ADMINISTRATIVE DETENTION IN ACCORDANCE WITH THE FOREIGNERS AND INTERNATIONAL PROTECTION LAW[*]

Doç. Dr. Nimet ÖZBEK[**]

ABSTRACT

Keeping under administrative detention of foreigners who have been given a deportation decision is an accepted practice in international and Turkish law. Administrative detention can be defined as keeping the foreigners who are decided to be deported for reasons specified in the Foreigners and International Protection Law (FIPL) in the detention areas until their procedures are completed. Even though it has a legal basis in Turkish law before the FIPL entered into force, the administrative detention procedure applied gained legal basis after the FIPL entered into force. In this Law, the reasons for the administrative detention, the supervision of the administrative detention process and the notification to the parties, the legal remedy against administrative detention are regulated in detail. It is necessary to examine whether the new Law is functional or not by examining how these regulations brought together with the FIPL are implemented in practice and the course of implementation within the framework of the decisions of the European Court of Human Rights and the Constitutional Court.

Keywords: Deportation, Foreigners and International Protection Law, administrative detention, Repatriation Centers, foreign.

[*] Yayın Kuruluna Ulaştığı Tarih: 17/11/2020
Kabul Edildiği Tarih: 11/12/2020

[**] Assoc. Prof. Dr., Department of Private International Law, Ankara University, Faculty of Politicial Sciences,
E-Mail: ozbek@politics.ankara.edu.tr
ORCID: 0000-0002-5380-7778

YABANCILAR VE ULUSLARARASI KORUMA KANUNU UYARINCA İDARİ GÖZETİM

ÖZ

Hakkında sınır dışı etme kararı verilmiş yabancıların idari gözetim altında tutulması uluslararası hukuk ve Türk hukukunda kabul gören bir uygulamadır. İdari gözetim, Yabancılar ve Uluslararası Koruma Kanunu'nda (LFIP) yer alan sebeplerle hakkında sınır dışı kararı alınan yabancıların, idari işlemlerin bitirilmesine kadar gözetim alanlarına konulması şeklinde tanımlanabilir. Türk hukukunda da LFIP'nın yürürlüğe girdiği dönemden önce de kanuni düzenleme olsa da idari gözetim kavramı LFIP yürürlüğe girmesiyle hukuki dayanağa kavuşmuştur. Bu Kanunda idari gözetimin sebepleri, idari gözetimin denetimi, denetim sonucu verilen kararın tebliği, bu karara karşı başvurulabilecek hukuki yollar gibi konular ayrıntılı olarak düzenlenmiştir. LFIP ile birlikte getirilen bu düzenlemelerin uygulamada nasıl hayata geçirildiği ve Avrupa İnsan Hakları Mahkemesi ve Anayasa Mahkemesi kararları çerçevesinde uygulamanın seyri ele alınarak yeni Kanunun işlevsel olup olmadığının irdelenmesi gerekmektedir.

Anahtar Kelimeler: Sınır dışı, idari gözetim, Yabancılar ve Uluslararası Koruma Kanunu, geri gönderme merkezi, yabancı.

1. Introduction

Although Article 19 of the Constitution of the Republic of Turkey's right to physical integrity of the person is guaranteed, the process of deportation of foreigners is considered to be an exception has been brought to this right[1]. As a reflection of the sovereign right of states to foreigners' law, it is alleged that they have exclusive authority to expel foreigners[2]. The deportation was regulated in the Law on the Residence and Travel of Foreigners (YİSHK) numbered 5683 and the Passport Law (PK)[3] numbered 5682 before the Foreigners and International Protection Law (FIPL)[4] came into effect[5].

With the entry into force of the LFIP, the deportation (removal) of foreigners for the first time in Turkish Foreigners Law has been systematically gathered in a single legal arrangement. The reasons for deportation are restrictively listed in Article 54 of the LFIP, and even if there are reasons for deportation in Article 55, the reasons preventing the decision to be deported are listed[6]. Also, as it is established in some international conventions concerning fundamental rights and freedoms, non-refoulement forbids states from sending individuals who are not or cannot be protected under the Geneva Convention to a country in which they would face risks to their lives or freedoms[7]. In the LFIP, the authority empowered to take the deportation decision and the judicial remedies against this decision are among the regulations introduced. Although the implementation of the administrative detention of deported foreigners was carried out before the LFIP came into effect, this concept was introduced Turkish legal system for the first time with the LFIP. The administrative detention of the deported foreigner, the duration of the administrative detention and the rights granted to the foreigner who

---

1 AYBAY, Rona: Bir İnsan Hakları Sorunu Olarak Sınır Dışı Edilme, Maltepe Üniversitesi Hukuk Fakültesi Dergisi, 2003/2, p. 143 (Sınır Dışı).

2 EKŞİ, Nuray / KABAALİOĞLU, Haluk: Yabancıların Türkiye'den Sınır Dışı Edilmeleri, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, C. 24, S. 1-2, 2004, p. 503; Bayraktaroğlu Özçelik, Gülüm: Yabancılar ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Yabancıların Türkiye'den Sınır Dışı Edilmeleri, Türkiye Barolar Birliği Dergisi, 2013(108), p. 211-212. AYBAY, Rona: Yabancılar Hukuku, İstanbul 2005, p. 228, (Yabancılar).

3 The Law on Residence and Travel of Foreigners and the Passport Law, Article 124 (1) of the FIPL has been repealed.

4 Official Gazette 11.04.2013, No. 28615

5 ÇİÇEKLİ, Bülent: Yabancılar ve Mülteci Hukuku, Ankara 2016, p. 166-169; Aybay, Sınır Dışı, 2003, p.163-171.

6 YILMAZ, Sibel, Protection Of Refugees' Rights Arising Out Of The International Protection Procedure From The View Of Turkish Constitutional Court's Individual Application Decisions, Ankara Üni. Hukuk Fak. Dergisi, 68 (3) 2019, pp.707-752, p.715; KUŞCU, Döndü, Yabancılar Ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Sınır Dışı Edilmelerine Karar Verilen Yabancıların İdari Gözetim Altına Alınmaları, *DÜHFD,* Cilt: 22, Sayı: 37, 244 Yıl: 2017, pp. 241-284, p.244-245.

7 FARMER, Alice, 'Non-Refoulement and Jus Cogens: Limiting AntiTerror Measures that Threaten Refugee Protection', Georgetown Immigration Law Journal, Vol. 23, No. 1, 2008, pp. 1-38, p.2, 17-18; INELİ-CİGER Meltem, 'Protecting Syrians in Turkey: A Legal Analysis' International Journal of Refugee Law, Vol 29, No 4, 2017, pp. 555–579, p.573-574; LAUTERPACHT, Elihu and BETHLEHEM, Daniel, 'The Scope and Content of the Principle of Non-refoulement', in E. Feller, V. Türk ve F. Nicholson (ed.), Refugee Protection in Internaional Law: UNHCR's Global Consultations on International Protection, Cambridge, 2003, pp. 87-177 p.116.

was taken under administrative detention were regulated for the first time by Article 57 of the LFIP[8].

The regulations of the administrative detention of the LFIP have been largely shaped by European Court of Human Rights (ECHR) well-established cases and its criticisms towards to Turkey. However, after the LFIP came into force, the individual applications made to the Constitutional Court indicate that the issues in implementation are still ongoing. Individual applications are still being made to the Constitutional Court regarding the overcrowding of the administrative detention places, the difficult access of foreigners in these places to legal aid, and the inhumane treatment of some foreigners in detention.

2. Definition of Administrative Detention

In the process of accepting foreigners into the country or expelling them from the country, in the presence of some conditions, administrative detention is an accepted practice among states[9]. Administrative detention is a method of precaution that is carried out in the application of the decision of rejection from the border and deportation and during the evaluation of the applications of international protection applicants, in case of certain conditions[10]. In addition to detention and arrest under criminal law, administrative detention can also be defined as preventive detention for security and terrorism reasons[11] and detention to limit irregular immigration[12].

In the Article 19 of the Constitution, it is stated that everybody has the right to enjoy personal security and liberty, regardless of the distinction between foreigners and citizens, and later, the exceptions to the right to liberty were listed in this article. According to this, it was stated that it would be possible to arrest or detain a person who illegally wished to enter or entered the country, or for whom a deportation decision or an extradition order has been issued. With the aforementioned regulation, it is seen that foreigners are allowed to be arrested and taken under administrative detention[13].

In addition, according to Article 16 of the Constitution, this restriction on the fundamental rights and freedoms of foreigners must be regulated by law in accordance with international law. Also, in the Article 38 of the Constitution, it is addressed that the procedures that restrict the freedom of person cannot be implemented by the administration. According to this article, "The Administration may not impose any sanction resulting in restriction of personal liberty*".* According to Article 38 of the Constitution, taking a foreigner under administrative detention and depriving him of his liberty with only an administrative act would be against the Constitution. For this reason,

---

8 EKŞİ, Nuray: Yabancılar ve Uluslararası Koruma Hukuku, İstanbul 2016, p. 134 (Yabancılar); Bayraktaroğlu Özçelik, p. 239.

9 EKŞİ, Nuray, 6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu'nda İdari Gözetim, İstanbul 2014, p. 3 (İdari Gözetim).

10 EKŞİ, İdari Gözetim, p. 3.

11 MUELLER, T.N. Preventive Detention As A Counter-Terrorism İnstrument in Germany. *Crime Law Soc Change, 2014,* 62, pp.323–335, p.326.

12 ÖZBEK, Nimet, AİHM Kararları Işığında LFIP'nda İdari Gözetimin Uygulandığı Mekânlar Hakkında Ortak Sorunlar, Türkiye Barolar Birliği Dergisi, 2015 (118), p. 19.

13 YILMAZ, p.737; EKŞİ, İdari Gözetim, p. 9.

it has been argued that the administrative detention decision should be given by the courts[14]. In our opinion, when the articles 19, 16 and 38 of the Constitution are evaluated together, the administrative detention decision, which does not include a criminal nature and has the nature of a measure, will not be contrary to the Constitution, provided that it remains within the boundaries of the frames drawn by the law[15].

3. Regulations Regarding Administrative Detention in International Law

Administrative detention of foreigners to be deported has been accepted under international law[16]. In the UN Convention against Torture, Inhuman, Degrading Treatment or Punishment and the Optional Protocol to this Convention, detention is regulated as being held in a public or private place where the person concerned is not allowed to leave with his own consent on the instructions of any judicial, administrative or other official (Art. 4/II)[17]. In the Universal Declaration of Human Rights (UDHR) [18], there is a provision in the nature of assurance that the surveillance order is based on a legal basis. Article 9 of the UDHR regulates that no one can be arbitrarily arrested, detained or exiled. However, this article is applicable to both cases of criminal charges and cases of administrative deprivation of liberty[19].

According to the European Convention on Human Rights (ECHR), everybody has the right to personal security and liberty regardless of foreign and citizen discrimination (Art. 5). To the Convention, this right is not absolute and there are its exceptions[20]. In Article 5/1 of the ECHR, it is regulated under which circumstances a person can be deprived of his freedom. It is also stated in this article that no one can be deprived of his freedom without complying with the procedure specified in the laws. In Article 5 of the ECHR, there is also a provision on administrative detention for deportation. According to this regulation, in cases where the person is prevented from entering the territory of the country illegally, there is a pending deportation decision, and there is a pending extradition procedure, his arrest and detention in accordance with the law is allowed (Art.5 / 1-f). It is obligatory for every person caught to be informed of the reasons for his arrest and the charges against him and the reasons for his detention as soon as possible and in a language he understands (Art. 5/2)[21]. Anyone who has been deprived of her liberty due to arrest or detention has the right to apply to the court for a short period of

---

14 HUYSAL, Burak / ŞERMET, Begüm: 6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu'nun 57. Maddesi Çerçevesinde Hakkında Sınır Dışı Kararı Alınan Yabancıların İdari Gözetimi, Prof. Dr. Feridun Yenisey'e Armağan, Ekim 2014, p. 2220.

15 EKŞİ, İdari Gözetim, p. 9; ÖZBEK, p. 47.

16 EKŞİ, İdari Gözetim, p. 10.

17 ÖZBEK, p. 20.

18 https://www.ihd.org.tr/insan-haklari-evrensel-beyannames/15.10.2020

19 United Nations and the Rule of Law, Human Rights And Arrest, Pre-Trial Detention And Administrative Detention, p.175-176, (https://www.un.org/ruleoflaw/files/training9chapter5en.pdf, 17 October 2020)

20 Cassel, Douglass International Human Rights Law and Security Detention, 40 Case W. Res. J. Int'l L. 383, 2009, pp.383-401, p.389-390.

21 CLAIRE, Macken (2006) Preventive Detention And The Right To Personal Liberty And Security Under Article 5 ECHR, The International Journal of Human Rights, 10:3, pp.195-217, p.198-199.

inspection of the legality of the detention procedure and for a decision to release him/her if the detention is against the law (Art. 5/4)[22].

According to the ECHR, no one will be deprived of his liberty without complying with the procedure stipulated by the law. Therefore, in order to take an administrative detention decision, there should be a clear regulation in the relevant laws. The ECHR has forbidden arbitrary administrative detention. Also the ECHR requires that the administrative detention decision be taken and implemented in accordance with the law and its compliance with the law can be controlled within reasonable limits, the administrative detention conditions comply with general standards, do not constitute degrading, degrading and inhuman treatment, and the recognition of fundamental procedural rights and guarantees to foreigners under administrative detention recognition of rights and guarantees is aimed[23].

In the European Union acquis, it is regulated that third country nationals who are given a decision to return can be kept under administrative detention[24]. The "Directive of the European Parliament and of the Council on Common Standards and Procedures for the Return of Third-Country Nationals Residing Illegally in Member States" (Directive 2008/115/EC)[25] states that if third-country nationals who have been ordered to return are at risk of fleeing or have acts that prevent or damage the enforcement of the return order, the member state can put that person under administrative detention. The period of administrative detention cannot exceed six months, but if the person concerned does not cooperate or the necessary documents cannot be obtained from the third state, the period of surveillance might be exceeded for a maximum of twelve months. Administrative detention decision can be made by administrative or judicial bodies. It has been accepted that, in the event of an administrative detention decision by administrative bodies, the review of the lawfulness of the administrative detention order is subject to an accelerated judicial procedure[26]. Whether the continuation of the administrative detention decision is necessary will be reviewed regularly, ex officio, within certain periods[27]. While preparing the LFIP, the provisions of the European Union Directive 2008/115 were also taken into account[28].

---

22 ZAMANI, Masoud, Detention Without Trial: Historical Evolution, States' Authority And İnternational Law. PhD thesis, University of Nottingham, 2015, p.112-114.

23 KUŞCU, p.249; EKŞİ, İdari Gözetim, p. 12.

24 DARDAĞAN KİBAR, Esra, Yabancılar ve Uluslararası Koruma Kanunu Tasarısında ve Başlıca Avrupa Birliği Düzenlemelerinde Yabancıların Sınırdışı Edilmelerine İlişkin Kurallar: Bir Karşılaştırma Denemesi, Ankara Avrupa Çalışmaları Dergisi, Vol: 11, No: 2, 2012, p. 68.

25 Directive 2008/115/EC of The European Parliment and of the Council of 16 December 2008 “on common standards and procedures in Member States for returning illegally staying third-country nationals”, OJ 24.12.2008 L348, p. 98, see also.: (http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF acceessed 21.10.2020)

26 DARDAĞAN KİBAR, p. 68; EKŞİ, İdari Gözetim, p. 56.

27 DARDAĞAN KİBAR, p. 68.

28 EKŞİ, İdari Gözetim, p. 55.

4. Legal Bases of Pre-LFIP Administrative Detention Procedure and ECHR Decisions

Foreigners who were decided to be deported[29] in the pre-LFIP period were held in refugee guesthouses or police or gendarmerie stations until their deportation procedures were completed. The basis of this practice was the Articles 17th and 23rd of the Law on the Residence and Travel of Foreigners[30]. Political reasons given and the decision to expel foreigners (Art. 17) who took refuge in Turkey as they were unable to supply a passport or who cannot leave Turkey for other reasons (m.23), were being forced to sit at the place indicated by the Ministry of Interior. In these regulations included in the Law on the Residence and Travel of Foreigners, administrative detention was not explicitly mentioned and the reasons for the administrative detention, the periods to be under detention and no legal remedies were arranged against this detention order[31]. In this context, the pre-LFIP period, in some cases under the ECHR, administrative detention and implementation of the decisions taken by Turkey is judged to be a breach of Article 5 of ECHR[32]. It also concluded that the conditions of detention violated the principle of "prohibition of ill-treatment" protected by Article 3 of the ECHR[33]. In the doctrine, it is stated that the administrative detention decisions made in the pre-LFIP period are also an administrative act, so the person concerned can apply to the administrative court against these decisions[34].

Date 22 September 2009 Abdoklhani and Karimnia v. Turkey decision, the Court ruled breaching of Article 5 of the ECHR in terms of circumstances of administrative detention. Applicants who were Iranian citizens have entered illegally in Turkey and after being arrested by security forces, a decision to deport them to Iraq was taken. They were held at the Hasköy police station (Muş province) until they were taken to the Kırklareli Aliens Admission and Residence Center (Repatriation Centers)[35].

On the basis of Article 5/1-f of the ECHR, the applicants alleged that they had been deprived of their liberty contrary to the conditions stipulated by the law and were not informed about the reason for their detention. They also alleged, relying on Article 5 § 4 of the ECHR, that they did not have the opportunity to appeal to check the legality of their deprivation of liberty. The Court also stated in the case of the application that the deprivation of liberty to which the applicants had been subjected was not sufficiently

---

29 Apart from administrative detention, the ECHR has violation decisions in Turkish law on the lack of an effective remedy in the administrative judiciary against deportation decisions and the automatic suspension of execution in administrative cases against the deportation proceedings. Again, the application to be made to the administrative court against the deportation decision from 15 days to 7 days is a violation of the effective application right. See. Demir, Işıl Egemen "Yabancılar Ve Uluslararası Koruma Kanunundaki Güncel Gelişmeler Hakkında Genel Değerlendirme", *TAÜHFD*, 2020; 2(1): pp.115-132, p.131.

30 EKŞİ, Nuray: İltica Talepleri Reddedilerek Türkiye'den Sınır Dışı Edilmelerine Karar Verilen Yabancılara İlişkin AİHM Kararlarının Yabancılar ve Uluslararası Koruma Kanununa Etkisi, Türkiye Adalet Akademisi Dergisi, Vol. 5, No. 19, Ekim 2014, p. 72 (İltica); EKŞİ, Yabancılar, p.128.

31 EKŞİ, İdari Gözetim, p. 13.

32 EKŞİ, İltica, p. 74.

33 EKŞİ, İdari Gözetim, s. 57

34 EKŞİ, İltica, s. 73

35 EKŞİ, Yabancılar, s. 131; EKŞİ, İltica, s. 76.

protected against arbitrariness, as there were no clear legal provisions stipulating the procedure for deprivation of liberty in order to deportation, determining the period of detention and extending the period. Therefore, in this case, which is the subject of the application, the ECtHR decided that the deprivation of the applicants' liberty was not "in accordance with the law", in violation of Article 5 § 1 of the ECHR[36]. It has also been concluded that there has been a violation of Article 5 § 2 of the ECHR, as the grounds for their deprivation of liberty were not officially notified to the applicants by the officials.

In another case[37], Palestinian citizen Islam Haslem Asalya was paralyzed from the waist down after the Israeli missile attack and he has entered Turkey through legal means for treatment in 2008. On 29 July 2009, a deportation decision was taken by the Ministry of the Interior, at the request of the Turkish National Intelligence Service, which received intelligence that the applicant might be involved in international terrorist acts. The applicant was taken to the Police Headquarters by police officers who came to his home on 12 August 2009 and after being told that he would be deported, he was taken to the Kumkapı Guest House of the Istanbul Police Department, without giving any information about the reason for the decision, when he would be deported or where he would be deported. The applicant stated that his detention was unlawful and the conditions of the Kumkapı Foreigners' Guesthouse, which lacked basic infrastructure for disabled people like him, were extremely poor. He alleged that the guesthouse conditions violated Article 3 of the ECHR, especially since special regulations were not made for the needs of disabled people like him. The court stated that the applicant was detained in custody for a short period of time, but was deemed to have been detained in conditions that were incompatible with the minimum requirements required by the civil conditions and that these conditions were not compatible with human dignity and that he was subjected to degrading treatment within the scope of Article 3 of the ECHR. As a result, it was decided that the applicant's detention conditions in Kumkapı Foreigners' Guest House between 12-18 August 2009 had been violated of Article 3 of the ECHR.

In Yarashonen v. Turkey case[38], the applicant was kept Kumkapı Removal Center in administrative detention at the Center. The applicant stated that the Kumkapı Removal Center was seriously crowded and, despite its total capacity of five hundred, nearly six hundred people were accommodated, this crowded environment caused hygiene problems, the people had become infected and epidemic diseases spread

---

36 ERKEM, Nalan: Abdolkhani ve Karimnia / Turkey, Monitoring Report on Implementation of Decision İHOP, 2013/3, http://www.aihmiz.org.tr/?q=tr/node/197 (13.10.2020); Benzer kararlar için bkz. Z.N.S. v. Türkiye (Application no: 21896/08), Alipour ve Hosseinzadgan v.Türkiye (Application no: 6909/08, 12792/08 ve 28960/08), Charahili v. Türkiye (Application no: 46605/07), Ranjbar ve Diğerleri v. Türkiye (Application no:37040/07), Tehrani ve Diğerleri v. Türkiye (Application no: 32940/08, 41626/08, 43616/08), Moghaddas v. Türkiye (Application no: 46134/08), Ghorbanov ve Diğerleri v. Türkiye (Application no: 28127/09).

37 Asalya v. Türkiye (Application no: 43875/09, Decision Date: 15.04.2014), (https://hudoc. echr.coe. int/tur#{%22itemid%22:[%22001-142399%22]}, acceessed 05.10.2020)

38 Yarashonen v. Türkiye (Application No: 72710/11, Decision Date: 24.06.2014), (https://hudoc.echr. coe.int/tur#{%22itemid%22:[%22001-145011%22]}, acceessed 20.10.2020)

frequently and therefore serious bacterial infection. He also stated that he was not allowed to do outdoor exercise during his detention and that he was not able to go out. As a result of its assessment, the Court noted that certain aspects of the conditions in which the applicant was held were stricter than the punishment imposed on prisoners serving life sentences, taking into account the purpose of the detention of persons for deportation. The ECtHR found that there had been a violation of Article 3 of the ECHR due to the physical conditions in which the applicant was kept in that Center.

In another decision, Kurkaev[39], born in 1983 in Chechnya, came to Istanbul on September 4, 2000 due to the fear of death he experienced. On 23 June 2004 the applicant was taken into custody, along with other persons, by police officers from the Istanbul Anti-Terror Branch. Until the deportation proceedings were concluded, the applicant continued to be detained in the Foreigners Department of the Istanbul Police Department. He was released on September 25, 2004. In his allegations, the applicant stated that during his ninety-one day stay in the Istanbul Police Department, he had to sleep on the floor without a bed sheet and blanket, due to the high number of asylum seekers, during this period he was not allowed to go out into the open air and that his hygiene conditions were very poor. The ECtHR referred to the reports prepared by the European Committee for the Prevention of Torture or Inhuman Punishment or Treatment (CPT) in 1999, 2001 and December 2005 on the Foreigners Branch of the Istanbul Police Department[40].

The ECtHR stated that the circumstances of detention of the applicant in the Foreigners Department of the Istanbul Security Directorate exceeded the limit of violence within the scope of Article 3 of the ECHR and concluded that these conditions should be evaluated within the scope of degrading treatment. In this context, the ECtHR has concluded that Article 3 of the ECHR has been violated. These decisions made by the ECtHR stating that the conditions of detention constitute a violation of Article 3 of the ECHR, and the decisions that there is a violation of Article 5 of the ECHR regarding the absence of a legal regulation on administrative detention are decisions made in the pre-LFIP period. While drafting the LFIP, the violations stated in the ECtHR decisions were taken into consideration and legal regulations were made accordingly[41].

5. Administrative Detention of Foreigners Deported According to LFIP Provisions

Since the ECtHR has made violation decisions stating that administrative detention decision has been taken about those to be deported, although there is no legal regulation, administrative detention in the LFIP is regulated in detail[42]. For the first time in the Turkish law of foreigners, the administrative detention of the foreigners who are subject to a deportation decision, the duration of the administrative detention, the

---

39 Kurkaev v. Türkiye, (Application no: 10424/05, Decision Date: 19.10.2010), (https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-101231%22]}, 20.10.2020)

40 European Committee for the Prevention of Torture, 7-14 December 2005 Turkey Visit Report, 06.09.2006, CPT/Inf (2006)30, see original text of report: (http://humanrightscenter.bilgi.edu.tr/media/ uploads/2015/05/08/2006-30-inf-eng.pdf, 11.10.2020)

41 KUŞCU, p.258.

42 EKŞİ, İdari Gözetim, p. 50.

rights to be granted to the foreigner under administrative detention and the remedy against the administrative detention decision have been regulated[43].

According to Article 56 of the LFIP and the LFIP Implementing Regulation[44], the deportation decision must include one of the provisions that the foreigner will be directly deported or invited to leave the country or administrative detention decision has been taken. Those who are invited to leave the country will be given fifteen days to leave the country, and this period can be up to thirty days. However, it has been regulated that this period will not be given to those who are in danger of escaping and disappearing, those who try to obtain a residence permit with forged documents or those who have been found to have received it, those who violate the legal entry or legal exit rules, those who use false documents, those who threat to public ordre, public security[45] and public health. For these foreigners who will not be given time to leave the country, administrative detention decision will be taken and detention provisions will come into effect (LFIP, Art.56).

5.1. *Reasons for Administrative Detention*

The reasons for administrative detention are listed in Article 57/2 of the LFIP. According to this Article, firstly, administrative detention decision can be taken for foreigners, who are at risk of fleeing and disappearing, who are subject to a deportation decision. However, to this Article, administrative detention decision can be issued for foreigners, who had breached entry and exit rules to Turkey, who had used false or unsubstantiated document, or who have not left Turkey after the expiry of the period allowed to them to leave, without a reasonable excuse. Finally, administrative detention decision will be taken for those who threat to public order, public security or public health[46]. There is also a reason for administrative detention in the Implementation Regulation. Accordingly, among the foreigners whose residence permit is deemed inappropriate and canceled, those who use false or unfounded documents or who are found to threat to public order, public security and public health are also taken under administrative detention (Reg. Art. 59/2).

Although it is regulated that the foreigners who are decided to be deported will be detained in administrative detention at risk of fleeing and disappearing, the criteria for the risk here are not specified. Regardless of the reason for deportation, if the foreigner has a risk of escape and disappearance, he will be taken under administrative detention. Though there is no determination in the law as to which situations carry the risk of escape and disappearance, it may be thought that the possibility of escaping from

43 EKŞİ, Yabancılar, p. 134.

44 Official Gazette. 17.03.2016, No. 29656.

45 GREER, Steven, 'Preventive Detention and Public Security: Towards a General Model', in A. Harding and J. Hatchard (eds), *Preventive Detention and Security Law: A Comparative Survey* (Dordrecht: Martinus Nijhoff Publishers, 1993, p.25.

46 ÖZBEK, s.22.

criminal prosecution will be high, especially in cases[47] where the foreigner is expelled due to a crime he has committed[48].

Foreigners who violate the entry and exit rules to Turkey may be taken removal decision and administrative detention decision of them (LFIP Art.54/1-h). Another reason for administrative detention is to use false or unfounded documents. In terms of which documents the foreigner, who was decided to be deported, used fake and unfounded documents, is not stipulated in Article 57 of LFIP. However, among the reasons for deportation, there are visa, residence permits, all transactions made while entering the country, using false information or fake documents. Based on Article 56 of the LFIP, if foreigners, who are given a period between fifteen days to thirty days, do not leave the country without an acceptable excuse during this period, administrative detention decision will be taken for these persons (Reg. Art. 58/2).

5.2. *Authority Empowered to Take the Decision of Administrative Supervision, Duration and Inspection of Administrative Supervision and Notification to Parties*

The decision will be made by the governorships for those who are deemed to have a reason for administrative detention among those who have been decided to be deported. According to the Implementation Regulation, the deportation decision will be taken ex officio by the governorate in the province where the foreigner was arrested, processed or determined, or upon the instruction of the Directorate General of Immigration Administrative (Art. 56/1). Administrative detention decision will be taken by the governorates of this place authorized in terms of location, to be stated in the deportation decision. Foreigners who have been taken administrative detention decision will be conveyed to removal centers where they will be detained within forty-eight hours (LFIP Art.57/2)[49]. However, instead of the administrative detention decision, alternative obligations to administrative detention may be decided on these persons in accordance with Article 57/A of LFIP (LFIP Art.57/2).

As a rule, a foreigner under administrative detention can be kept for a maximum of six months in removal centers, but this period can be expanded for a maximum of six months if the deportation procedures cannot be ended up because of the foreigner's failure to cooperate or provide correct information or documents about his country (LFIP Art. 57/3). As a result, foreigner will be deprived of his/her liberty for a year with a mere administrative act without a court decision. In the doctrine, it was criticized by some authors and it was stated that the authority to decide on administrative detention

---

47 According to Clayton and Tomlinson, there is no separate scope for the second ground of detention exists because 'an attempt to carry out an offence is in itself an offence' see Clayton, Richard and Tomlinson, Hugh, The Law of Human Rights (Oxford: Oxford University Press, 2000), p.488; D.J. Harris, M. O'Boyle and C. Warbrick, Law of the European Convention on Human Rights (London: Butterworths, 1995), p.117–118.

48 KUŞCU, Döndü, Yabancılar ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Yabancıların Sınır Dışı Edilmeleri, İstanbul 2017, p. 102 vd.

49 DGMM, Removal Centres (https://en.goc.gov.tr/removal-centres, 17 October 2020)

should be taken from the administration and given to the courts[50]. However, this decision taken by the administration must have been taken in accordance with the conditions determined by law[51]. In our opinion, the decision to take the foreigners who have been deported under administrative detention should be taken by the administration, provided that due sensitivity is shown and the conditions in the law are met.

Although the administrative detention decision can be taken for six months, the foreigner does not need to be detained during this six-month period. Whether the continuation of the administrative supervision is necessary or not will be evaluated regularly by the governorship every month (LFIP Art. 57/4).

If the administration foresees that the deportation decision cannot be fulfilled within six months of the foreigner's detention, or if there is a serious indication that the foreigner under surveillance is among the foreigners who cannot be deported, or the risk of disappearance by escape or if the foreigner has applied for voluntary return support, may not require to continued detention and it terminates the detention (Reg. Art. 61/1-*a*, *b*, *c*, *ç*).

The decision of administrative detention, the extension of the administrative detention decision, outcomes of the evaluations made regularly every month or without waiting for the end of one month are notified to the person under custody or to the legal representative or lawyer, together with their reasons. If foreigners who are under detention are not represented by a lawyer, these persons or their legal representatives will be acknowledged the outcome of the decision, appeal procedures and timeframes (LFIP Art. 57/4-5)[52].

5.3. *Implementation of Administrative Detention Decision*

According to Article 58 of the LFIP, foreigners who are given an administrative detention decision are held in removal centers. The procedures and principles regarding the establishment, management, operation, transfer, inspection and transfer of foreigners under administrative detention to removal centers in order to be deported will be regulated by a regulation (Art 58/3)[53]. Removal centers are places where foreigners who are taken under administrative detention are detained in accordance with the provisions of the "Regulation on Establishment, Management, Operation, Operation and Inspection of Reception and Accommodation Centers and Removal Centers" (Art. 3/1-ç).

The procedures and principles to be followed in the fulfillment of the services provided within the scope of the Regulation are listed in the Article 4 of the Regulation. According to this Article, services in these centers should be traced the procedures and principles as follow: Protecting the right to life, human-oriented approach, protecting the benefit of the unaccompanied child, giving priority to those with special needs,

---

50 ŞEN, Ersan: Yabancının İdari Gözetimi Anayasaya Aykırı mı?, (http://www.haber7.com /yazarlar/ prof-dr-ersan-sen/1428014-yabancinin-idari-gozetimi-anayasaya-aykiri-mi, 25.10.2020)

51 EKŞİ, İdari Gözetim, p. 9; ÖZBEK, p. 47.

52 KUŞCU, p.264.

53 EKŞİ, İdari Gözetim, p. 14.

keeping personal information confidential, informing those concerned in the procedures to be carried out, strengthening the shelters socially and psychologically, respecting the freedom of belief and worship of the shelters, the shelters that are served on the basis of non-discrimination based on language, race, color, gender, political opinion, philosophical belief, religion, sect and similar reasons.

In the removal centers, the most basic needs, accommodation and nutrition, are provided, and health services, which cannot be covered by the foreigner, are provided free of charge. The foreigner is given permission to meet his relatives with a notary public, legal representative or lawyer, and they are allowed to telephone access[54].

Taking alternative administrative measures instead of administrative detention is aimed both not to deprive individuals of their liberty and not to led to a financial burden on the administration (Art. 57/A)[55].

However, according to Article 57/8 of the LFIP, to issue monitoring measure for persons for whom an administrative detention by administration, and to issue this administrative decision without a court or judge decision on a foreigner who is not a suspect, accused or convict in terms of criminal law may undermine the right to freedom and security guaranteed in Article 19 of the Constitution[56]. Although it is possible to object to the criminal judge of peace against this measure, this may not be an effective remedy, as seen in the decisions of the ECtHR and the Constitutional Court.

6. Judicial Remedy Against Administrative Detention Decision

6.1. *Application to the Criminal Judges of Peace Against the Decision of Administrative Detention*

LFIP allows for a judicial remedy against administrative detention orders. Detained persons or their legal representatives or lawyers can apply to the criminal judge of peace against the decision of administrative detention. (LFIP Art. 57/6). The petition of objection submitted to the administration will be immediately conveyed to the criminal judge of peace. Against the administrative detention decision, which is an administrative act, an application should be made to administrative courts instead of the criminal judge of peace. So, administrative detention decisions are administrative acts and not penalty decisions.

As justification, because of the small number of administrative courts in Turkey examination would be insufficient and in order to provide effective control, this task should be given to the criminal judgeships which are more common in Turkey[57]. In our

---

54 KUŞCU, p.265-266.

55 BALFE, Lord Richard, Committee on Legal Affairs and Human Rights, Administrative detention in Council of Europe member states – legal limits and possible alternative measures, AS/Jur (2016) 18, https://www.statewatch.org/media/documents/news/2016/may/coe-pa-admin-detention-report.pdf, p.7, "In particular for asylum seekers, when it should be as short as possible, and that alternatives to detention should be used wherever possible. With regard to immigration detention of children, the Assembly has taken a particularly critical stand".

56 EGEMEN DEMİR, p.131.

57 EKŞİ, İdari Gözetim, p. 80; DOĞAN, Vahit: Türk Yabancılar Hukuku, Ankara 2016, p. 126; BAYRAKTAROĞLU ÖZÇELİK, p. 240.

opinion, it was necessary to apply to the administrative courts against the administrative detention decision, which was not a criminal law sanction but was an administrative act.

Although the period of time to apply to the criminal court of peace against the decision of administrative detention is not regulated in the Law, it is stated that the criminal judge of peace will be applied again with the claim that the conditions of administrative detention have disappeared or changed (LFIP Art.57/6). Therefore, it was stated that during the period of administrative detention, an objection could be brought to the criminal judge of peace against detention[58].

Applying to the criminal court of peace against the administrative detention decision does not prevent the implementation of administrative detention. The application against the administrative detention decision in the same direction does not stop the removal process (Reg, Art. 59/5). The period given to the criminal judge of peace to make an examination and make a decision is five days. The decision of the criminal judge of peace at the end of this period is final. In our opinion, an individual application can be made to the Constitutional Court and the ECtHR against this decision, as in the deportation decisions, and if the conditions are available, an interim injunction can be requested in accordance with Article 73 of the Constitutional Court Rules and Article 39 of the ECHR Rules of Procedure.

Also, attorney service is provided according to the provisions of the Attorneyship Law, upon their request, for those who apply to judicial remedy against administrative detention and who are unable to afford the attorney's fee (LFIP Art. 57/6-7, Reg, Art.59).

6.2. *Individual Application to the Constitutional Court*

In case of violation of any of the fundamental rights and freedoms under the ECHR, which are guaranteed by the Constitution, an individual application can be made to the Constitutional Court, provided that domestic remedies are exhausted. In the case before Constitutional Court[59], the applicant has entered the legal way to Turkey on 05.04.2012. The applicant, who was pregnant, applied to the Istanbul Police Department to extend her residence permit on 01.03.2014 and was detained after a period of time and taken to Istanbul Kumkapı Removal Center and was released on 20.01.2014 after being held there for eighteen days.

In the report prepared by the Turkish Human Rights Institution regarding Kumkapı Removal Center, it was stated that access to the Center was difficult, persons under custody had no opportunity to meet with a lawyer and that the Center had not had judicial review. Considering this report, the Constitutional Court stated that there were very few outdoor facilities to be provided due to the space of less than three square meters per person in the center and the insufficient common use areas except for the accommodation areas. Also, the applicant who was pregnant was detained under these conditions for eighteen days. It concluded that there was a violation of the

[58] KUŞCU, p.278; BAYRAKTAROĞLU ÖZÇELİK, p. 241; DOĞAN, p. 126.

[59] A.S. Application, , (Application no: 2014/2841, Decision Date: 09.06.2016), Official Gazette. Date:29.06.2016, No. 29757.

regulation guaranteed by Article 17/3 of the Constitution that no one can be treated incompatible with human dignity[60].

In another decision[61], the applicant has entered illegally to Turkey on 15 December 2013. The application filed by the Istanbul 1st Administrative Court against the deportation proceedings was rejected by this Court and his application to the criminal judge of peace against the decision of administrative detention was also rejected by the Istanbul 1st the Criminal Judge of Peace (Magistrate Judge). The Constitutional Court held that in order for a treatment to be evaluated within the scope of Article 17/3, it must reach the minimum level of severity. The Court stated that this minimum threshold is relative and that every concrete event should be evaluated according to its conditions and in this context, the duration of the treatment, its physical and mental effects, and the gender, age and health status of the victim are important factors. The applicant alleged that the Kumkapı Removal Center conditions were inhuman and degrading. He stated that the Center was overcrowded and did not stay in the dormitory, but instead preferred to sleep in the television room.

As a result of its assessment, the Constitutional Court found that the Kumkapı Removal Center was overcrowded and less than three square meters of space per person, that the common areas other than the places in the Center were insufficient and that the opportunities for the applicant to benefit from the open air were very limited. The Court stated that the applicant's detention for more than eight months under these conditions incompatible with human dignity had clearly been in violation of Article 17 of the Constitution. The Court also criticized the administrative court's failure to examine the administrative process of deportation by taking into account what particular circumstances, apart from general factors. However, in accordance with Article 57 of the LFIP, the governorship's assessment required to continue the administrative detention every month and the application to be made to the criminal judge of peace against the decision of administrative detention, stated that the conditions of detention were not inspected in terms of compliance with Article 17/3 of the Constitution. In addition, for these reasons, it has come to the conclusion that there is no effective judicial and administrative remedy within the context of Article 40 of the Constitution[62].

As can be understood from the rulings of the Constitutional Court, the conditions of detention in removal centers where persons under administrative detention are kept still constitute unconstitutional. Therefore, it is obvious that there is a violation of Article 3 of the ECHR, which regulates the prohibition of ill-treatment. In addition to the LFIP and the Regulation on the Establishment, Operation, Operation and Inspection of the Reception and Accommodation Centers and Removal Centers, which were issued to eliminate this contradiction, there is a need for a new regulation regulating the conditions of removal centers where administrative oversight is carried out. It is seen that while evaluating the objections to the administrative detention, the criminal judgeships of peace exclude the complaints of the objector regarding the conditions due

60 A.S. Application, p. 83.

61 K.A. Decision (Application No: 2013/3187, Decision Date: 14.04.2016), Official Gazette. Date:14.06.2016, Number. 29742.

62 DÖNDÜ, p.274-275.

to the lack of concrete examination conditions. Similarly, there is no regulation regarding the criteria by which the conditions of the removal centers will be inspected in the assessment of whether the continuation of administrative detention, which should be done every month, by the governorships. For this reason, the detention of foreigners should be prevented in a way that exceeds the capacity of the center, and concrete criteria regarding the conditions should be determined in order for the evaluations to be made in terms of the conditions of the centers to be effective and functional.

CONCLUSION

In the process of deportation of foreigners from the country, administrative detention in the presence of certain conditions is an accepted practice among states. Administrative detention is a method of precaution that is applied when certain conditions are met during the implementation of border rejection and deportation orders and the evaluation of the applications of international protection applicants.

Undoubtedly, the most important legal basis of administrative detention is the Article 5 of the ECHR. According to the relevant article, in cases where the foreigner is detained from illegally entering the territory of the country, there is a pending deportation decision and a pending request for extradition, his arrest and detention in accordance with the law is allowed (Art.5 / 1-f). This foreigner who has been caught must be informed as soon as possible and in a language he/she understands the grounds for the detention, the charges against him and the reasons for his detention (Art. 5/2) Therefore, there should be a clear regulation in the laws in order to take an administrative detention decision against the foreigner. Although administrative detention was applied to the foreigners who were decided to be deported in the pre-LFIP period, there was no clear regulation on this issue. Therefore, in the period before LFIP, in some cases lodged in the Court, the administrative supervision of the implementation by Turkey of Article 5 of the ECHR decision is given on that violation.

Considering the violation decisions of the ECtHR, the legislator, together with the LFIP, for the first time regulated the administrative detention of the foreigners who are subject to deportation decision, the duration of the administrative detention, the rights granted to the foreigner under administrative detention and the application against the administrative detention decision. The reasons for administrative detention are included in the Article 57 of the LFIP. According to this Article, firstly, administrative detention decision can be taken for foreigners, who are at risk of fleeing and disappearing, who are subject to a deportation decision. However, to this Article, administrative detention decision can be issued for foreigners, who had breached entry and exit rules to Turkey, who had used false or unsubstantiated document, or who have not left Turkey after the expiry of the period allowed to them to leave, without a reasonable excuse. Finally, administrative detention decision will be taken for those who threat to public ordre, public security or public health. However, alternative measures may be taken instead of administrative detention (Art. 57/2).

According to the same article, it should be evaluated by the governorship whether there is a need for detention every month, and if it is determined that the

implementation of the detention measure is no longer needed or the situation that causes detention has disappeared, the administrative detention process should be terminated immediately. If it is determined that there is still a necessity for detention of the foreigner, this assessment made by the governorship together with the grounds must be acknowledged to the foreigner or his/her legal representative. In the same direction, the foreigner or his legal representative who has been decided to extend the administrative detention procedure for another six months should be notified with the reasons for this decision and the right to apply for a legal remedy should be reminded. Otherwise, it cannot be mentioned that the administrative detention procedure applied during the deportation process was carried out with due care and as a result, this situation will lead to a violation of Article 19 of the Constitution and Article 5 of the ECHR.

REFERENCES

A.S. Application, , (Application no: 2014/2841, Decision Date: 09.06.2016), Ofiicial Gazette. Date:29.06.2016, No. 29757, bkz. (http://kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/03234646-f24f-4946-8162-390d3ee7f206?wordsOnly=False 12.10.2020)

Asalya v. Türkiye Davası (Application no: 43875/09, Karar Tarihi: 15.04.2014), kararın Türkçe metni için bkz.: (http://www.inhak.adalet.gov.tr/ara/karar/asalya.pdf 05.10.2020)

AYBAY, Rona: Bir İnsan Hakları Sorunu Olarak Sınır Dışı Edilme, Maltepe Üniversitesi Hukuk Fakültesi Dergisi, 2003/2, p.141-172.

AYBAY, Rona: Yabancılar Hukuku, İstanbul 2005.

BALFE, Lord Richard, Committee on Legal Affairs and Human Rights, Administrative detention in Council of Europe member states – legal limits and possible alternative measures, AS/Jur (2016) 18, (https://www.statewatch.org/media/documents/news/2016/may/coe-pa-admin-detention-report.pdf, p.7. 20.10.2020)

BAYRAKTAROĞLU ÖZÇELİK, Gülüm: Yabancılar ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Yabancıların Türkiye'den Sınır Dışı Edilmeleri, Türkiye Barolar Birliği Dergisi, 2013(108), p. 211-258.

CASSEL, Douglass International Human Rights Law and Security Detention, 40 Case W. Res. J. Int'l L. 383, 2009, pp.383-401.

CLAIRE, Macken (2006) Preventive Detention And The Right To Personal Liberty And Security Under Article 5 ECHR, The International Journal of Human Rights, 10:3, pp.195-217.

CLAYTON, Richard and TOMLİNSON, Hugh, The Law of Human Rights (Oxford: Oxford University Press, 2000), p.488; D.J. Harris, M. O'Boyle and C. Warbrick, Law of the European Convention on Human Rights (London: Butterworths, 1995).

ÇİÇEKLİ, Bülent: Yabancılar ve Mülteci Hukuku, Ankara 2016.

DARDAĞAN KİBAR, Esra, Yabancılar ve Uluslararası Koruma Kanunu Tasarısında ve Başlıca Avrupa Birliği Düzenlemelerinde Yabancıların Sınır Dışı Edilmelerine İlişkin Kurallar: Bir Karşılaştırma Denemesi, Ankara Avrupa Çalışmaları Dergisi, Cilt: 11, Sayı: 2, Yıl: 2012, p. 53-74.

EGEMEN DEMİR, Işıl, "Yabancılar ve Uluslararası Koruma Kanunundaki Güncel Gelişmeler Hakkında Genel Değerlendirme", *TAÜHFD*, 2020; 2(1): pp.115-132.

DGMM, Removal Centres (https://en.goc.gov.tr/removal-centres, 17 October 2020)

Directive 2008/115/EC of The European Parliment and of the Council of 16 December 2008 "on common standards and procedures in Member States for returning illegally staying third-country nationals", OJ 24.12.2008 L348, p. 98, see also.: (http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en: PDF, 21.10.2020).

DOĞAN, Vahit: Türk Yabancılar Hukuku, Ankara 2016.

EKŞİ, Nuray: İltica Talepleri Reddedilerek Türkiye'den Sınır Dışı Edilmelerine Karar Verilen Yabancılara İlişkin AİHM Kararlarının Yabancılar ve Uluslararası Koruma Kanununa Etkisi, Türkiye Adalet Akademisi Dergisi, Y. 5, S. 19, Ekim 2014, p. 53-101.

EKŞİ, Nuray, Yabancılar ve Uluslararası Koruma Hukuku, İstanbul 2016.

EKŞİ, Nuray, 6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu'nda İdari Gözetim, İstanbul 2014.

EKŞİ, Nuray / KABAALİOĞLU, Haluk: Yabancıların Türkiye'den Sınır Dışı Edilmeleri, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, C. 24, S. 1-2, 2004, p. 503-522.

ERKEM, Nalan: Abdolkhani ve Karimnia / Türkiye Kararının Uygulanması İzleme Raporu, İHOP AİHM Kararlarının Uygulanması İzleme Raporları,2013/3, (http://www. aihmiz.org.tr/?q=tr/node/197, 13.10.2020).

European Committee for the Prevention of Torture, 7-14 December 2005 Turkey Visit Report, 06.09.2006, CPT/Inf (2006)30, Raporun orijinal metni için bkz (http://humanrightscenter.bilgi.edu.tr/media/uploads/2015/05/08/2006-30-inf-eng. Pdf, 11.10.2020).

FARMER, Alice (2008), 'Non-Refoulement and Jus Cogens: Limiting AntiTerror Measures that Threaten Refugee Protection', Georgetown Immigration Law Journal, Vol. 23, No. 1, pp. 1-38.

GREER, Steven, 'Preventive Detention and Public Security: Towards a General Model', in A. Harding and J. Hatchard (eds), *Preventive Detention and Security Law: A Comparative Survey* (Dordrecht: Martinus Nijhoff Publishers, 1993

HUYSAL, Burak / Şermet, Begüm: 6458 Sayılı Yabancılar ve Uluslararası Koruma Kanunu'nun 57. Maddesi Çerçevesinde Hakkında Sınır Dışı Kararı Alınan Yabancıların İdari Gözetimi, Prof. Dr. Feridun Yenisey'e Armağan, Beta Yayınevi, Ekim 2014.

İNELİ-CİGER, Meltem (2017), 'Protecting Syrians in Turkey: A Legal Analysis' International Journal of Refugee Law, Vol 29, No 4, pp. 555–579.

Kurkaev v. Türkiye, (Application no: 10424/05, Decision Date: 19.10.2010), see for text http://www.izmirbarosu.org.tr/Upload/files/haberler/kurkaev--tuerkiye.pdf, (acceessed 20.10.2020).

KUŞCU, Döndü, Yabancılar Ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Sınır Dışı Edilmelerine Karar Verilen Yabancıların İdari Gözetim Altına Alınmaları, *DÜHFD,* Cilt: 22, Sayı: 37, 244 Yıl: 2017, pp. 241-284.

KUŞCU, Döndü: Yabancılar ve Uluslararası Koruma Kanunu Hükümleri Uyarınca Yabancıların Sınır Dışı Edilmeleri, İstanbul 2017.

Lauterpacht, Elihu and Bethlehem, Daniel (2003), 'The Scope and Content of the Principle of Non-refoulement', in E. Feller, V. Türk ve F. Nicholson (ed.), Refugee Protection in Internaional Law: UNHCR's Global Consultations on International Protection, Cambridge, pp. 87-177.

MUELLER, T.N. Preventive Detention As A Counter-Terrorism İnstrument in Germany. *Crime Law Soc Change, 2014,* 62, pp.323–335.

ÖZBEK, Nimet, AİHM Kararları Işığında LFIP'nda İdari Gözetimin Uygulandığı Mekânlar Hakkında Ortak Sorunlar, Türkiye Barolar Birliği Dergisi, 2015 (118), pp. 15-50.

ŞEN, Ersan: Yabancının İdari Gözetimi Anayasaya Aykırı mı?, (http://www.haber7.com /yazarlar/ prof- dr-ersan-sen/1428014-yabancinin-idari-gozetimi-anayasaya-aykiri-mi 25.10.2020).

United Nations and the Rule of Law, Human Rights And Arrest, Pre-Trial Detention And Administrative Detention, p.175-176, (https://www.un.org/ruleoflaw/files/training9 chapter5en.pdf, 17 October 2020.

Yarashonen v. Türkiye Davası (Application No: 72710/11, Decision Date: 24.06.2014), see for text.(http://www.refworld.org/ cases,ECHR,53ad75944.html, 20.10.2020).

YILMAZ, Sibel, Protection Of Refugees' Rights Arising Out Of The International Protection Procedure From The View Of Turkish Constitutional Court's Individual Application Decisions, Ankara Üni. Hukuk Fak. Dergisi, 68 (3) 2019, pp.707-752.

ZAMANİ, Masoud, Detention Without Trial: Historical Evolution, States' Authority And İnternational Law. PhD thesis, University of Nottingham, 2015.