> The fact that the deportation decision is examined only formally and that the deportation decision is not subject to adversarial proceedings is one of the indicators that procedural guarantees are not sufficiently provided to the foreigner.

In addition to the sovereignty of the State, when the relevant provisions of Articles 5, 16 and 17 of the Constitution and the 1951 Geneva Convention, to which Türkiye is a party, are interpreted together, it must be accepted that the protection of foreigners who may be subjected to ill-treatment in the country to which they are sent against risks to their material and moral existence is among the positive obligations of the State.<sup>74</sup> The recognition of the right to appeal against the administrative deportation procedure provides a more comprehensive protection in this sense.

Under Article 54 of the LFIP, foreigners can be deported to their country of origin, transit country or a third country with a deportation order. Since the main assessment point of the report is **the risks of torture and ill-treatment in the country to which the foreigner will be sent under the principle of non-refoulement**, a detailed examination of the country to which the foreigner will be deported is necessary. In this context, some country examples will be discussed in the next part of the Report.

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<sup>71</sup> ECtHR, Saadi v. Italy, Judgment of 37201/06, 28 February 2008.

<sup>72</sup> CC, Azizjon Hikmatov Decision, 2015/18582, 10 May 2017.

<sup>73</sup> CC, Hekmatullah Kamalov and Others Decision, 2017/5038, 15 September 2020, para. 25, 26; CC, A.A. and A.A. Decision, 2015/3941, 01 March 2017, para. 60, 61

<sup>74</sup> CC, Yusuf Ahmed Abdelazim Elsayad Decision, 2016/5604, 24 May 2018.



ortation

PORT

V

**EVALUATION OF THE COUNTRY OF  
DEPORTATION OF THE FOREIGNER**

Мангала  
Лаккадивские о-ва  
(Инд.)

Три

## V. EVALUATION OF THE COUNTRY OF DEPORTATION OF THE FOREIGNER

### A. In General

The situation of the country to which the deportee will be sent is a fact that needs to be examined in order to determine whether the State's obligation not to send the foreigner to a country where he/she will face the risk of torture and ill-treatment is met. If, after examining the information, documents and reports on the situation in these states, it is concluded that the relevant country is not safe, the foreigner should not be sent to that country.

Article 4 of the Implementing Regulation on the Law on Foreigners and International Protection sets out a roadmap for the assessment of the country to which the foreigner will be deported:

- (1) *Non-refoulement shall be implemented for all foreigners within the scope of the Law.*
- (2) *Following matters shall be investigated ex officio by the governorate before deportation or removal of foreigners, who are not entitled to stay in Türkiye;*
  - a) *Whether they will be subjected to torture, inhuman or degrading punishment or treatment where they will be deported or removed,*
  - b) *Whether their life or freedom will be threatened on account of their race, religion, nationality, membership of a particular social group or political opinions.*
- (3) *Foreigners cannot be deported or removed to a country, where it is understood that they may face threats as a result of the conducted research. Proceedings shall be constituted for these persons pursuant to the provisions related to international protection, residence or deportation of the Law and Directorate General shall be immediately informed.*
- (4) *During the investigation, information and documents may be requested from the foreigner and country of origin information shall be benefited."*

Country of origin information (COI) terminologically refers to the process by which state authorities examine the socio-political situation of the country of origin and, if necessary, transit countries in international protection claims. Sources of country of origin information include country of origin legislation and its implementation, reports of international organizations and governmental and non-governmental organizations, media and embassy reports. Country of origin information provides information on the human rights and security situation, political situation and legal framework, cultural practices and social attitudes, humanitarian and economic situation, events and current situation, and geography.<sup>75</sup> The function of country of origin information and the sources from which information is collected are based on Article 93 of the LFIP.<sup>76</sup>

<sup>75</sup> The Presidency of Migration Management, "Country of Origin Information", <https://www.goc.gov.tr/mense-ulke-bilgisi5>, (D.A: 06.04.2022).

<sup>76</sup> "In assessing international protection claims, up-to-date information shall be compiled from United Nations High Commissioner for Refugees and other sources with respect to the countries of origin, residence and transit in order to determine the accuracy of the claims put forward by applicants to ensure an effective and fair decision."



In this Report, “country of origin information” is used as a broader concept that refers to the search for the country to which the foreigner will be returned after expulsion, rather than a concept that should be explored only in international protection claims. Accordingly, the procedure applicable to country of origin information should be taken into account not only for the country of origin, but also for third countries. This is because deported foreigners may be sent not only to their country of origin but also to third countries in some cases. Therefore, non-refoulement will also be violated if the investigation shows that the socio-political situation of the third country would expose the deported foreigner to the risk of torture or ill-treatment, but the foreigner is sent to the third country, or if the third country to which the foreigner is sent sends the foreigner to the country of origin, which is risky.

The countries to which foreigners are deported may not always be safe. In this context, there is a violation of the negative obligations of the state for foreigners in our country if the countries to which they are returned are not safe and they will be subjected to torture and ill-treatment. Since the prohibition of torture and ill-treatment under Article 3 of the ECHR is absolute, the allegations of the foreigner who presents evidence that he/she will be subjected to treatment contrary to Article 3 should be investigated,<sup>77</sup> and if necessary, the foreigner should not be deported.

In a case decided by the ECtHR, the applicant, a Tunisian national with a residence permit in Italy, was convicted of international terrorism by the Italian courts and convicted of the same offense by the Tunisian courts in the same year. In the context of the proceedings brought by the applicant following an order by the Italian Minister of the Interior to return the applicant to Tunisia after his release, the Court examined reports on Tunisia prepared by Human Rights Watch (HRW) and Amnesty International (AI), which described an alarming situation in Tunisia and whose conclusions were confirmed by a report of the United States of America (USA). It noted that the reports in question set out numerous examples of individuals who had been subjected to torture and ill-treatment for the crime of terrorism and held that, as the reports were accepted as reliable and no contrary information or documentation could be produced, the applicant's removal to Tunisia would constitute a violation.<sup>78</sup>

In a case where the applicant stated that he would face ill-treatment if extradited to Kazakhstan, the ECtHR made inquiries into Kazakhstan's country information and examined a number of reports. In this context, the Court examined the Concluding Observations of the United Nations Committee against Torture on Kazakhstan dated 12 December 2008 and 12 December 2014, the report of the United Nations Special Rapporteur on Torture dated 16 December 2009, the thirty-fifth annual report of the United Nations Human Rights Committee, the US Department of State Reports, the reports of the International Organization for Migration (IOM) dated 27 May 2010 and 13 May 2011 and concluded that there had been a violation of Article 3 of the Convention due to the lack of adequate examination of the applicant's allegations by the domestic authorities and the absence of a legal process against illegal deportation.<sup>79</sup>

The descriptions of the countries mentioned here are examples to provide a general framework of how the risk of torture and ill-treatment that the foreigner may face in the event of deportation may occur. Considering that the socio-political situation of countries may change, countries that were not safe at the time of the data presented in this Report may be safe at the time of deportation, and vice versa. Therefore, in order not to violate non-refoulement in deportation proceedings, it is important to examine the current socio-political situation of the country to which the foreigner will be deported.

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<sup>77</sup> CC, Hekmatullah Kamalov and Others Decision, 2017/5038, 15 September 2020.

<sup>78</sup> ECtHR, Saadi v. Italy, Judgment of 37201/06, 28 February 2008.

<sup>79</sup> ECtHR, Amerkhanov v. Türkiye, Judgment of 16026/12, 05 June 2018.



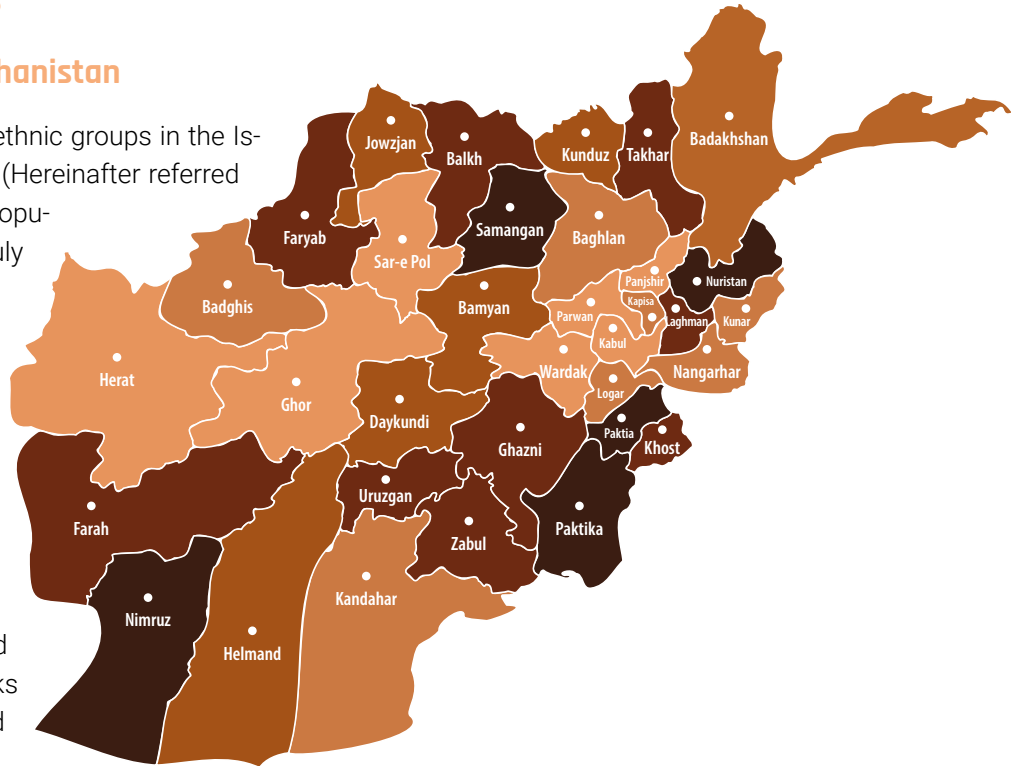
## B. Country Examples

### 1. Islamic Republic of Afghanistan

Current statistical data on ethnic groups in the Islamic Republic of Afghanistan (Hereinafter referred to as Afghanistan.) with a population of 37,466,414 as of July 2021, is not available.

However, there are different ethnic groups such as Pashtuns, Tajiks, Hazaras, Uzbeks, Baluch, Turkmen, Nuristanis, Pamiris and Arabs.<sup>80</sup>

As military operations in Afghanistan intensified, the rapid escalation of insurgent attacks in urban areas has increased dramatically.<sup>81</sup>



More than 10,000 civilians were reported killed or wounded between January and December (2018) as a result of an increasing number of armed clashes.<sup>82</sup> The vast majority of these clashes were blamed on insurgents who carried out indiscriminate attacks targeting civilians. Airstrikes in the region also killed hundreds of civilians during the year.<sup>83</sup> The report highlights the lack of effective investigations into systematic torture, extrajudicial killings and enforced disappearances of police and National Directorate of Security (NDS) personnel in Afghanistan, despite the adoption of OPCAT in April 2018.<sup>84</sup>

According to the Special Report of the UN Assistance Mission in Afghanistan (UNAMA), 2018 was a year in which violations against human rights defenders and members of the press in Afghanistan intensified. Accordingly, 13 human rights defenders and 17 members of the press were killed. In 2019, 4 human rights defenders and 6 members of the press were killed.<sup>85</sup> In 2020, 14 human rights defenders

<sup>80</sup> CIA World Factbook, Afghanistan. <https://www.cia.gov/the-world-factbook/countries/afghanistan/>, (D.A: 05.02.2022).

<sup>81</sup> Human Rights Watch, "World Report 2019-Events of 2018", p. 17, [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf), (D.A: 16.03.2022).

<sup>82</sup> Ibid. p. 17.

<sup>83</sup> Ibid. p. 17.

<sup>84</sup> Ibid. p. 17.

<sup>85</sup> UNAMA, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 8, [https://unama.unmissions.org/sites/default/files/unama\\_special\\_report\\_killing\\_of\\_human\\_rights\\_defenders\\_and\\_journalists\\_in\\_afghanistan\\_2018-2021\\_february\\_2021.pdf](https://unama.unmissions.org/sites/default/files/unama_special_report_killing_of_human_rights_defenders_and_journalists_in_afghanistan_2018-2021_february_2021.pdf), (D.A: 09.02.2022).

and 9 members of the press were deliberately killed. The report states that in almost none of the cases, no individual or group claimed responsibility for the killings.<sup>86</sup>

In 2018, widespread violence caused by insurgent attacks on candidates running in the elections and on facilities used for voter registration, including schools, also affected preparations for the October parliamentary elections.<sup>87</sup> More than 400 civilians were killed or injured in targeted attacks on voters, roads and polling facilities on election days.<sup>88</sup> The number of internally displaced Afghans increased due to the onset of the worst drought in decades and the expulsion of thousands of Afghans from Iran.<sup>89</sup> Increasing numbers of asylum seekers were returned from Europe to Afghanistan in 2017 and 2018, at a time of high civilian deaths.<sup>90</sup>

UNAMA reported that 1,086 abductions occurred in 2020, resulting in 77 deaths and 36 injuries. Compared to 2019, these figures represent double the rate of casualties.<sup>91</sup> Civilians abducted in 2020 reportedly included staff from non-governmental organizations, humanitarian deminers, health workers, and civilians working for the Government of Afghanistan, often stopped at checkpoints while traveling on public roads.<sup>92</sup>

According to UNAMA, 707 people lost their lives and 541 people were injured in attacks against civilians in 2020. The total number of deaths and injuries in 2020 corresponds to a 45% increase compared to the same period in 2019.<sup>93</sup> 94% of these deaths and injuries were caused by anti-government elements.<sup>94</sup> These figures include the deliberate killing of civilians, including media workers, civil society activists and members of the judiciary and civilian members of the government administration, as well as civilian family members of the conflicting parties.<sup>95</sup> It is also reported that members of minority communities were killed by armed groups in Afghanistan in 2020.<sup>96</sup> In the same period, human rights defenders in the country were under threat and killed or wounded by unidentified armed individuals, and two staff members of the Afghanistan Independent Human Rights Commission (AIHRC) were killed in an attack on their vehicle in Kabul.<sup>97</sup>

Violence against women is also reported to continue intensively in Afghanistan, with more than 100 killings reported in 2020. In addition, there is a lack of effective investigation of these murders.<sup>98</sup>

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<sup>86</sup> UNAMA, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, p. 8-10.

<sup>87</sup> Human Rights Watch, "World Report 2019-Events of 2018", p. 17.

<sup>88</sup> Ibid. p. 17.

<sup>89</sup> Ibid. p. 17.

<sup>90</sup> Amnesty International, "Amnesty International Report 2017/18-The State of the World's Human Rights", 2018, p. 20.

<sup>91</sup> UNAMA, Afghanistan - Protection of Civilians in Armed Conflict, Annual Report 2020, February 2021, p. 58, [https://unama.unmissions.org/sites/default/files/afghanistan\\_protection\\_of\\_civilians\\_report\\_2020.pdf](https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_report_2020.pdf), (D.A: 09.02.2022).

<sup>92</sup> Ibid. p. 58.

<sup>93</sup> Ibid. p. 58.

<sup>94</sup> Ibid. p. 16.

<sup>95</sup> Ibid. p. 16.

<sup>96</sup> Amnesty International, "Amnesty International Report 2020/21-The State of the World's Human Rights", 2021, p. 37, <https://www.amnesty.org/en/wp-content/uploads/2021/06/POL-1032022021TURKISH.pdf>, (D.A: 07.03.2022).

<sup>97</sup> Ibid. p. 39.

<sup>98</sup> Ibid. p. 42.

The Doha Agreement was signed between the United States and the Taliban<sup>99</sup> on February 29, 2020 in order to establish peace in the country. After the Doha Agreement, conflicts and violence between the government and the Taliban decreased; however, it was observed that this period of non-conflict could not be sustained for a long time, the conflict environment revived and violent incidents came to the agenda again.<sup>100</sup> As a matter of fact, the Taliban entered the capital Kabul on August 15, 2021, and subsequently took over the administration of Afghanistan.<sup>101</sup> It is stated that after the Taliban took over the administration of Afghanistan, gross human rights violations took place, and human rights violations, especially against women and girls, occurred intensely.<sup>102</sup>

In 2020, it is reported that serious negotiations were held with the aim of ending the conflict in the country, but clashes between Afghan government forces, the Taliban and other armed forces continued during this year, resulting in approximately 6,000 deaths and injuries until September 2020.<sup>103</sup> Based on the same year, 1,274 civilians were killed by improvised explosive devices (IEDs).<sup>104</sup>

UNAMA documented 1,659 deaths and 3,524 injuries between January 1 and June 30, 2021. The total number of civilians killed and wounded increased by 47% compared to the first half of 2020. In addition, UNAMA reveals that very high numbers of girls and women were killed and/or wounded and child casualties occurred during this period.<sup>105</sup>

UNAMA has documented a nearly three-fold increase in civilian casualties caused by the use of non-suicide IEDs by anti-government elements in the first six months of 2021 compared to the same period last year. This is the highest number of civilian casualties caused by non-suicide IEDs in the first six months of a year since UNAMA began systematically documenting civilian casualties in Afghanistan in 2009. Civilian casualties from ground combat have also increased significantly. There was a similar increase in targeted killings by anti-government elements. Airstrikes by pro-government forces are said to have contributed to the increase in civilian casualties.<sup>106</sup>

<sup>99</sup> Founded in Afghanistan in 1994, the Taliban has become a target of the US, especially after the 11 September attacks. Al-Jazeera, The emergence and development of the Taliban, 18.01.2014. <http://www.aljazeera.com.tr/dosya/talibanin-ortaya-cikisi-ve-gelisimi>, (D.A: 05.02.2022).

<sup>100</sup> EASO-European Asylum Support Office, Afghanistan Security situation, Haziran 2021, p. 30, 35, 49, [https://www.ecoi.net/en/file/local/2054554/2021\\_06\\_EASO\\_COI\\_Report\\_Afghanistan\\_Security\\_situation.pdf](https://www.ecoi.net/en/file/local/2054554/2021_06_EASO_COI_Report_Afghanistan_Security_situation.pdf), (D.A: 05.02.2022).

<sup>101</sup> BBC News Turkish, "How did the Taliban gain control of Afghanistan in 10 days?", 17.08.2021, <https://www.bbc.com/turkce/haberler-dunya-58242170>, D.A: 07.04.2022; Anadolu Agency, "Taliban regain control of Afghanistan in 2021", 24.12.2021, <https://www.aa.com.tr/tr/dunya/taliban-2021de-yeni-den-afghanistan-yonetimini-ele-gecirdi/2456398>, (D.A: 07.04.2022).

<sup>102</sup> Heather Barr, "Tougher Steps Needed Against Afghanistan's Taliban", Human Rights Watch, 09.06.2022, <https://www.hrw.org/news/2022/06/09/tougher-steps-needed-against-afghanistans-taliban>, (D.A: 13.06.2022).

<sup>103</sup> Human Rights Watch, "World Report 2021-Events of 2020", 2021, p. 19, [https://www.hrw.org/sites/default/files/media\\_2021/01/2021\\_hrw\\_world\\_report.pdf](https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf), (D.A: 25.02.2022).

<sup>104</sup> Ibid. p. 20.

<sup>105</sup> UNAMA, Afghanistan - Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021, p. 1, [https://www.ecoi.net/en/file/local/2056652/unama\\_poc\\_midyear\\_report\\_2021\\_26\\_july.pdf](https://www.ecoi.net/en/file/local/2056652/unama_poc_midyear_report_2021_26_july.pdf), (D.A: 05.02.2022); ACCORD – Austrian Centre for Country of Origin and Asylum Research and Documentation, Afghanistan, 30.08.2021, <https://www.ecoi.net/en/countries/afghanistan/featured-topics/general-security-situation-in-afghanistan/>, (D.A: 05.02.2022).

<sup>106</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021, p. 1.

In 2021, it is stated that some attacks originating from Daesh-Khorasan (Daesh-K)<sup>107</sup> also occurred. In this context, it is stated that many attacks targeted the Hazara Shiite community. On May 8, 85 civilians, including 42 girls and 28 women, were killed in an explosion at a school in Kabul, and more than 200 people, most of whom were from the Hazara community, were injured.<sup>108</sup> Although the attack in question was not claimed by any individual or group, it is noteworthy that it occurred in a predominantly Hazara neighborhood<sup>109</sup> which has been targeted by the Daesh-K terrorist organization many times. On October 8, another suicide attack, claimed by Daesh-K, killed 72 people and injured more than 140.<sup>110</sup>

There are credible reports of detentions and killings in Kabul as well as other provinces.<sup>111</sup> In Afghanistan, armed groups have forced residents of some provinces, including Daykundi, Uruzgan, Kunduz and Kandahar, from their homes due to perceived support for the previous government. In some districts of these provinces, hundreds of families belonging to the Hazara community have been forced to leave their homes and flee.<sup>112</sup>

It has been revealed that the lives of civilian Afghans are at risk during periods of escalation of war and violence in different parts of Afghanistan. According to AIHRC's findings, the number of deaths and injuries and the number of people displaced as a result of non-compliance with international humanitarian law by parties to the conflict and the harmful effects of violence in various provinces are on an upward trend.<sup>113</sup>

UNAMA stated that prisoners in Afghanistan's prisons are subjected to torture and ill-treatment.<sup>114</sup> The statement by the IOM also included various incidents of torture and ill-treatment in Afghanistan in 2021. These took the form of breaking legs, plucking hair, hitting the face with a hard object, beatings with sticks and rifles.<sup>115</sup>

Under the current circumstances in Afghanistan, reports of torture and ill-treatment in various parts of the country,<sup>116</sup> make it necessary to consider the situation in Afghanistan in terms of the non-refou-

<sup>107</sup> Daesh, which has been declared as a terrorist organisation by the European Union, the UN and many countries and organisations including Türkiye, the USA, Saudi Arabia and Canada, is an organisation that has been active mainly in Iraq and Syria and has carried out actions against security forces and civilians in order to establish a caliphate state in this region. Daesh terrorist organisation, which was established in the early years of the Iraq War in 2003 and declared its allegiance to al-Qaeda in 2004, was named "al-Qaeda in Iraq" after a while. Daesh-Khorasan (Daesh-K) is the branch of Daesh terrorist organisation in the Pakistan-Afghanistan region.

<sup>108</sup> Human Rights Watch, "World Report 2022-Events of 2021", 2022, p. 19, [https://www.hrw.org/sites/default/files/media\\_2022/01/World%20Report%202022%20web%20pdf\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf), (D.A: 25.02.2022).

<sup>109</sup> Ibid. p. 19.

<sup>110</sup> Ibid. p. 19.

<sup>111</sup> Ibid. p. 19.

<sup>112</sup> Ibid. p. 19.

<sup>113</sup> ACCORD – Austrian Centre for Country of Origin and Asylum Research and Documentation, Afghanistan, 30.08.2021, <https://www.ecoi.net/en/countries/afghanistan/featured-topics/general-security-situation-in-afghanistan/>, (D.A: 05.02.2022).

<sup>114</sup> Anadolu Agency, "UN: Prisoners are tortured and ill-treated in Afghanistan", 03.02.2021, <https://www.aa.com.tr/tr/dunya/bm-afganistanda-mahkum-lar-iskence-ve-kotu-muamele-goruyor/2132916>, (D.A: 07.04.2022).

<sup>115</sup> Amnesty International, "Afghanistan: Taliban Responsible for Brutal Massacre of Hazara Men – New Investigation", 19.08.2021, <https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/>, (D.A: 07.04.2022).

<sup>116</sup> Anadolu Agency, "Prisoners tortured in US-controlled Bagram Prison recount their nightmarish days", 21.09.2021, <https://www.aa.com.tr/tr/dunya/abd-dene-timindeki-bagram-cezaevinde-iskence-goren-mahkumlar-kabus-dolu-gunlerini-anlatti/2370310>, (D.A: 06.04.2022); Evrensel Newspaper, "In Afghanistan, the Taliban tortured journalists: I thought they were going to kill me.", 09.09.2021, <https://www.evrensel.net/haber/442289/afganistanda-taliban-gazetecilere-iskence-yapti-beni-oldurecekler-sandim>, (D.A: 06.04.2022); Hurriyet Newspaper, "Afghan interpreter told: Blood-curdling torture by the Taliban!", 29.12.2021, <https://www.hurriyet.com.tr/dunya/afgan-tercuman-anlatti-talibandan-kan-donduran-iskence-41970794>, (D.A: 06.04.2022); Yeni Shafak, "Yeni Shafak entered Ba-

ment in a meticulous manner. Above, a number of sources that can be utilized in determining whether foreigners in our country will face the risk of torture and ill-treatment if deported to Afghanistan have been examined. As a result of all the examinations and researches, it is seen that human rights violations occur in various regions of Afghanistan. Therefore, it is important to take into account the possible human rights violations, especially the risk of torture and ill-treatment, that foreigners who will be deported to Afghanistan may face. Otherwise, if deported foreigners face torture and ill-treatment, the principle of non-refoulement may be violated. At this point, it should be avoided to make evaluations and make decisions by extending the relatively favorable situation only in certain parts of the country to the whole country. It should also be taken into account that the general situation in the country can change in a short period of time due to highly volatile political and social developments.

As a result, the Taliban, which has taken over the governance of the country, needs to be more cautious at this point due to its well-documented practices. The fact that “*some of its members are prone to violence*”, which was confirmed by the Taliban’s own leadership after the takeover, highlights the need for a high standard of scrutiny in deportations to Afghanistan.<sup>117</sup>

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gram Prison: Traces of torture remain”, Yeni Shafak, 04.09.2021, <https://www.yenisafak.com/dunya/yeni-safak-bagram-cezaevine-girdi-iskence-izleri-duruyor-3690736>, (D.A: 06.04.2022).

<sup>117</sup> UNHCR, UNHCR Position on Returns to Afghanistan, Association for Solidarity with Refugees, Ağustos 2021, p. 3, [https://multeci.org.tr/wp-content/uploads/2021/08/UNHCR-Position-on>Returns-to-Afghanistan\\_Aug-2021\\_TR.pdf](https://multeci.org.tr/wp-content/uploads/2021/08/UNHCR-Position-on>Returns-to-Afghanistan_Aug-2021_TR.pdf), (D.A: 13.06.2022).

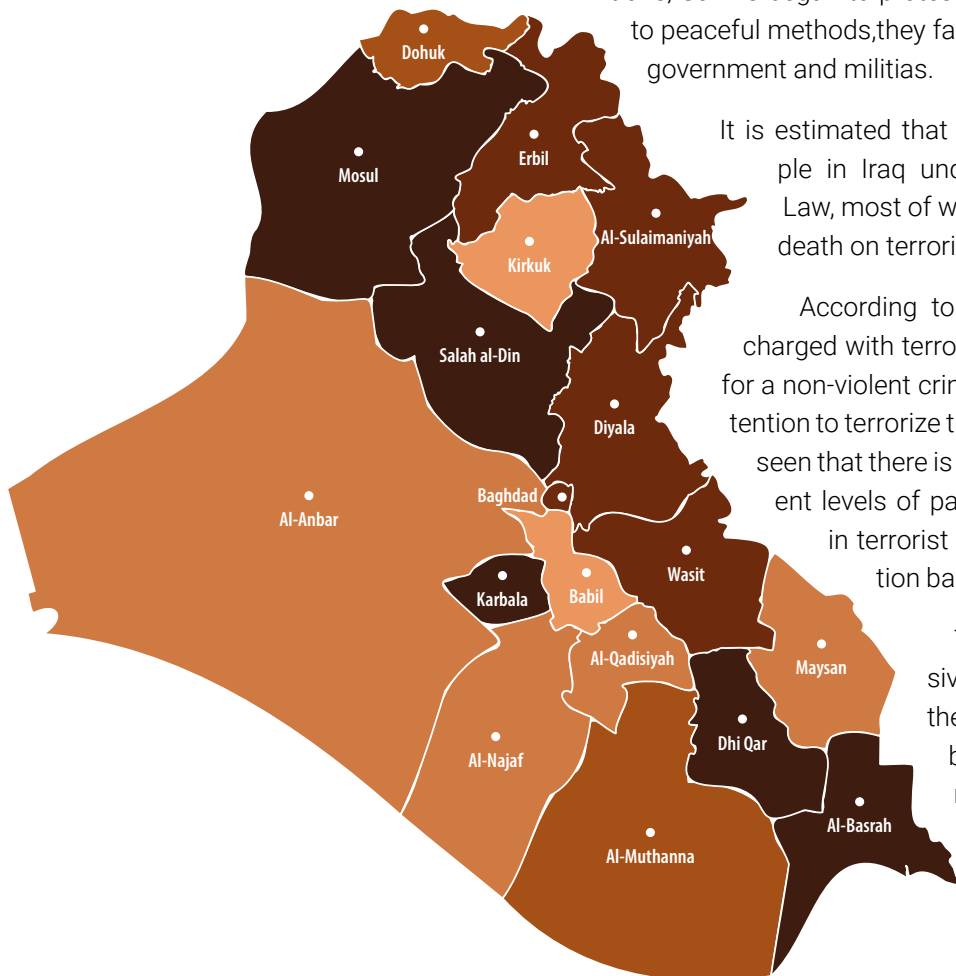
## 2. Republic of Iraq

The population of the Republic of Iraq (hereinafter referred to as Iraq) is 39,650,145 as of July 2021, of which 75-80% are Arabs, 15-20% are Kurds, and 5% are Turkmens, Yazidis, Shahbeks, Bedouins and other minorities.<sup>118</sup> Sunnis, who make up 32-37% of the country's population, are a large minority in the country.<sup>119</sup> The lack of adequate representation of the Sunnis, who began to withdraw from state affairs especially after 2003, has caused discomfort among this segment.<sup>120</sup> This situation has paved the way for the intensification and growth of the activities of radical groups in Iraq.<sup>121</sup> After the 2010 general elections, Sunnis began to protest, and although they resorted to peaceful methods, they faced harsh reactions from the government and militias.

It is estimated that there are around 4,000 people in Iraq under the 2005 Anti-Terrorism Law, most of whom have been sentenced to death on terrorism charges.

According to this law, a person can be charged with terrorism and sentenced to death for a non-violent crime committed without the intention to terrorize the population. Moreover, it is seen that there is no distinction between different levels of participation and responsibility in terrorist acts, nor is there any evaluation based on the severity of the act.

Therefore, the comprehensive definition of terrorism in the Iraqi Anti-Terrorism Law has been criticized by UN human rights experts.<sup>122</sup> Within the scope of the Anti-Terrorism Law, the detention of Sunnis who are thought to be affiliated with Daesh



<sup>118</sup> CIA World Factbook, Iraq, <https://www.cia.gov/the-world-factbook/countries/iraq/>, (D.A: 04.02.2022).

<sup>119</sup> Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Iraq, May 2018, <https://www.refworld.org/docid/4954ce672.html>, (D.A: 03.06.2022).

<sup>120</sup> Renad Mansour, The Sunni Predicament in Iraq, Carnegie Endowment for International Peace, Mart 2016, p. 5-6.

<sup>121</sup> Harvard University, ReliefWeb: Never Forget: Views on Peace and Justice Within Conflict-Affected Communities in Northern Iraq, Aralık 2019 [https://reliefweb.int/sites/reliefweb.int/files/resources/neverforget\\_eng\\_2.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/neverforget_eng_2.pdf), (D.A: 03.06.2022).

<sup>122</sup> UN-OHCHR, Iraq: Wave of mass executions must stop, trials are unfair - UN experts, 20.11.2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E>, (D.A: 12.07.2021).

face the risk of being detained under the Anti-Terrorism Law, and that most of the arrests are made without following due process of law.<sup>123</sup>

Those who fled Daesh-occupied territories or were forced to live in Daesh-occupied territories during the period of the organization's de facto sovereignty have been targeted by the authorities and Hashd al-Shaabi<sup>124</sup> on suspicion of being affiliated to Daesh in different ways. Reports on Iraq have highlighted serious human rights violations, including war crimes, killings, abductions and revenge attacks, mostly targeting Sunni civilians, particularly boys and adult men perceived to be linked to Daesh, during the fight against Daesh by military forces or other associated forces between 2014 and 2018. Thousands of Iraqis suspected of being Daesh fighters or linked to Daesh, including children, have been tried in anti-terrorism courts and hundreds have been sentenced to death. While arrests and detentions were reportedly carried out under the Anti-Terrorism Law, observations of the region show that most arrests were not in accordance with legal regulations and were often arbitrary.<sup>125</sup>

A number of interventions were carried out in Iraq by the Iraqi army, Hashd al-Shaabi militias and the police in order to remove the terrorist organization Daesh from the regions it occupied. A number of reports have been prepared on human rights violations during these interventions. Reports prepared by non-governmental organizations or governments on the fear of violence or torture perpetrated by state, non-state or hybrid actors in Iraq, and to which people are subjected because of their Kurdish, Arab, Turkmen or Sunni status, i.e. their nationality or sectarian differences, can provide information about the socio-political structure of the country.<sup>126</sup>

The Hashd al-Shaabi militia organization has been accused of human rights violations and sect-based violence against Sunni civilians.<sup>127</sup> The violations committed by the Hashd al-Shaabi organization in various regions of Iraq liberated from Daesh have been documented by the UN, international human rights organizations, Sunni tribal leaders in Iraq and the press.<sup>128</sup> Other crimes committed by Shiite militias include house demolitions, kidnappings and killings, and attacks on refugee camps.<sup>129</sup>

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<sup>123</sup> EASO – European Asylum Support Office, Country Guidance: Iraq; Guidance note June, Haziran 2019, p. 53. [https://euaa.europa.eu/sites/default/files/Country\\_Guidance- ce\\_Iraq\\_2019.pdf](https://euaa.europa.eu/sites/default/files/Country_Guidance- ce_Iraq_2019.pdf), (D.A: 04.02.2022).

<sup>124</sup> The name of the Hashd al-Shaabi militia force is of Arabic origin and means Popular Mobilisation Forces. The organisation was established following a fatwa issued by Iraq's Shiite religious leader Ayatollah Sistani following the capture of Mosul by the Daesh terrorist organisation in Iraq in 2014. The organisation, which has received heavy criticism for human rights violations, is particularly accused of killing innocent Sunni civilians. In order to control Hashd al-Shaabi and to put it on a legal basis, a law passed by the Iraqi Parliament in 2016 made these militia groups an autonomous part of the Iraqi security forces. There are some debates on the relationship between the Hashd al-Shaabi organisation and the state. For detailed information, see EASO - European Asylum Support Office, Iraq: Security Situation, Country of Origin Information Report, October, p. 21-25.

<sup>125</sup> European Asylum Support Office, Iraq: Treatment of Iraqis suspected of links to Daesh, October 2020, p. 11. [https://www.ecoi.net/en/file/local/2039438/10\\_2020\\_EASO\\_COL\\_Report\\_Iraq\\_Treatment\\_Iraqis\\_affiliation\\_ISIS.pdf.pdf](https://www.ecoi.net/en/file/local/2039438/10_2020_EASO_COL_Report_Iraq_Treatment_Iraqis_affiliation_ISIS.pdf.pdf), (D.A: 04.02.2022).

<sup>126</sup> Home Office, Country Policy and Information Note, Irak: Sunni Arabs, Version 3.0, January 2021.

<sup>127</sup> Vatan Newspaper, 03 January 2020, What is Hashd al-Shaabi and when was it established? <https://www.gazetevatan.com/gundem/hasdi-sabi-nedir-ne-zaman-kuruldu-1293687>, (D.A: 04.02.2022).

<sup>128</sup> Anadolu Agency, 26 October 2016, Iraq's Hashd al-Shaabi militia has a record of violations, <https://www.aa.com.tr/tr/dunya/iraktaki-hasdi-sabi-miliserlerin-ihlallerle-do-lu-sicili-/672678>, (D.A: 04.02.2022).

<sup>129</sup> Conference on Combating Violence against Women in the Light of a Law that Does Not Protect Women, 20 September 2020, D.A: 04.02.2022. (The link to the website is included in the bibliography).

The fight against Daesh in Iraq continued decisively from mid-2019 until the beginning of 2020.<sup>130</sup> Daesh showed intense activity in Iraq in 2020, especially in Kirkuk, Baghdad, Nineveh and Anbar regions.<sup>131</sup>

In Iraq, more than 600 civilian protesters and activists were reportedly killed in protests that began in October 2019 and lasted until January 2020, not only on terrorism grounds but also on the grounds of corruption, poor public services and unemployment.<sup>132</sup>

Within the scope of the principles set out by the UNHCR, it is stated that persons suspected of supporting Daesh,<sup>133</sup> persons who oppose or are perceived to oppose the government<sup>134</sup> and members of religious and ethnic minority groups<sup>135</sup> may need international refugee protection, taking into account the subjective circumstances of the case.<sup>136</sup>

Minutes of the meeting between representatives of the Association for Human Rights and Solidarity for the Oppressed (Mazlumder) and A.G., born in Mosul/Ninova, Iraq, dated February 08, 2022 states:

- **A.G;** In 2007, following an explosion near the cement factory where he worked in Mosul/Ninova, he was detained by soldiers in the house where he was staying, subjected to severe torture, blindfolded and taken blindfolded to the bottom of the wall where he was tortured to be executed, the execution was stopped when someone said it was a mistake, thus he was saved from being killed at the last moment, he had visible scars on his body due to the torture he had been subjected to, he left his country and came to Türkiye in 2014 with the conviction that his future was completely darkened after Daesh took control of their region, he had just been able to obtain his International Protection Status Applicant Identity Document, a deportation decision was taken against him on the grounds that he violated the conditions for entry into Türkiye, Ankara 1st Administrative Court rejected the annulment application with a majority of votes,<sup>137</sup>

<sup>130</sup> EASO – European Asylum Support Office, Iraq: Security Situation, Country of Origin Information Report, October 2020, p. 13.

<sup>131</sup> Ibid. p. 33.

<sup>132</sup> Ibid. p. 15-16; Anadolu Agency, 25 December 2019, Anti-government demonstrations marked 2019 in Iraq, <https://www.aa.com.tr/tr/dunya/irakta-2019a-hukmet-karsiti-gosteriler-damgasini-vurdu-/1683472>, (D.A: 04.02.2021).

<sup>133</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq, 31 May 2012, HCR/EG/IRQ/12/03, <https://www.refworld.org/docid/4fc77d522.html>, (D.A: 04.02.2022).

<sup>134</sup> UNHCR, UNHCR Position on Returns to Iraq, 14.11.2016, <https://www.refworld.org/docid/58299e694.html>, (D.A: 04.02.2022).

<sup>135</sup> UN General Assembly, Protocol Relating to the Status of Refugees, p. 267. 31 January 1967, U.N.T.S. 606, <https://www.refworld.org/docid/3ae6b3ae4.html>, (D.A: 04.02.2022).

<sup>136</sup> UNHCR – UN High Commissioner for Refugees: International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, <https://www.ecoi.net/en/file/local/2007789/5cc9b20c4.pdf>, (D.A: 04.02.2022).

<sup>137</sup> The summary information regarding the court decision attached to the minutes of the meeting between Mazlumder representatives and A.G., born in Mosul/Nineveh, Iraq, is as follows: In the Ankara 1st Administrative Court's decision date 15.11.2021, plaintiff's case dismissed and it was stated that the plaintiff, who could not base the issue that he would be persecuted if he was sent back to Iraq on material grounds due to which acts or situations in the past, could not find concrete information and documents that he would be subjected to persecution if he was sent back, considering that there are Sunni troops within the Hashd al-Shaabi organisation, which he claimed that he would be persecuted due to being a Sunni Turkmen, and that a significant part of those displaced by the Daesh armed terrorist organisation have returned to their countries, the claimant was not facing a "real risk" of being subjected to ill-treatment and that the claimant was not within the scope of Article 4 and Article 55 of Law No. 6458, considering the explanations regarding the country of origin information included in the decision. The minority vote, on the other hand, referred to the Iraqi country of origin information and Iraqi country reports; the claimant's allegation that his life is in danger if he is sent back to his country was not examined by the defendant administration in line with the country of origin information and no evaluation was made about the claimant, whether there is a serious indication that the claimant will be subjected to persecution if he is sent back to his country in line with the country of origin information, disagreed with the majority opinion, stating that an adequate and effective examination and assessment should be made as to whether the claimant faces a "real risk" of being subjected to ill-treatment, and therefore whether the claimant is within the scope of Articles 4 and 55/1(a) of Law No. 6458.



- A.G.'s uncle **R.İ.**, who came to Türkiye together with A.G., returned to Iraq in 2017, was detained in Iraq, tortured, sentenced to death, his health deteriorated after torture, one of his legs was amputated, it is not known which prison in Iraq he is in, and there are rumors that he is losing the other leg,
- **A.İ.**, A.G.'s neighbor from Mosul/Ninova, came to Türkiye, requested international protection from the Migration Management, returned to Iraq in 2018 while working with A.G., was sentenced to life imprisonment,<sup>138</sup> and according to information from A.G.'s relatives, was subjected to severe torture.<sup>139</sup>

In Iraq, as in other countries, there are regions with varying levels of security within the borders of the country. For instance, it is known that the security level of the Iraqi Kurdish Regional Government (KRG) is not the same as the security level of other parts of Iraq. However, it should be noted that the relative security of the KRG does not mean that the entire country of Iraq is secure. In addition, the possibility that a foreigner who is deported to the KRG may be sent from the KRG to other parts of Iraq and may face torture and ill-treatment at the new destination should not be ignored. Therefore, the fact that there are certain safe zones in a country does not eliminate the risk of torture and ill-treatment if the foreigner is deported to the relevant country. Therefore, it is essential to conduct a detailed investigation when determining that there is no real risk that the foreigner deported from Türkiye to Iraq will be subjected to torture and ill-treatment.

In the context of assessments of the human rights situation, social and political situation, torture and ill-treatment in Iraq, the above-mentioned reports and other sources of information are important examples in terms of showing which criteria should be taken into account when analyzing the current situation in Iraq. The intensity and severity of the incidents that constitute a problem necessitates more in-depth examinations in terms of deportation procedures to be carried out especially for certain segments of this country. When the threats arising from both state and non-state elements are considered together, it is imperative to conduct more detailed and prudent investigations/researches on deportation procedures to Iraq.

As a result of all the research and investigations conducted in this regard, it is assessed that the current situation in Iraq has the potential to pose serious risks in terms of security. It should be kept in mind that torture and ill-treatment is a potential risk in deportation procedures.

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<sup>138</sup> In the translation of the judgement of the First Chamber of the Iraqi Nineveh High Criminal Court, which is attached to the minutes of the meeting between Mazlumder representatives and A.G., born in Mosul/Nineveh, Iraq, it is stated that A.İ. was sentenced to life imprisonment under the Anti-Terrorism Law and the Criminal Code.

<sup>139</sup> Minutes of the meeting between Mazlumder representatives and A.G., born in Mosul/Nineveh, Iraq, dated 08.02.2022.

### 3. Arab Republic of Egypt

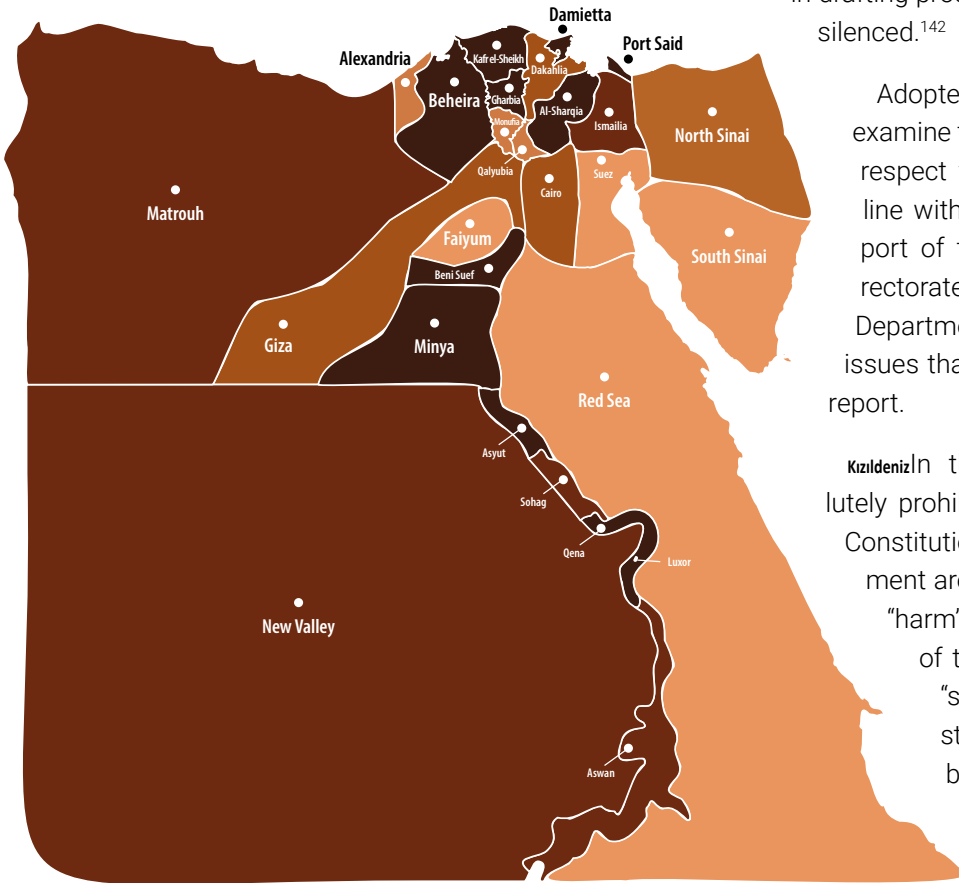
The Arab Republic of Egypt (hereinafter referred to as Egypt), has a population of 106,437,241 as of July 2021, all of whom are Egyptians except for 0.3%.<sup>140</sup> The revolutionary movement that started in Egypt after 2011 with the “hope of democracy and human rights” brought instability and conflict. After the 2013 military intervention in Egypt, Türkiye became one of the countries hosting refugees fleeing Egypt.<sup>141</sup>

In 2014, the new Egyptian Constitution was put to a plebiscite and was adopted with 98.1% yes votes as a result of a 38.6% turnout. The report of the Directorate-General for External Policies of the European Parliament stated that the drafting and adoption process of the new constitution were undemocratic as not all political views were represented in the Constituent Assembly, transparency was not ensured in drafting process, and opposing views were silenced.<sup>142</sup>

Adopted in 2014, it would be useful to examine the new constitutional law with respect to human rights protection in line with the data contained in the report of the European Parliament’s Directorate-General for External Policies, Department of Politics, in terms of the issues that constitute the subject of our report.

**Kızıldeniz** In this context, torture is absolutely prohibited in Article 52 of the new Constitution, but other forms of ill-treatment are not mentioned, and the word “harm” is preferred in the text instead of the more comprehensive word “suffering”. Article 64 of the Constitution regulates freedom of belief, while freedom of religion is not mentioned.

Article 65 guarantees freedom of thought, opinion and expression,



<sup>140</sup> CIA World Factbook, Egypt. <https://www.cia.gov/the-world-factbook/countries/egypt/>, (D.A: 05.02.2022).

<sup>141</sup> Middle East Monitor, “Türkiye’s Erdogan: Muslim Brotherhood is ideological, not terrorist organisation,” 17 February 2017, <https://www.middleeastmonitor.com/20170217-Türkiyes-erdogan-muslim-brotherhood-is-ideological-not-terrorist-organisation/>, (D.A: 03.06.2022).

<sup>142</sup> Michael Meyer-Resende, “Egypt: In-depth Analysis of the Main Elements of the New Constitution”, European Parliament Directorate General for External Policies of the Union, Policy Department, April 2014, p. 7-8, [https://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET\\_NT\(2014\)433846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET_NT(2014)433846_EN.pdf), (D.A: 05.02.2022).

while Articles 3, 67 and 71 specify the limits of this freedom. The freedom of assembly regulated in Article 73 of the new Constitution is conditional on the competent authorities being notified in accordance with the relevant law. The November 24, 2013 Law on Demonstrations stipulates that such notification must be made at least 3 days in advance. Article 75 of the new constitution regulates the freedom of association, but does not mention the freedom to form trade unions. Apart from the provision in Article 92 of the Constitution that laws on the implementation of rights and freedoms cannot violate the essence of these rights and freedoms, the criteria by which human rights will be limited are not specified.<sup>143</sup>

The 2017 Human Rights Report published by the United States contains important findings on the human rights situation in Egypt. In this context, violations of the right to life, large-scale terrorist attacks, arbitrary arrests and detentions, crackdowns on press, internet and academic freedom, disappearances, politically motivated convictions and detentions, restrictions on freedom of expression, unfavorable prison conditions, unlawful interference in private life, prosecution of civilians in military courts, government control over the registration and financing of civil society organizations, and restrictions on freedoms of assembly and association were identified as the most important human rights problems in Egypt.<sup>144</sup>

It is emphasized that the prosecution of individuals who have abused their positions in Egypt is not in accordance with the law, that in many cases human rights violations are not effectively investigated in relation to cases of violence perpetrated by security forces, and that this plays a role in reinforcing the perception of impunity in society.<sup>145</sup> The same report states that local civil society organizations documented hundreds of cases of torture throughout the year, including deaths resulting from torture. National and international human rights organizations reported that police and prison guards resorted to torture to extract information from detainees, including minors.<sup>146</sup>

The Emergency State Security Courts, established under the 1958 Emergency Law, are also a serious human rights concern in Egypt.<sup>147</sup> These courts can continue to hear cases filed during the state of emergency after its end. In addition, these courts are staffed by military judges, the principle of a fair trial is applied at very low standards, the President is granted broad powers and there is no possibility of appeal.<sup>148</sup> The state of emergency, which began in April 2017, lasted until October 2021.<sup>149</sup>

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<sup>143</sup> Michael Meyer-Resende, "Egypt: In-depth Analysis of the Main Elements of the New Constitution", European Parliament Directorate General for External Policies of the Union, Policy Department, April 2014, p. 11-13, [https://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET\\_NT\(2014\)433846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2014/433846/EXPO-AFET_NT(2014)433846_EN.pdf), (D.A: 10.02.2022).

<sup>144</sup> US State Department, "Egypt 2017 Human Rights", p. 1, <https://www.state.gov/wp-content/uploads/2019/01/Egypt.pdf>, (D.A: 10.02.2022)

<sup>145</sup> Ibid. p. 1.

<sup>146</sup> Ibid. p. 6.

<sup>147</sup> International Commission of Jurists, "Egypt's Judiciary: A Tool of Repression," September 2016, p. 150-152, <http://www.refworld.org/pdfid/586e71ea4.pdf>, (D.A: 03.06.2022).

<sup>148</sup> Ibid. p. 146-150.

<sup>149</sup> Anadolu Agency, Egypt lifts state of emergency after more than 4 years, 25.10.2021, <https://www.aa.com.tr/tr/dunya/misirida-4-yildan-uzun-suredir-devam-eden-ohal-kaldirildi/2402768>, (D.A: 05.02.2022).

According to the Death Penalty Reports published by AI, at least 109 people were sentenced to death in 2013,<sup>150</sup> at least 509 in 2014,<sup>151</sup> at least 538 in 2015,<sup>152</sup> at least 237 in 2016,<sup>153</sup> and at least 407,<sup>154</sup> in 2017. On January 26, 2018, a group of UN human rights experts called on the Egyptian government to suspend all pending death sentences, highlighting allegations of a lack of fair trials.<sup>155</sup>

In 2017 and 2018, a report containing data from 2017 and 2018 suggested that torture and ill-treatment in Egypt is routinely practiced in official detention facilities and that it is systematic in detention centers belonging to the National Security Organization. It was also stated that hundreds of people were sentenced to various penalties, including the death penalty, as part of unjust mass trials, referring to events in the same year.<sup>156</sup> According to the relevant reports, in 2019, death sentences were issued and carried out in some countries, including Egypt, as a result of unfair trials,<sup>157</sup> the same situation continued in 2020 and 2021;<sup>158</sup> following the September 20 protests<sup>159</sup> human rights defenders were frequently detained and subjected to torture or ill-treatment.<sup>160</sup>

The above-mentioned findings necessitate a sensitive assessment of whether there is a real risk that foreigners deported to Egypt will be subjected to torture and ill-treatment. In this respect, it has been concluded that avoiding wholesale practices when establishing deportation proceedings involving deportation to Egypt and rigorous examination of the current security situation in Egypt by the competent judicial authorities will ensure that violations of the prohibition of torture and ill-treatment are prevented. In particular, the increasing repression and violence against certain individuals and groups in Egypt, as well as the frequency and severity of human rights violations in the country, necessitates a high standard for the set of obligations in deportation proceedings to Egypt.

<sup>150</sup> Amnesty International, "Death Sentences and Executions 2013," p. 8, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500012014en.pdf>, (D.A: 05.02.2022).

<sup>151</sup> Ibid. p. 6.

<sup>152</sup> Ibid. p. 7.

<sup>153</sup> Ibid. p. 5.

<sup>154</sup> Ibid. p. 7.

<sup>155</sup> "Egypt must halt executions, say UN human rights experts", UN OHCHR, 26.01.2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22613>, (D.A: 05.02.2022).

<sup>156</sup> Amnesty International, "Amnesty International Report 2017/18-The State of the World's Human Rights", p. 29.

<sup>157</sup> Amnesty International, "Human Rights in the Middle East and North Africa-2019", 2019, p. 5, <https://www.amnesty.org.tr/public/uploads/files/Rapor/Orta%20Dog%C-C%86u%20ve%20Kuzey%20Afrika'da%201%CC%87nsan%20Haklar%C4%B1-Genel%20Bak%C4%B1s%CC%A7%202019.pdf>; Human Rights Watch, "World Report 2020-Events of 2019", 2020, p. 179, (D.A: 25.02.2022), [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2020\\_0.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf), (D.A: 25.02.2022).

<sup>158</sup> Amnesty International, "Amnesty International Report 2020/21 Report-The State of the World's Human Rights", p. 56.

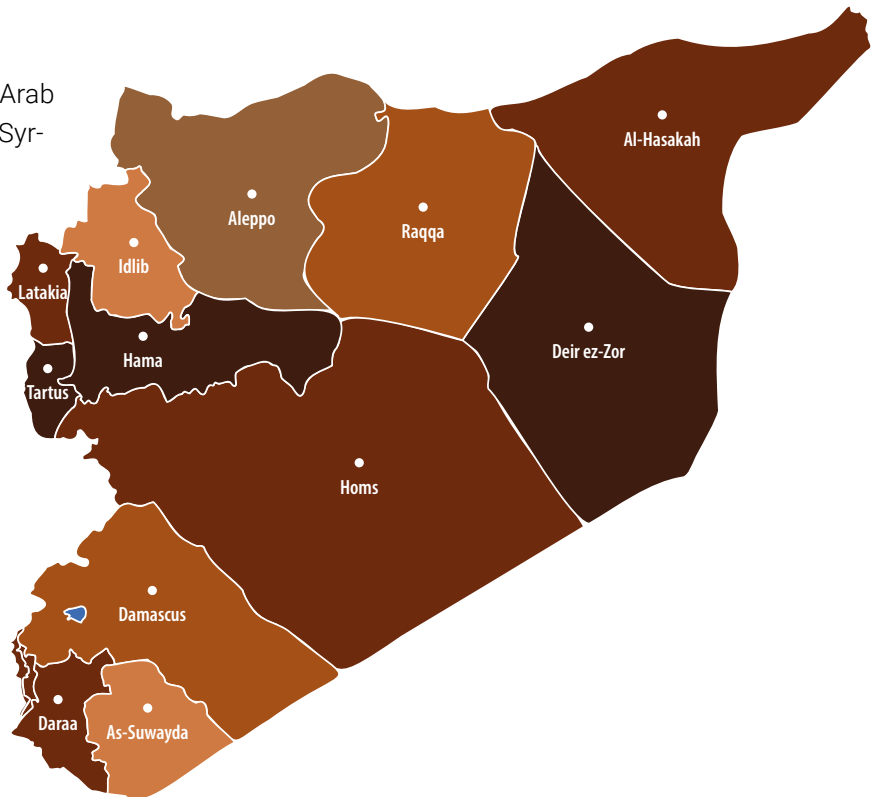
<sup>159</sup> On 20 September 2019, anti-government demonstrations took place in Egypt.

<sup>160</sup> Amnesty International, "Human Rights in the Middle East and North Africa-2019", p. 5.

## 4. Syrian Arab Republic

The population of the Syrian Arab Republic (hereinafter referred to as Syria) as of July 2021 is 20,384,316, 87% of whom are Muslim (74% Sunni, 13% Shia), 10% Christian and 3% Druze. Approximately 74% of the country's population are Arabs, 9.5% Kurds, 4.5% Turkmen, 3.5% Assyrians, 1% Armenians and 6% other ethnic groups.<sup>161</sup>

Starting in 2011, the Syrian Civil War continues to have sociological, economic and political repercussions. Forced to relocate due to the war, Syrians have started an intensive migration movement, especially to neighboring countries.<sup>162</sup>



Opening its doors to Syrians fleeing the war, Türkiye, as a country hosting the largest number of refugees in the world, fulfills its obligations defined in international law. It is seen that our country is positively differentiated from the countries of the world in this regard.<sup>163</sup>

In the Syrian Civil War, approximately 600,000 people lost their lives, more than 6.5 million Syrians were internally displaced, and more than 5.6 million Syrian refugees had to flee the country.<sup>164</sup> Following the protests that started in 2011, the unrest turned into a civil war after the harsh interventions against the protesters and the level of violence of the protests increased.<sup>165</sup> The level of conflict in Syria, which has been going on for more than a decade, has already decreased.<sup>166</sup>

<sup>161</sup> CIA World Factbook, Syria. <https://www.cia.gov/the-world-factbook/countries/syria/>, (D.A: 04.02.2022).

<sup>162</sup> World Atlas, "Largest Ethnic Groups In Syria", WorldAtlas, 07.06.2018, <https://www.worldatlas.com/articles/largest-ethnic-groups-in-syria.html>, (D.A: 15.04.2022).

<sup>163</sup> Report on the Protection and Promotion of Human Rights 2020, p. 22.

<sup>164</sup> BBC, 10 critical turning points in 10 years of war in Syria, 21 March 2021, <https://www.bbc.com/turkce/haberler-dunya-56377932>, (D.A: 04.02.2022).

<sup>165</sup> Geneva Academy, The War Report 2018, Armed Conflict: Nearing The End, p. 2, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Syrian%20Armed%20Conflict%20Nearing%20The%20End.pdf>, (D.A: 04.02.2022).

<sup>166</sup> Anadolu Agency, Is a political solution possible in Syria in the 10th year of the war, 29.03.2021, <https://www.aa.com.tr/tr/analiz/savasin-10-yilinda-suriye-de-siyasi-co-zum-mumkun-mu/2191230>, (D.A: 04.02.2022).

Since 2011, Syrians involved in the protests have been subjected to intensive use of tear gas, machine gun and sniper fire, as well as the threat of mass arrest.

Attacks by regime forces on areas where protesters were concentrated led to violations of the right to life. In addition, these attacks triggered the beginning of new protests. The conflict in Syria has turned into a chaotic conflict between multiple state and non-state armed groups.<sup>167</sup> It is underlined that rapes and sexual violence committed by government forces and associated militias in Syria from 2011 to 2017 constitute war crimes and crimes against humanity.<sup>168</sup>

On August 21, 2013, more than 1400 civilians lost their lives as a result of the use of chemical weapons in Eastern Ghouta.<sup>169</sup> In addition to this attack, a total of 217 chemical weapons attacks were carried out in opposition-held areas, and as a result of the examination of blood and urine samples taken from the people killed, it was determined that sarin gas was used in the attack in April 2017.<sup>170</sup> On International Day in Support of Victims of Torture, the Syrian Network for Human Rights (SNHR) published a report documenting that at least 14.227 people have died as a result of torture in Syria, including 177 children and 62 women.<sup>171</sup>

The systematic torture of detained opposition figures in Syria has been documented by various institutions and organizations. In 2014, the photographs taken by a military policeman, code-named "Caesar", who was in charge of taking photographs of regime opponents who were tortured and starved to death by the Syrian army, came to the agenda as documents of the deaths due to torture.<sup>172</sup> It is reported that the aforementioned person fled Syria with 55.000 photographs of 11.000 victims. Some of these photographs were obtained by Anadolu Agency (AA) and published in 2014. These photographs, which are critical in terms of revealing the systematic torture practiced in Syria, were presented to the authorities upon the request of the UN.<sup>173</sup>

In May 2017, Türkiye, Iran and Russia signed an agreement in Astana (now Nur-Sultan) to establish "de-escalation zones".<sup>174</sup> In this context, Idlib province and some parts of neighboring provinces (Latakia, Hama and Aleppo provinces), some areas in the north of Homs province, Eastern Ghouta in Damascus

<sup>167</sup> Wallace, David, Amy McCarthy, and Shane R. Reeves. "Trying to make sense of the senseless: classifying the syrian war under the law of armed conflict", *Mich. St. Int'l L. Rev.* 25 (2017): 555, p. 562. <https://core.ac.uk/download/pdf/228478286.pdf>, (D.A: 09.02.2022).

<sup>168</sup> Human Rights Watch, "World Report 2019-Events of 2018", 2019, p. 558, [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf), (D.A: 16.03.2022).

<sup>169</sup> Anadolu Agency, Syrian Network for Human Rights: Prosecute those responsible for the chemical weapons attack in Eastern Ghouta, 21.08.2019, <https://www.aa.com.tr/tr/dunya/suri-ye-insan-haklari-agi-dogu-gutadaki-kimyasal-silah-saldirisinin-sorumlulari-yargilansin/1561433>, (D.A: 09.02.2022).

<sup>170</sup> Ibid.

<sup>171</sup> SNHR, At Least 14,227 Individuals, including 177 Children and 62 Women, Killed as a Result of Torture in Syria, 2019, [https://sn4hr.org/wpcontent/pdf/english/14227\\_individuals\\_have\\_died\\_due\\_to\\_torture\\_at\\_the\\_hands\\_of\\_the\\_main\\_parties\\_to\\_the\\_conflict\\_in\\_Syria\\_en.pdf](https://sn4hr.org/wpcontent/pdf/english/14227_individuals_have_died_due_to_torture_at_the_hands_of_the_main_parties_to_the_conflict_in_Syria_en.pdf), (D.A: 09.02.2022).

<sup>172</sup> HRW, Syria: Stories Behind Photographs of People Killed in Custody, 16.12.2015, <https://www.hrw.org/tr/news/2015/12/16/284529>, (D.A: 18.04.2022); HRW, If the Dead Could Speak, 16.12.2015, <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities>, (D.A: 18.04.2022).

<sup>173</sup> Anadolu Agency, Photos of atrocities in Syria at UNSC, 15.04.2014, <https://www.aa.com.tr/tr/dunya/suriyedeki-vahsetin-fotografllari-bmgkda/166832>, (D.A: 18.04.2022); Anadolu Agency, Crime against humanity in Syria documented with new photos, 22.05.2014, <https://www.aa.com.tr/tr/dunya/suriyede-insanlik-sucu-yeni-fo-tografllarla-belgelendi/157365>, (D.A: 18.04.2022); Anadolu Agency submits new photos of torture in Syria to UN, 23.05.2014, <https://www.aa.com.tr/tr/dunya/suriyedeki-iskencenin-yeni-fotografllari-bmye-sunuldu/157307>, (D.A: 18.04.2022); Anadolu Agency, told the photos of torture, 31.07.2014, <https://www.aa.com.tr/tr/dunya/iskencenin-fotografllarini-anlati/135412>, (D.A: 18.04.2022).

<sup>174</sup> BBC, Türkiye, Russia and Iran sign 'de-escalation zones' agreement in Syria, 04.05.2017, <https://www.bbc.com/turkce/haberler-dunya-39802814>, (D.A: 09.02.2022).

and some areas in the south of the country (Daraa and Quneitra provinces) were designated as de-escalation zones.<sup>175</sup>

The international effort to establish these de-escalation zones is important for the establishment of safe zones in Syria. However, the status quo regarding the existence of de-escalation zones should not lead to the misconception that the entire Syrian country is safe.

A 2018 report states that identification information on detained or missing persons was updated in July, and that these updates included death certificates.<sup>176</sup> However, these updates did not include detailed information other than the date and, in some cases, the cause of death, and that other information was not provided to families.<sup>177</sup> It was stated that ill-treatment incidents in the country continued in 2018.<sup>178</sup>

Prolonged sieges in Syria have resulted in civilians facing obstacles in accessing health, basic needs and humanitarian aid.<sup>179</sup> Among the most common criticisms are that the judiciary in the country is not independent and that crimes are not investigated by the state.<sup>180</sup> In addition, the use of internationally banned chemical weapons has been reported in Syria.<sup>181</sup>

According to data as of the end of 2019, the number of missing persons in Syria is in the tens of thousands.<sup>182</sup> In addition to these enforced disappearances within the scope of the criminal justice system, violations of torture and ill-treatment also occur, and in some countries, including Syria and Egypt, the security forces perpetrating these incidents are often impunity.<sup>183</sup> In the same period, Syrian security forces arrested hundreds of activists, former opposition leaders and family members in areas recaptured from anti-government groups, including Eastern Ghouta, Daraa and southern Damascus, despite an agreement not to arrest them.<sup>184</sup> It is also reported that thousands of detainees have lost their lives due to torture and unfavorable detention conditions.<sup>185</sup> The failure of the authorities to provide adequate information to the families of those who disappeared or were killed is a situation that was also seen in 2019.<sup>186</sup>

In a report on 2019, AI underlines that in some countries, including Syria, certain criteria regarding the principle of fair trial are not taken into account in trials, and that exceptional courts such as revolutionary courts, security courts, military courts are conducting trials in these countries.<sup>187</sup>

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<sup>175</sup> Anadolu Agency, 'de-escalation zones' memorandum in Syria in force, 05.05.2017, <https://www.aa.com.tr/tr/dunya/suriyede-catismasizlik-bolgeleri-muhtirasi-yururlukte/811904>, (D.A: 09.02.2022).

<sup>176</sup> Human Rights Watch, "World Report 2019-Events of 2018", p. 557-558.

<sup>177</sup> Ibid. p. 558.

<sup>178</sup> Ibid. p. 558.

<sup>179</sup> Amnesty International, "Amnesty International Report 2017/18-The State of the World's Human Rights", p. 31.

<sup>180</sup> Ibid. p. 32.

<sup>181</sup> Ibid. p. 30.

<sup>182</sup> Amnesty International, "Human Rights in the Middle East and North Africa -2019", p. 6.

<sup>183</sup> Ibid.p. 3.

<sup>184</sup> Human Rights Watch, "World Report 2020-Events of 2019", p. 541.

<sup>185</sup> Ibid. p. 541.

<sup>186</sup> Ibid. p. 541-542.

<sup>187</sup> Amnesty International, "Human Rights in the Middle East and North Africa -2019", p. 6.

In its report on the situation of human rights in the world for 2020/2021, AI states that the same situation continued in the relevant period.<sup>188</sup> Another issue that should be pointed out in terms of criminal trials is the allegation that thousands of people in Syria were arrested without a court order.<sup>189</sup>

There are allegations of arbitrary detention, disappearance and continued ill-treatment of those who signed so-called reconciliation agreements across the country in 2021. HRW's relevant report revealed that 13 cases of torture, 3 abductions, 5 extrajudicial killings and 17 cases of enforced disappearances were documented between 2017 and 2021 for refugees returning to Syria from Jordan and Lebanon.<sup>190</sup>

From late 2011 to 2020, attacks on the population continued in Syria. Since the beginning of the armed conflict, areas inhabited by civilians have been bombed and places such as hospitals, medical facilities, markets, bakeries, schools, etc. have been targeted.<sup>191</sup> Hundreds of civilians, including rescue and medical personnel, have been killed and injured in military operations in northwestern Syria.<sup>192</sup> Hama, Aleppo and Idlib provinces are among the most heavily airstruck areas in Syria.<sup>193</sup> At the same time, it is underlined that the use of improvised explosive devices and barrel bombs dropped by the Syrian air force from helicopters into areas where civilians live densely constitutes a war crime.<sup>194</sup> It is also stated that humanitarian aid organizations and Damascus-based international non-governmental organizations are prevented from reaching civilians in the region.<sup>195</sup>

It is an intense agenda that the parties commit war crimes in the conflicts in the region and that attacks against civilians violate international law.<sup>196</sup> It is stated that the same situation was observed in 2020.<sup>197</sup> It is also seen that terrorist organizations operating in the region commit war crimes by using improvised explosive devices. In addition, it is pointed out that international powers have not taken the necessary measures to prevent harm to the civilian population in the region.<sup>198</sup>

The human rights situation in Syria, incidents related to the prohibition of torture and ill-treatment, social and political developments and other findings are explained above. These findings cause concerns that foreigners who will be deported from our country and sent to Syria will face the risk of torture and ill-treatment. As a result of all the examinations made, it is assessed that a sensitive analysis should be made by the competent authorities in terms of the security situation in Syria, both during the establishment of deportation procedures and in the lawsuits filed against deportation procedures. In this way, violations of the principle of non-refoulement in Syria can be prevented.

<sup>188</sup> Amnesty International, "Amnesty International Report 2020/21-The State of the World's Human Rights", p. 56.

<sup>189</sup> Amnesty International, "Human Rights in the Middle East and North Africa-2019-2019", p. 6.

<sup>190</sup> Human Rights Watch, "World Report 2022-Events of 2021", p. 636.

<sup>191</sup> UN General Assembly, Human Rights Council Forty-sixth session, 22 February–19 March 2021, p. 6, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_46\\_54\\_EN.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_46_54_EN.pdf), (D.A: 05.02.2022).

<sup>192</sup> Amnesty International, "Human Rights in the Middle East and North Africa-2019-2019", p. 7.

<sup>193</sup> Amnesty International, "Amnesty International Report 2020/21-The State of the World's Human Rights", p. 57.

<sup>194</sup> UN General Assembly, Human Rights Council Forty-sixth session, p. 7

<sup>195</sup> Amnesty International, "Amnesty International Report 2020/21-The State of the World's Human Rights", p. 57.

<sup>196</sup> Amnesty International, "Amnesty International Report 2017/18-The State of the World's Human Rights", 2018, p. 30, <https://www.amnesty.org.tr/uploads/files/2017e2%80%99den%202018e2%80%99e%20D%3bcnyada%20c4%b0nsan%20Haklar%c4%b1n%c4%b1n%20Durumu.pdf>, (D.A: 16.02.2022).

<sup>197</sup> Amnesty International, "Amnesty International Report 2020/21-The State of the World's Human Rights", p. 57.

<sup>198</sup> UN General Assembly, Human Rights Council Forty-sixth session, p. 7.



In Syria, violations are likely to come not only from state forces but also from paramilitary and semi-paramilitary structures. The chaotic situation in the country and the division of de facto sovereignty by different structures make the situation more serious. For this reason, it is imperative that all aspects of deportation procedures are handled with an analytical approach.

In the event that the grounds listed in Article 54 of the LFIP are met, the unlawfulness of any deportation due to substantive or procedural grounds can be asserted before the judicial authorities. However, it would be useful to provide detailed explanations about the restriction codes, as the deportation of **foreigners with a restriction code** is the subject of annulment proceedings filed against the deportation procedure in national judicial mechanisms and in the ECtHR, or of lawsuits alleging violation of fundamental rights and freedoms due to deportation.

DEPARTURE 10:08  
SEAT 15A  
PASSENGER NAME SURNAME

UA310

JAMAICA Kingston  
Caribbean

25.03.15 25  
AMSTERDAM

VISAS

MALAYSIA \* IMMIGRATION  
ipoh  
24 MAR 2016  
421D

IMMIGRATION  
INTERNATIONAL  
CCT 2012  
WSSM  
SINGAPORE

IMMIGRATION CONTROL  
LAMPYAKA  
10 MAR 2015  
CYPRUS  
3-DEPARTURE  
FR

07 01 14 51  
PARIS CHARLES DE GAULLE  
C-2F

IMMIGRATION OFFICER  
(1959)  
05 AUG 2014  
QUITC AIRPORT



# V I

**RESTRICTION CODES**

## VI. RESTRICTION CODES

An increasing number of foreigners enter our country every year for different reasons. However, entry bans may be imposed on some foreigners for a number of reasons such as posing a threat to international security, posing a threat to national security and public order, violating visa/work/residence permit or being deported for certain offences. The entry ban in question covers the prevention of foreigners outside the country from entering the country and the deportation of foreigners within the borders of the country. The establishment of deportation proceedings for the above-mentioned reasons appears as a reflection of the fulfilment of the state's public protection obligation.

Article 9 of the LFIP, titled "*Entry ban to Türkiye*", states that the Presidency of Migration Management, when necessary and upon consultation with the relevant government departments and institutions, may impose an entry ban against foreigners whose entry into Türkiye is objectionable for public order, public security or public health reasons. Foreigners deported from Türkiye under the relevant article are banned from entering Türkiye by the Presidency of Migration Management or governorships. The maximum duration of the entry ban to Türkiye is five years, and in case of a serious threat to public order or public security, this period may be extended by the Presidency of Migration Management for a maximum of ten years. In line with the same regulation, it is stated that due to public order, public security or public health reasons, the Presidency of Migration Management and due to administrative fines and public receivables, governorships may condition the admission of foreigners to the country on prior authorisation.

In addition, some foreigners who wish to enter Türkiye are not granted visa under Article 15 of the LFIP. Foreigners considered within the scope of this provision are; *"...whose/who: a) passport or travel document is not valid at least sixty days beyond the expiry date of the visa requested; b) are banned from entering Türkiye; c) are considered undesirable for reasons of public order or public security; ç) are identified to have a disease posing public health threat; d) are suspects of or, are convicted of, a crime(s) that are subject to extradition pursuant to agreements to which the Republic of Türkiye is a party to; e) are not covered with a valid medical insurance for the duration of their stay; f) fail to supply proof of the reason for their purpose of entry into, transit from or stay in Türkiye; g) do not possess sufficient and sustainable resources [for the duration of their stay] ğ) would refuse to pay receivables, originating from overstaying the duration of visa or a previous residence permit duration or, that should be enforced and collected pursuant to the Law on the Procedure of Collection of Public Receivables No. 6183 of 21/07/1953 or, debts and fines enforced pursuant to the Turkish Penal Code No. 5237 of 26/09/2004."*<sup>199</sup>

Within the scope of these explanations, "restriction codes", which refer to entry bans and prior authorisation decisions, have been established.<sup>200</sup> A foreigner who is subject to a restriction code is subject to certain restrictions within the scope of the relevant code. The eighth paragraph of Article 9 of the LFIP stipulates that the procedures and principles regarding the entry ban to Türkiye shall be determined by the Ministry of Interior. As a matter of fact, it can be noted as a positive development that the Circular No. 2020/17 on Restriction Codes, which regulates the principles regarding the restriction codes that are of particular importance in terms of the entry ban to the country, has been published.

<sup>199</sup> <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6458.pdf>, (D.A: 08.06.2022).

<sup>200</sup> Victims of the Restriction Code Report, p. 15-16.

Restriction codes are codes consisting of a number of letters and numbers between 1-200.<sup>201</sup> Data entries for restriction codes are made in certain cases such as visa/residency/work permit violations, threats to public health, emergence of an inconvenient situation in terms of international security or public security, attempted entry-exit with false information, illegal organisation activities, smuggling crimes, activities against national security and general security.

Although there are a number of other codes for the restriction of foreigners, the security and terrorism-related codes G-82<sup>202</sup> and G-87<sup>203</sup> are the most common codes for violations of the prohibition of torture and ill-treatment due to deportation.<sup>204</sup>

In the event that a lawsuit is filed against a deportation proceeding based on a restriction code, the authority imposing the restriction code should inform the court hearing the cancellation lawsuit about the concrete data on the basis of which the restriction code was imposed. In this way, the breach of the principle of equality of arms, which is an element of the right to a fair trial, can be prevented. This is because if the concrete grounds on which a restriction code is imposed on foreigners are not explained, they will not have the opportunity to make an adequate defence. As a matter of fact, in its *Muhammad and Muhammad v. Romania* judgment, the ECtHR stated that in order for the foreigner to put forward his/her arguments against the expulsion decision taken against him/her within the scope of Article 1(1)(a) of Protocol No. 7 to the ECHR, the national authorities must know the material elements that are stated to endanger national security.<sup>205</sup> Without knowing these material elements, the foreigner will not be able to exercise his/her right of defence or present reasonable grounds for deportation. Moreover, the applicant will not be able to have his case examined unless the national courts collect evidence to confirm or overturn the expulsion decision.<sup>206</sup>

The deportation of foreigners with restriction codes based on abstract allegations may cause some problems in the reason element of this administrative act. For this reason, the imposition of restriction codes should be based on objective and proven facts. In this sense, there must be concrete evidence, especially in terms of restriction codes imposed on the grounds of public order or public security. It is important to consider concrete evidence when interpreting public security and public order as grounds for restriction codes. At this point, taking a balanced approach between public security and public order and fundamental rights and freedoms<sup>207</sup> will prevent possible human rights violations.

The information taken as a basis for the imposition of a restriction code may be information provided by national public authorities or intelligence information provided by the country of nationality of the foreigner.<sup>208</sup> Basing the application of a security-based restriction code on foreigners coming to Türkiye for asylum from a certain country solely on the intelligence information of the country of origin is a practice that may have negative consequences for the international protection system. The accuracy of the data

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<sup>201</sup> Ibid. p. 16.

<sup>202</sup> It is a restriction code imposed due to activities against national security.

<sup>203</sup> It is a restriction code imposed for general security reasons.

<sup>204</sup> Victims of the Restriction Code Report, p. 19-20.

<sup>205</sup> ECtHR, *Muhammad and Muhammad v. Romania*, Judgment of 80982/12, 15 October 2020.

<sup>206</sup> ECtHR, *Kaushal and Others v. Bulgaria*, Judgment of 1537/08, 02 September 2010.

<sup>207</sup> Report on the Protection and Promotion of Human Rights 2020, p. 23.

<sup>208</sup> Victims of the Restriction Code Report, p. 19-20, 51.



ARRIVAL  
DISPATCH

LOMBIA  
014

PASSPORT  
MALAYSIA - IMMIGRATION  
12 JUN 2015  
4067

SYDNEY

INTERNATIONAL  
SINGAPORE

tion(U.K.)

MALI  
Tombouctou  
Niamey  
BURKINA FASO  
Ouagadougou  
GHANA  
Lome  
Accra  
TOGO  
BENIN  
NIGERIA  
Kano  
Abuja  
Ogbomoso  
Ibadan  
Lagos  
Porto-Novo  
CAMEROON  
Malabo  
Douala  
Yaounde  
EQUATORIAL GUINEA  
Libreville  
GABON

shared by the country sharing intelligence information about the foreigner should be confirmed within the limits of possibilities. Otherwise, the possibility that the assessments made about the foreigner as being risky in terms of public order or public security may arise from the political conjuncture in the country transmitting the information and may not reflect the truth will be ignored and some unlawful decisions will be taken. In this context, the reliability of the source of evidence in asylum law should be taken into consideration.

The confidentiality of information and documents obtained for the protection of national security is of special importance. Therefore, the public authorities cannot be expected to submit all confidential information and documents to the judicial authorities in the deportation of foreigners, especially in relation to terrorist activities and for the purpose of protecting national security. However, it is not sufficient for the public authorities to be satisfied with the abstract declaration that the person poses a danger to national security. The public authorities are required to provide the judicial authorities with sufficient and serious information that the person has engaged in activities that jeopardise national security in the context of the circumstances of the concrete case.<sup>209</sup>

It is also stated that there are some problems in terms of removal of restriction codes. In this context, it is stated that the foreigner, for whom a data entry was made regarding the restriction code, was deported due to the aforementioned code despite the removal of the restriction code.<sup>210</sup>

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<sup>209</sup> CC, A.G. Decision, 2018/6143, 16 December 2020, para. 53.

<sup>210</sup> Report on the Victims of the Restriction Code, p. 24.







# VII

**GENERAL EVALUATION AND  
RECOMMENDATIONS**

## VII. GENERAL EVALUATION AND RECOMMENDATIONS

### A. General Evaluation

One of the natural consequences of the State's sovereignty is the right to control the entry, residence and deportation of foreigners. Therefore, it is possible, and in some cases necessary, for states to expel foreigners who pose a danger to public order and public security in order to protect citizens against terrorist threats. In this context, states have a margin of appreciation in the field of migration.

This authorisation of States in the field of migration is an approach that is accepted by jurisprudence and doctrine as well as normative regulations. The ECtHR frequently emphasises this point in its established case-law. However, states should refrain from acting arbitrarily, rely on the constitution and laws, fulfil the requirements of the rule of law and not establish procedures that would constitute a violation of human rights.

In this respect, *the principle of non-refoulement*, which is accepted as a customary international rule and which prohibits a person from being sent to a country where his/her life or freedom would be under threat, is considered within the scope of the prohibition of torture and ill-treatment. In the event that the foreigner is deported, if he/she will be punished with the death penalty in the country to which he/she will be sent, or if he/she will be subjected to certain treatments contrary to the prohibition of torture and ill-treatment, the deportation process in question will cause a violation of human rights in terms of human rights, and a violation of non-refoulement principle will occur. The deportation of a foreigner who has good grounds to believe that he/she faces a serious risk of being subjected to treatment contrary to Article 3 of the ECHR in the country to which he/she is to be sent will constitute a violation of the principle non-refoulement.

In this respect, when it is concluded that a foreigner should be deported due to the fulfilment of the conditions specified in the legislation, the authorities of the country carrying out the deportation procedure should conduct a detailed research on the country to which the foreigner will be sent and examine the general socio-economic situation of the country and the specific situation of the foreigner concerned. Within the framework of the conclusion reached as a result of the examination, it should be determined whether the deportation procedure will be carried out or not. While researching country of origin information, it would be appropriate to make use of reports prepared by non-governmental organisations and government officials. In this Report, the Islamic Republic of Afghanistan, the Republic of Iraq, the Arab Republic of Egypt and the Arab Republic of Syria are analysed as examples to investigate the country of origin information and to reveal the socio-political situation of the relevant countries at the time of the Report.

States may use restriction codes as a justification for the deportation of foreigners within the margin of appreciation. However, restriction codes are a subject that poses potential problems in determining the limits of the margin of appreciation of states, and the margin of appreciation may be overly broad. It is

important that the wide margin of appreciation in question is applied in a way that does not create uncertainty and that the limits of the powers are clearly defined.<sup>211</sup>

In order for foreigners to fully exercise their right of defence, deportees should know the concrete elements of the crime they are charged with. In this sense, in order to fully realise the freedom of foreigners deported due to the imposition of restriction codes, it should be clearly stated for which acts the restriction code data entry is made about foreigners.

One of the issues requiring sensitive analyses in terms of data entries related to the restriction code is the exchange of intelligence between countries. Although the said intelligence exchange is a very appropriate practice in terms of the effective investigation and prosecution of international crimes, it will prevent possible victimisation if the information transmitted by the country of origin about the foreigner in our country is investigated and the necessary actions are taken after confirming its accuracy.

As a result of the examinations made by our Institution, it is assessed that, although States have a wide margin of appreciation in the field of migration, human rights constitute a natural limit to the margin of appreciation and that situations that may lead to violations of the prohibition of torture and ill-treatment may arise in practices and deportation procedures within the scope of the margin of appreciation. In this context, it has been concluded that possible problems in practice should be prevented in terms of the application of the principle of non-refoulement during the execution of deportation procedures, that the restriction codes contain too subjective elements, that this subjectivity poses a threat to human rights, and that more objective practices should be established in determining the grounds put forward in deportation procedures. In this framework, it is considered that it would be appropriate to implement the following recommendations.

## **B. Recommendations**

With regard to the deportation of foreigners to a country where there is a risk of torture and ill-treatment, either on the basis of a restriction code or on grounds other than a restriction code, in the context of the grounds and fundamental principles explained, the following are recommended.

1. Taking measures to ensure adequate procedural safeguards in order to prevent deported foreigners from being subjected to torture and ill-treatment in the country of removal and to ensure the realisation of the right to seek remedy,
2. Prior to the deportation of foreigners, the authorities carrying out the deportation procedures should collect sufficient and detailed information about the country to which the foreigner will be sent,
3. Taking the necessary measures to ensure that judicial authorities have access to sufficient and accurate information on deportation proceedings,

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<sup>211</sup> Report on the Protection and Promotion of Human Rights 2020, p. 23.

4. In cases where deportation decisions are based on classified information, the obstacles to access to such classified information by administrative courts examining appeals against deportation decisions should be removed without prejudice to the principle of protection of national security,
5. Providing satisfactory, clear and precise justifications in deportation decisions and in the decisions of administrative courts reviewing the appeals against these decisions, without compromising the principle of protection of national security,
6. Amending the provisions regarding the objection period against the expulsion decision in the third paragraph of Article 53 of the LFIP in line with the human rights-based approach,<sup>212</sup>
7. Monitoring the situation of foreigners deported from Türkiye after deportation and investigating whether they have been subjected to torture and ill-treatment,
8. Paying utmost attention to the verification of the accuracy of intelligence data received from foreign countries and used as justification for the imposition of restriction codes, and attaching importance to basing restriction codes on concrete evidence,
9. Taking necessary measures to prevent deportation proceedings from being carried out despite the lifting of the restriction codes imposed on foreigners.

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<sup>212</sup> The third paragraph of Article 53 of the LFIP reads as follows "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 person who has appealed against the decision to the court 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 judgement."

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