



Z-2024/62441669/39186747 -

The Permanent Mission of the Republic of Türkiye to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Communication from Special Procedures dated 16 October 2024 (UA TUR 6/2024), has the honour to enclose herewith the information note provided by relevant Turkish authorities.

The Permanent Mission of the Republic of Türkiye avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 12 December 2024



Encl: As stated.

**Office of the High Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 Geneva**

**INFORMATION NOTE IN REPLY TO THE JOINT URGENT APPEAL FROM
SPECIAL PROCEDURES DATED 16 OCTOBER 2024**

(UA TUR 6/2024)

1. With reference to the joint urgent appeal of the Special Rapporteur on the situation of human rights in Eritrea, the Working Group on Enforced and Involuntary Disappearances and the Special Rapporteur on the human rights of the migrants dated 16 October 2024, the Government of the Republic of Türkiye (hereinafter, “the Government”) would like to submit its responses and observations hereinbelow.

I. RELEVANT LAW

2. In Türkiye, international protection procedures, administrative detention and deportation procedures are carried out under the relevant provisions of the Law on Foreigners and International Protection no. 6458 (hereinafter, “the Law no. 6458”):

“ARTICLE 4 – Non-refoulement

No one within the scope of this 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 52 – Deportation

Foreigners may only be deported to their country of origin or a transit country or a third country by virtue of a deportation decision.

ARTICLE 53 – Deportation decision

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

(2) The [deportation] decision together with its reasons shall be notified to the foreigner, in respect of whom a deportation decision has been issued or, to his/her legal representative or lawyer. If the foreigner, in respect of whom the deportation decision has been issued, is not represented by a lawyer, the foreigner or his/her legal representative shall be informed about the consequence of the decision, procedures and time limits for appeal.

(3) The foreigner or his/her legal representative or lawyer may appeal against the deportation decision to the administrative court within seven days of the notification of the decision. The person who applies to the court shall also notify the authority that issued the

deportation decision of his/her application. In the case of an application to the court, the file shall be deemed complete upon the submission of the defense or the time limit for the submission of the defense expires. If notification cannot be made to the address indicated by the applicant, the period stipulated in the third paragraph of Article 26 of Law No. 2577 shall be applied as two months. The court shall have the discretion to hold a hearing. The applications shall be finalized within fifteen days after the file is finalized or, in cases where an interim decision or a hearing is required, within fifteen days after their completion. The court's decision on this matter shall be final. Without prejudice to the consent of the foreigner, the foreigner shall not be deported within the period of filing a lawsuit or in case of an application for judicial remedy, until the conclusion of the proceedings.

ARTICLE 54 – Persons subject to a deportation decision

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

- a) are deemed to be deported pursuant to Article 59 of the Turkish Penal Code № 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 who attempt to violate these provisions;
- 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) Those who are assessed to be associated with terrorist organizations defined by international institutions and organizations.

(2) A deportation decision may be taken at any stage of international protection proceedings for international protection applicants or international protection status holders who are assessed to be within the scope of subparagraphs (b), (d) and (k) of the first paragraph of this Article.

ARTICLE 55 – Exemption from deportation decision

(1) Deportation decision shall not be issued in respect of those foreigners listed below regardless of whether they are within the scope of Article 54:

a) when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to;

b) who would face risk due to serious health condition, age or, pregnancy in case of travel;

c) who would not be able to receive treatment in the country to which they shall be returned while undergoing treatment for a life-threatening health condition;

ç) victims of human trafficking, supported by the victim's assistance programme;

d) victims of serious psychological, physical or sexual violence, until their treatment is completed.

(2) Assessment within the scope of the first paragraph shall be made on case by case basis. These persons may be asked to reside at a given address and report to authorities in form and periods as requested.

ARTICLE 57 - Administrative detention for deportation and its duration

(1) Foreigners within the scope of Article 54 shall be immediately notified to the governorate for a decision to be taken upon their arrest by law enforcement officers. The deportation decision shall be taken by the governorate for those who are deemed to require. The evaluation and decision period may not exceed forty-eight hours.

(2) Of those for whom a deportation decision has been taken, those who pose a risk of flight or disappearance, who violate the rules of entry or exit to or from Türkiye, who use forged or false documents, who do not leave Türkiye without an acceptable excuse, who pose a threat to public order, public security or public health, shall be placed under administrative detention by the governorate or alternative obligations to administrative detention shall be imposed in accordance with Article 57/A. Foreigners subject to administrative detention shall be taken to removal centers within forty-eight hours by the law enforcement unit making the arrest.

(3) The duration of administrative detention in removal centers shall not exceed six months. However, this period may be extended for a maximum of six 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.

(4) The governorate shall regularly evaluate whether there is a necessity for the continuation of administrative detention every month. If deemed necessary, the thirty-day period shall not be waited. Administrative detention shall be terminated immediately for foreigners for whom the continuation of administrative detention is not deemed necessary. These foreigners shall be subjected to alternative obligations to administrative detention in accordance with Article 57/A.

(5) The decision on administrative detention, the extension of the administrative detention period and the results of the monthly evaluations shall be notified to the foreigner or his/her legal representative or lawyer together with the reasons thereof. At the same time, if the

person placed under administrative detention is not represented by a lawyer, he or his legal representative shall be informed of the outcome of the decision, the procedures and deadlines for appeal.

(6) The person placed under administrative detention or his/her legal representative or lawyer may apply to the criminal judge of peace against the administrative detention decision. The application shall not stop the administrative detention. If the petition is submitted to the administration, the petition shall be immediately delivered to the authorized criminal judge of peace. The criminal judge of peace shall conclude the examination within five days. The decision of the criminal judge of peace is final. The person placed under administrative detention or his/her legal representative or lawyer may apply to the criminal judge of peace again claiming that the conditions of administrative detention have disappeared or changed.

(7) Of those who apply for judicial remedy against the administrative detention procedure, those who do not have the means to cover the attorney fees shall, upon their request, be provided with attorney services in accordance with the provisions of the Law on Attorneys dated 19/3/1969 and numbered 1136.

(8) Electronic and communication devices of foreigners under administrative detention may be examined to determine their nationality. The data obtained as a result of the examination shall not be used for purposes other than this.

ARTICLE 57/A - Alternative obligations to administrative supervision

(1) The following alternative obligations to administrative detention may be imposed on foreigners listed in the second paragraph of Article 57 or on foreigners whose administrative detention has been terminated:

- a) Residence at a specific address*
- b) Notification*
- c) Family-based repatriation*
- ç) Return counseling*
- d) Voluntary participation in services in the public interest*
- e) Guarantee*
- f) Electronic monitoring*

(2) In case one or more of the obligations listed in the first paragraph are imposed on the foreigner, this period may not exceed twenty-four months.

(3) It is obligatory to impose one or more of the obligations listed in the first paragraph of this Article on foreigners who are within the scope of the second paragraph of Article 57 but not placed under administrative detention.

(4) The foreigner or his/her legal representative or lawyer shall be notified that he/she is subjected to obligations alternative to administrative detention, together with the reasons thereof. If the foreigner against whom alternative obligations to administrative detention are imposed is not represented by a lawyer, he/she or his/her legal representative shall be informed about the outcome of the decision, appeal procedures and periods.

(5) The foreigner subjected to electronic monitoring obligation, or his/her legal representative or lawyer may apply to the criminal judge of peace against this decision.

The application shall not suspend the administrative obligation to which the foreigner is subjected. The criminal judge of peace shall finalize the review within five days. The decision of the criminal judge of peace is final.

(6) Foreigners who do not comply with the obligations alternative to administrative detention may be placed under administrative detention.

(7) In the event that a guarantee obligation is imposed on the foreigner and the foreigner fails to leave Türkiye within the guarantee period, without prejudice to force majeure and failure to terminate the court process, the payment shall be credited to the Treasury.

(8) The procedures and principles regarding the implementation of this Article shall be regulated by the Ministry of Interior.

ARTICLE 58 – Removal centres

(1) Foreigners subject to administrative detention shall be held in removal centres.

(2) The removal centres shall be operated by the Ministry of Interior. The Ministry may have these centres operated by public institutions and agencies, the Turkish Red Crescent Association or non-profit associations with expertise in the field of migration by means of a protocol.

(3) The principles and procedures related to the establishment, management, outsourcing, inspection of removal centres and the transfer of foreigners subject to administrative detention to removal centres for removal purposes shall be regulated with a Directive.

ARTICLE 59 – Services provided in removal centres

(1) In the removal centres:

a) emergency and primary healthcare services of which the foreigner is unable to cover the cost shall be provided free of charge;

b) the foreigner shall be allowed access to and given the opportunity to meet with their relatives, the notary public, his/her legal representative and the lawyer, as well as access to telephone services;

c) the foreigner shall be given the opportunity to meet with the visitors, consular official of their country of citizenship, and officials of the United Nations High Commissioner for Refugees;

ç) the best interest of the child shall be considered, and families and unaccompanied minors shall be accommodated in separate areas;

d) the Ministry of National Education shall take the necessary measures to ensure that children have access to education.

(2) Representatives of the relevant non-governmental organisations with expertise in the field of migration may visit the removal centres upon permission of the Directorate General.

ARTICLE 65 – Application

(1) International protection applications shall be lodged with the governorates in person.

(2) In cases where an application is lodged with law enforcement units within the country or at the border gates, the application shall immediately be reported to the governorates. The governorates shall carry-out the actions related to the application.

(3) Every foreigner or stateless person is entitled to apply on their own behalf. Applicant may apply on behalf of accompanying family members whose applications are on the same grounds. In such cases, consent of the adult family members shall be required for applications made on their behalf.

(4) Persons who apply to the governorates for international protection within a reasonable period of time on their own accord shall not be subjected to criminal action for breaching the terms and conditions of legal entry into Türkiye or illegally staying in Türkiye, provided that they shall provide acceptable reasons for such illegal entry or presence.

(5) International protection application lodged by persons whose freedom has been restricted shall immediately be reported to the governorates. The receipt and assessment of applications shall not prevent the enforcement of other judicial or administrative actions, measures, and sanctions.

ARTICLE 68 – Administrative detention of applicants

(1) Applicants shall not be subject to administrative detention solely for lodging an international protection claim.

(2) Subjecting applicants to administrative detention is an exceptional action. Applicants only be subject to administrative detention only under the following cases:

a) for the purpose of determination of the identity or nationality in case there is serious doubt as to the accuracy of the information provided;

b) for the purpose of being withheld from entering into the Türkiye in breach of terms [and conditions] of entry at the border gates;

c) when it would not be possible to identify the elements of the grounds for their application unless subjected to administrative detention;

ç) when [the person] poses a serious public order or public security threat.

(3) The requirement for administrative detention shall be assessed on case-by-case basis. With respect to cases mentioned in the second paragraph, prior to an administrative detention, priority shall be given during the assessment to whether the residence and notification obligation stipulated in Article 71 shall be sufficient. The governorates may determine alternatives for administrative detention. Where such measures are not sufficient, administrative detention shall be applied.

(4) The administrative detention decision, including its reasons and duration shall be notified to the person subject to administrative detention or, to his/her legal representative or lawyer in writing. If the person subject to administrative detention is not represented by a lawyer, the person or to his/her legal representative shall be informed of the consequences of the decision and the appeal procedures.

(5) The period of administrative detention for applicants shall not exceed thirty days. The actions related to applicants subject to administrative detention shall be finalised as soon as possible. Administrative detention shall immediately be ended when its conditions no longer apply.

(6) At every stage of the administrative detention, it may be lifted by the authority that has issued the decision and [the person] may be asked to fulfil the obligations stipulated in Article 71 or other measures.

(7) The person placed under administrative detention or his/her legal representative or lawyer may appeal against the detention decision to the Judge of the Criminal Court of Peace. Such an application shall not suspend the administrative detention. In cases where the petition is handed to the administration, it shall immediately be conveyed to the competent Judge of the Criminal Court of Peace. The Judge of the Criminal Court of Peace shall finalise the assessment within five days. The decision of the Judge of the Criminal Court of Peace shall be final. The person placed under administrative detention or, his/her legal representative or lawyer may further appeal before the Judge of the Criminal Court of Peace should the administrative detention conditions no longer apply or have changed.

(8) The person subject to administrative detention pursuant to second paragraph may receive visitors, where the relevant principles and procedures shall be stipulated in a Directive. The person subject to administrative detention shall be granted access to legal representative, lawyer, notary public and United Nations High Commissioner for Refugees officials.

ARTICLE 70 – Information and translation services provided to applicants

(1) At the time of the registration, applicant shall be informed about the procedures to be followed regarding the application, his/her rights and obligations, how to comply with these obligations and the possible consequences of failing to comply with these obligations or cooperate with the authorities, and about the procedures and time limits for appeal.

(2) Upon request of the applicant, translation [and/or interpretation] service shall be provided during personal conversations at stages of application, registration and interview.

II. FACTS

- 3.** In accordance with the above provisions, administrative detention is an exceptional measure used to ensure the proper completion of international protection procedures or the safe departure of persons subject to a deportation order, where the conditions under Article 57 or Article 68 are present. As stated above, persons issued with a deportation order may be subjected to this measure only if they have violated the rules of entry or exit to or from Türkiye; used forged or false documents; failed to leave the country within the period given for their departure; or pose a threat to public order/security/health.

- 4.** With the amendment to the Law in 2019, alternative obligations to administrative detention were included in the legislation. In 2022, the Regulation on Alternative Obligations to

Administrative Detention was put into force after examination of best practices in countries, carefully following the work of the Council of Europe as well as other international institutions and organizations and receiving support from various academics. With alternative obligations to administrative detention, it has been ensured that the administrative processes of foreigners are completed with less restrictive measures instead of depriving them of their liberty. Regarding foreigners who cannot be taken under administrative detention due to their vulnerable conditions such as illness, old age, pregnancy etc., it has been ensured that work and procedures are carried out in accordance with the ECHR standards on the basis of human rights. In accordance with the provisions of the aforementioned legislation, the situation of foreigners under administrative detention is periodically evaluated and an alternative obligation is immediately imposed on foreigners whose administrative detention is not deemed necessary.

5. Removal centers are facilities that accommodate the following persons under control until they are sent back to their countries: irregular migrants who entered, stayed or tried to leave Türkiye illegally and apprehended by law enforcement officers; the ones accommodated under control as a result of the administrative detention decision issued by the Governorates; or those whose international protection procedures are completed. Migrants who stay in these facilities are provided with services such as shelter, nutrition, emergency and basic health, social, etc. needs. In accordance with our national legislation and international jurisprudence, foreigners who are hosted in these centers until the completion of their deportation or administrative detention procedures shall be treated in a manner that respects human dignity within the framework of fundamental human rights and shall be ensured that their basic needs are met.
6. It is not possible to take a deportation decision on an irregular migrant without an individual assessment in accordance with Articles 4 and 55 of the Law. As mentioned above, foreigners who are assessed to potentially be subjected to torture, inhuman or degrading punishment or treatment cannot be forcibly returned to their countries of origin.
7. All administrative decisions taken on irregular migrants, such as deportation, administrative detention, imposition of an alternative obligation to administrative detention, are

communicated to the foreigner or his/her lawyer/legal representative in his/her own language. For this purpose, notifications of all administrative decisions regarding irregular migrants are prepared in 23 different languages by the Presidency of Migration Management.

8. According to the Law no. 6458, foreigners may appeal against a deportation decision, either directly or through their legal representatives. If the foreigner has filed a lawsuit against the deportation decision, the enforcement of the procedure is suspended until the case is finalized. Furthermore, foreigners' access to a lawyer is regulated in detail in the legislation on removal centers. In this context, all residents of the removal centers are provided with access to legal assistance. In order to increase cooperation with bar associations on legal aid and access to lawyers and to enhance their effectiveness, a standard working procedure was prepared in cooperation with the UNHCR.
9. In Türkiye, legal aid services are also available for foreigners through bar associations. Foreigners who receive legal aid are exempt from litigation fees and costs and can file a lawsuit with a cost free lawyer appointed for them by the bar association. Lawyers and foreigners conduct their meetings in the lawyer interview rooms in accordance with the attorney-client confidentiality rules. There are no obstacles to the full functioning of the system in accessing legal aid.
10. Moreover, foreigners who are admitted to the center are provided with written and verbal information on legal guarantees, the issues to be notified, center rules and legal aid in the foreigner's own language or in a language they understand. The centers also have posters and brochures about legal aid posted on the walls in the ten most widely spoken languages. Payphones are placed in appropriate areas of the center so that foreigners can reach their relatives or legal representatives. Phone cards are provided free of charge for foreigners who cannot afford them. In addition, in centres equipped with technological facilities, foreigners are also given the opportunity to meet with their families and relatives via online platforms such as Skype.

- 11.** All 32 removal centers located in 25 provinces in Türkiye are operated by the Presidency of Migration Management according to the principle of “zero tolerance to ill-treatment” and the removal centers are monitored by cameras twenty-four hours a day. The judicial and administrative processes are initiated immediately following reported incidents through complaint mechanisms such as petition and complaint boxes.
- 12.** Removal centres are continuously inspected, with and without notice, by national and international organizations such as the European Committee for the Prevention of Torture (CPT) and the United Nations Subcommittee on the Prevention of Torture (SPT), Presidency of Migration Management, governorships, provincial and district human rights boards and Human Rights and Equality Institution of Türkiye.
- 13.** At the same time, internal audits are conducted by the Directorate and the Provincial Directorate of Migration Management and the Center managers. In addition, the Red Crescent, Bar Associations, United Nations High Commissioner for Refugees (UNHCR) and the consulates also carry out visits to the Centers.
- 14.** In accordance with the relevant legislation, the prohibition of ill-treatment of detainees is communicated to all personnel in writing and verbally. Furthermore personnel from all branches working in removing centres, especially security officers, are periodically trained on topics of basic human rights, non-discrimination and prohibition of ill-treatment.
- 15.** In addition, from the first entry of foreigners in each of these facilities, the psychosocial support unit conducts regular interviews with foreigners and determines their needs. It is a mandatory practice for the aforementioned unit to prepare a preliminary assessment report regarding the foreigner.

Regarding the Eritrea nationals subject to the notification letter

16. In 2024, 455 irregular migrants of Eritrean nationality were apprehended in Türkiye. 203 Eritreans were deported from the country, meanwhile 259 Eritrean nationals foreigners are monitored outside the removal centers by providing alternative obligations to administrative detention under Article 57/A of the Law No. 6458. 155 out of the mentioned 203 deported Eritreans **declared on video recordings that they did not have any asylum request from Türkiye and that they wanted to cross to Europe** and they were returned to their countries with a charter flight organized on 6 August 2024. Remaining Eritreans were allowed to leave our country on a voluntary basis without any law enforcement accompaniment. Currently, there are 66 irregular migrants of Eritrean nationality hosted in removal centers in Türkiye, and upon the joint urgent appeal letter, it was conveyed to the relevant institutions that the interim measure was requested to prevent any deportation decision against the Eritrean migrants that may lead to alleged violations.
17. **61 of the 66 foreigners accommodated in the removal centres stated that they had no expectations from Türkiye in regard of international protection and that their aim was to illegally cross to Europe through Türkiye.** Under the Law no. 6458, international protection applications must be made by foreigners themselves, and no international protection assessment is made ex officio for foreigners who do not have an application. **None of the said Eritrea nationals under administrative detention at the centres requested international protection.**
18. The Constitutional Court mentions in its A.A. and A.A decision, that there is no regulation in the Constitution regarding the admission, residency or deportation of foreigners. According to international law and established case-law of the Court, this matter falls within the realm of sovereignty and states have discretionary power to admit or deport the foreigners (see ECtHR judgments; Saadi v. Italy [GC], no. 37201/06, § 124-125; M.D. and M.A. v. Belgium, no. 58689, § 54; Babajanov v. Türkiye, no: 49867/08, § 41-42). In other words, contracting states have the right to control the entry, residence and expulsion of aliens. (see Salah Sheekh v. the Netherlands, no. 1948/04, § 135).

19. On the other hand, one of the positive obligations of the states is obviously to safeguard the physical and moral integrity of foreigners within the territory of the sovereign authority, who may be at risk of ill-treatment in the destination country. However, in order for the public authorities to assess whether there is a real risk that the applicants will be subjected to treatment that may violate their rights in the event of deportation, they must apply for international protection in accordance with Article 65(1) of Law No. 6458 and this application must be made within a reasonable time. Again, **in the present case, there was no international protection application made by the migrants accommodated in removal centres.**

20. It should also be noted that 30 of these foreigners met with their lawyers 48 times in total. 18 of the foreigners of Eritrean nationality currently held at the removal centres have a pending case against the deportation decision taken against them, and the final judgment of their cases shall be awaited. The UNHCR contacted our Government about the Eritreans who were hosted in the removal centres on a case-by-case basis. Therefore, the foreigners concerned were asked again whether they wanted to apply for international protection and it was confirmed that they did not have a request for international protection application. The UNHCR was duly informed of this situation.

21. Regarding the irregular migrants of Eritrean nationality who were apprehended in our country while trying to cross illegally to Europe; since it is an obligation of our country to prevent said attempts which may result in possible deaths, the Government kindly asks for support from the UN to ensure safe and legal arrival of mentioned foreigners to Europe.

22. In conclusion, Türkiye is giving the utmost possible effort to fulfill its international obligations regarding migration and international protection with understanding of full respect for fundamental human rights and freedoms; the Government would like to convey that the allegations of arbitrary detention, violation of non-refoulement principle and ill-treatment mentioned in the joint letter do not reflect the reality.