

INFORMATION NOTE IN REPLY TO THE JOINT URGENT APPEAL FROM THE SPECIAL PROCEDURES

(Reference: UA TUR 4/2022)

1. With reference to the joint letter of the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, dated 23 March 2022 regarding [REDACTED], the Government would like to submit its observations herein below.

I. OVERVIEW

Safeguards provided in Law No. 6458 on Foreigners and International Protection

2. Principles and procedures with regard to foreigners' entry into, stay in and exit from Türkiye as well as applications regarding international protection are regulated by Law No. 6458 on Foreigners and International Protection. According to Article 4 of the said Law, in line with the principle of non-refoulement, a foreigner should not be returned to a place where he/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.

3. In case a foreigner applies for international protection, he/she will be interviewed in due time in accordance with Article 75 of Law No. 6458 in order to verify the accuracy of his/her statements and the documents provided by the applicant. As a result of the interview, the decision can either be positive or negative depending on the overall evaluation of the interview, documents and statements made by the applicant.

4. Administrative review and judicial appeal procedures are available against the decision. In this context, the applicant is allowed to stay in Türkiye until the completion of the review process or judicial proceeding according to Article 80 of Law No. 6458.

5. Once an application for international protection is made, the applicant is given an "International Protection Applicant Identity Document" according to Article 76 of Law No. 6458 and is granted the right to access healthcare, legal, counselling and translation services, free of charge.

6. On the other hand, deportation is an administrative procedure that is issued upon instruction of the Presidency of Migration Management or *ex officio* by governorates. Foreigner or his/her legal representative is notified of the deportation decision, the reasons and the consequences thereof, as well as the procedures and the time limits for appeal.
7. Foreigner or his/her legal representative may appeal against the deportation decision before the administrative court within seven days after the notification.
8. Article 54 of the Law No. 6458 indicates the legal grounds on which a deportation decision has to be based on. According to Article 54/1 (d) of the said Law, a deportation decision can be issued against a foreigner who poses a threat to public order or public safety or public health.
9. According to Article 55 of the Law No. 6458, a deportation decision cannot be issued when there are serious indications to believe that the foreigner will be subjected to death penalty, torture, inhuman or degrading treatment or punishment in the country to which he/she will be returned; or if there is a risk of traveling due to serious health conditions, age or, pregnancy, if the foreigner is undergoing treatment for a life threatening health condition and would not be able to receive such treatment in the country to which he/she will be returned, if he/she is a victim of serious psychological, physical or sexual violence or human trafficking or supported by the victim's assistance programme.

The Human Rights Action Plan

10. With the Human Rights Action Plan, which was announced on 2 March 2021, establishment of a strong, accessible and effective human rights protection system is determined as a primary goal. The Action Plan is prepared with broad participation of all stakeholders including NGOs.
11. Under one of the Plan's goals, "Rehabilitation of Foreigners Under Internal Protection or Temporary Protection and Strengthening of Their Access to Justice", comprehensive set of activities are planned. These include;
- Developing strategies towards meeting the basic needs, such as health, accommodation and education, of foreigners under international protection or temporary protection and victims of human trafficking and conducting joint efforts with non-governmental organisations in order to facilitate their social adaptation,

- Introducing an effective remedy of application to examine complaints concerning the conditions of accommodation at removal centres,
- Conducting secondary legislation work concerning alternative measures to administrative detention and implementing these measures effectively,
- Taking necessary measures in order to facilitate the practical access of the foreigners, who are within the scope of the Law No. 6458, to an attorney and to ensure completion of proceedings within a reasonable time,
- Translating the forms concerning the rights of suspects, accused persons and victims that are prepared for foreigners into widely-spoken languages and providing these forms to the persons concerned,
- Creating a database of offences committed against foreigners under international protection or temporary protection.

II. FACTS AND OBSERVATIONS

12. [REDACTED] has been residing in Türkiye as an international protection applicant.

13. On 6 April 2021, [REDACTED] Provincial Directorate of Migration Management issued a removal order in respect of [REDACTED] under Article 54/1 of the Law No. 6458. It was determined that [REDACTED] violated the Law No. 2911 on Meetings and Demonstrations¹ by actively participating in an illegal demonstration on 20 March 2021 and thus, posed a threat to public order and peace.

14. Contrary to the allegations in the letter, [REDACTED] was not taken into custody, neither was he arrested nor subjected to a criminal investigation. Actions taken by the authorities with regard to [REDACTED] has been entirely of administrative nature.

15. On 11 April 2021, [REDACTED] filed a legal action for annulment of the removal order with a request for a stay of execution. On 28 May 2021, [REDACTED] Administrative Court decided that there is

¹ Article 3/2 of the Law no: 2911 provides: “The arrangement of meetings and demonstration marches by foreigners in accordance with the provisions of this Law is subject to the permission of the Ministry of Interior. It is possible for foreigners to address the crowd, to carry posters, banners, pictures, pennants, signs, tools and equipment in meetings and demonstration marches organized in accordance with this Law, with a notification to be made at least forty-eight hours before the meeting, to the highest civil authority of the place where the meeting will be held.”

no need to decide on the stay of execution request, since according to Article 53/3 of the Law No. 6458, ██████ cannot be removed until the conclusion of the trial. ██████ did not appeal against this decision.

16. On 16 January 2021, ██████'s international protection application was denied by ██████ Provincial Directorate of Migration Management, on grounds that his application does not meet the criteria. ██████ appealed the decision to ██████ Administrative Court. The proceedings are pending.

17. On 31 December 2021, ██████ Administrative Court found that ██████ did indeed violate Article 3 of the Law No. 2911 and posed a threat the public order and peace. The Court further found that ██████ did not provide any information or document on whether he will be subjected to death penalty or ill-treatment in the country of origin. Noting that foreigners are required to obey the laws of the country of residence, the Court remarked that ██████ knowingly beared the risk of deportation to his country of origin by disobeying the rules of the country he currently resides. The Court, however, referring to the removal order which stated that the foreigner shall be deported to a safe third country or, if the foreigner volunteered, his country of origin, concluded that, in any case, it is possible to deport ██████ to a safe third country. As such, the Court concluded that there is no contradiction to law in the removal order and thus dismissed the case. The Court's decision is final.

18. On 28 February 2022, ██████ lodged an individual application to the Constitutional Court, with a request for a stay of execution of the removal order. On 1 March 2022, the Court rejected the interim measure request, noting that the applicant is ordered to be deported to a safe third country, as stated in the removal order and that there is no indication in the file or the applicant's claims that there is a serious danger towards the life or material or moral integrity of the applicant, if he is deported. The application before the Court is pending.

19. Contrary to the allegations on the letter, ██████ was able to represent himself with a lawyer throughout the whole administrative and judicial process. (see Annex – 1 for the meeting report with his lawyer dated 5 April 2021) Legal aid request for the judicial proceedings was also granted.

20. On the other hand, ██████ did not request a translator for the administrative proceedings. As stated and undersigned by him in the Information and Identification Report (see Annex - 2) dated 6 April 2021, he is able to read and understand Turkish. Nonetheless, the removal order was translated to Farsi and notified to him via a translator (see Annex - 3).

21. Further addressing the misleading and inaccurate information on the letter, the Government would like to emphasize that [REDACTED] was not charged with any crime and was not put under police custody. The [REDACTED] Administrative Court, did not “sentence” [REDACTED] nor ordered his deportation.

22. The Government would like to underline that the allegations presented in the letter was already lodged before the Constitutional Court, in the form of individual application, which is pending and will be subjected to evaluation by the Court.

23. Finally, as pointed out by both the [REDACTED] Administrative Court and the Constitutional Court, the Government would like to emphasize that in the removal order, it is stated that the foreigner will be deported to the country of origin, only if he volunteers.

III. CONCLUSION

24. Considering that both the individual application lodged before the Constitutional Court and international protection application proceedings before the [REDACTED] Administrative Court are pending, the Government is of the view that reaching conclusions on the present case by the Special Procedures before the proceedings are finalized, would be inappropriate. Furthermore, the inaccurate information presented in the letter as stated above, should be taken into account by the Special Procedures.

Annex List

- 1- Meeting report with the lawyer dated 5 April 2021 (In original and in unofficial translation)
- 2- Information and Identification Report dated 6 April 2021 (In original and in unofficial translation)
- 3- Removal order issued in respect of [REDACTED]