REFUGEE RIGHTS REPORT WITHIN THE FRAMEWORK OF THE ACTION PLAN ON HUMAN RIGHTS

2024

İNSAN HAKLARI DERNEĞİ · HUMAN RIGHTS ASSOCIATION · KOMELEYA MAFÊN MIROVAN · 1986

HUMAN RIGHTS ASSOCIATION

REFUGEE RIGHTS REPORT WITHIN THE FRAMEWORK OF THE ACTION PLAN ON HUMAN RIGHTS

2024

HUMAN RIGHTS ASSOCIATION

Necatibey Cad. No: 82/11-12 Demirtepe / Ankara
e-Mail: posta@ihd.org.tr
Phone: (0.312) 230 35 67-68-69
Fax: (0.312) 230 17 07

TABLE OF CONTENTS


İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN
1986

A. Introduction: The Human Rights Action Plan (HRAP) 2021

A.1. Background

Announced on 2 March 2021, the Action Plan on Human Rights (HRAP) is a continuation of the reform will based on the Eleventh Development Plan and the Judicial Reform Strategy Document[1]. As a matter of fact, this Plan, which was planned to be prepared as one of the objectives[2] of the 2019 *Judicial Reform Strategy Document*, can also be seen as an extension of the judicial reform strategy. In different periods in the history of the Republic of Turkey, partial or comprehensive judicial reforms have been carried out for different needs. However, the transition to a planned judicial reform strategy is directly related to Turkey's candidacy process for membership of the European Union (EU) and the harmonisation with the EU acquis in this context. The first judicial reform strategy in this context was prepared in 2009 in order to meet one of the unofficial opening criteria within the scope of the negotiation process with the EU to ensure alignment with the acquis[3]. Following the first document, two more documents titled Judicial Reform Strategy (JRS) were prepared, the second in 2015 and the last in 2019. The last document, which will cover the years 2019-2024, was announced by President Erdogan himself on 30 May 2019 to show that the state and the government are behind it.

A 39-article proposal that envisages amendments in 15 different laws directly related to the nine aims, 63 goals and 256 activities included in this document has come to the agenda.

At this point, the extent of the direct relationship of the judicial reform strategy, and thus the HRAP, with the Instrument for Pre-accession

1 See Presidential Circular No. 2021/19 dated 29 April 2021 (the Circular), https://insanhaklarieylemplani.adalet.gov.tr/resimler/2021_9_Genelgesi.pdf

2 Goal 1.2. of the Judicial Reform Strategy Document was set as "A new Human Rights Action Plan will be prepared and effectively implemented": https://yargireformu.adalet.gov.tr/Resimler/yrs.pdf, p.29.

3 Judicial Reform Strategy Document, https://yargireformu.adalet.gov.tr/Resimler/yrs.pdf, p.6.

Assistance (IPA) should also be pointed out. IPA is a financial instrument for the benefit of (potential) candidate countries in the process of EU membership. In this context, the Instrument has the task of providing funds to support the political, institutional, social and economic reforms to be carried out by the candidate countries for EU membership and to help them reach the Union standards[4]. In this axis, the Instrument aims to harmonise the legislation and standards of the countries concerned with the EU legislation and standards, to improve the capacity of the institutions to carry out these harmonisation efforts and to implement the reforms, and thus to prepare them for the rights and obligations that come with EU membership[5].

IPA funds are planned to cover 7-year periods in accordance with the EU budget period. Currently, the IPA III period is being operated for the years 2021-2027. Turkey explains its plan for utilising financial assistance as part of IPA III through the *Strategic Response Document*[6]. In line with the above-mentioned scope, five windows covering thematic issues have been established in this Document. The first of these is the window entitled "rule of law, fundamental rights and democracy". In this window, the first priority issue is judiciary. In the context of this priority, reference was made to the judicial reform strategy, which includes improvements in important areas related to Chapter 23 of the Acquis (Judiciary and Fundamental Rights) and explicit references to EU membership[7]. Other priority issues under the relevant window are listed as fight against corruption, fight against organised crime/security, migration and border management, fundamental rights and civil society.

Although the reference to judicial reform is under the heading of judiciary, it is expected to have a scope that includes these issues. On the other hand, it is observed that the *Strategic Response Document* refers to the APHR as another reflection of the planning for harmonisation with the EU acquis and thus the utilisation of IPA III. The HRAP, like the JRS, addresses the issues included in the rule of law, fundamental rights and democracy

4 https://ipa.gov.tr/ipa-nedir/
5 Ibid.
6 https://abdigm.meb.gov.tr/meb_iys_dosyalar/2023_11/01165838_TURKYYE_IPA_III_S TRATEJYK_CEVAP_BELGESY.pdf
7 Ibid, p. 10.

window in a comprehensive manner. In this framework, it can be stated that the Judicial Reform Strategy and the HRAP have been shaped as the two main documents planning Turkey's development strategy under the heading of "rule of law and fundamental rights" in terms of harmonisation with the EU acquis and benefiting from the financial support under IPA III. With the EU's IPA III Regulation emphasising the importance of cooperation on migration at international and regional level, including further strengthening border and migration management capacities, ensuring access to international protection, sharing relevant information, strengthening border control and efforts to combat irregular migration, addressing forced displacement and combating trafficking in human beings and human smuggling[8], both the Judicial Reform Strategy and the HRAP include issues directly or indirectly related to migration management. In fact, addressing migration management in this context is not a new development; it was also included in the judicial reform strategies covering the previous IPA periods.

In the second JRS period, migration was considered as one of the most important agendas of Turkey, affecting social peace within the country as well as regional and international relations. In this JRS document, it was pointed out that the number of Syrians under temporary protection in Turkey reached 2.8 million by the end of 2015, with the waves of migration that started after the civil war in Syria in 2011, and it was stated that Turkey prevented a crisis that would "deeply affect Europe while ensuring the protection of the right to life of Syrian refugees" with the people-oriented policies it pursued despite the migration movements (2019: 13). On the other hand, migration movements are considered among the factors that may cause disputes and disagreements by posing a problem to the principle of reconciliation, which is the basis of law (2019: 92), and it is pointed out that it will inevitably affect the justice system, and it is stated that projects and training activities were carried out in the second JRS period, especially on refugees' access to justice.

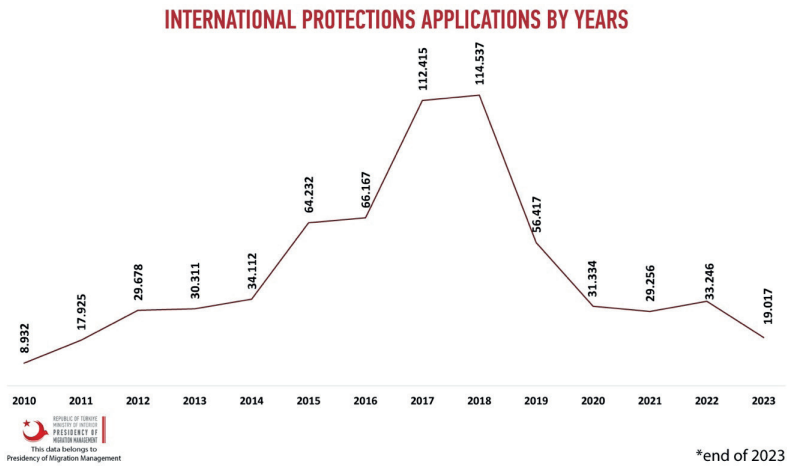
8 Regulation (EU) No 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-accession Assistance (IPA III), para. 22, https://ipa.gov.tr/wp-content/uploads/IPAIII_Turkce_Tuzuk.pdf

In the third JRS document, the issue of migration is mentioned under the heading “International judicial assistance and judicial cooperation will be improved”, which is referred to as **Goal 4.13**, with reference to “human trafficking” and “smuggling of migrants” within the scope of transnational crimes. It can be stated that there are more explicit references to migration in the HRAP. As a matter of fact, these references constitute the source of the evaluations in this report. In this context, it can be seen that the promises of the HRAP in terms of various activities under two objective headings (protection and promotion of freedoms of expression, association and religion, protection of vulnerable groups and strengthening social welfare) are directly related to migration. These activities are compiled below under the heading ‘Scope’.

A.2. Regular And Irregular Migration in Turkey

According to the latest data of the Presidency of Migration Management, as of 21 March 2023, the number of **foreigners in Turkey with residence permit** is 1,107,370. The top five countries of origin of foreigners in Turkey with residence permit are Turkmenistan (110,553), Russian Federation (99,022), Iraq (88,797), Iran (81,067) and Syria (79,107). There are also sub-types of residence permits such as “Short-Term Residence” (621,177), “Student Residence Permit” (171,849) and “Family Residence Permit” (124,503), although the conditions for each cluster may vary. The top five provinces with the highest numerical concentration of foreigners with residence permits in Turkey are as follows: Istanbul (554,473), Antalya (114,705), Ankara (75,387), Bursa (50,384) and Mersin (43,896). The last five provinces with the lowest numerical concentration of foreigners in Turkey with residence permit are as follows: Bayburt (290), Ardahan (275), Bitlis (207), Muş (88) and Tunceli (50).

In 2023, the number of **international protection** applicants in Turkey was announced as 19,017, the lowest in the last decade. The majority of the applicants are from Afghanistan (13,068), while Iraq and Iran are the other countries with the highest number of applicants.



As of 21 March 2024, the number of **Syrians under temporary protection** in Turkey was announced as 3,130,768. In this sense, there are more Syrians in Turkey than in other countries in the region such as Lebanon (1,520,000), Jordan (730,630), Iraq (317,960) and Egypt (156,678), as well as in Germany (522,575), Sweden (111,119) and Austria (73,921). In this context, the top five provinces where Syrians reside in Turkey are as follows: Istanbul (530,746), Gaziantep (428,574), Şanlıurfa (277,443), Hatay (262,960) and Adana (220,486). When we look at these numbers in proportion to the population of the provinces where Syrians reside, the ranking of the first five provinces changes as follows: Kilis (31.25%), Gaziantep (16.53%), Hatay (14.55%), Şanlıurfa (11.14%) and Mersin (9.58%). The total number of Syrians staying in 6 **Accommodation Centres** in Adana (13,129), Hatay (10,803), Kahramanmaraş (14,504), Osmaniye (10,012) and Malatya (11,617) is 60,065. In addition, a total of 65,581 Syrians were resettled to **third countries** between 2016 and 2024.

According to the data of the Presidency of Migration Management, the number of **victims of human trafficking** has fluctuated over the years, with a sharp decline in the last four years. The number of people staying in the two **Shelter for Victims of Human Trafficking** one in Ankara and one in Kırıkkale was 42 as of 2024.

With all these data, Turkey has historically become a country receiving migration from different countries, for different reasons and with different profiles since the beginning of the 2000s due to its central position in Asia, Europe and Africa continents and their close sub-regions such as Caucasus, Middle East, North Africa and Balkans. With the 2011 civil war in Syria, Turkey has become the country hosting the largest number of refugees in the world. Considering the nature of the migration received by Turkey, discrimination and human rights violations that migrants and refugees are subjected to in different areas of life have been and will continue to be on the agenda of law with a wide range.

A3. Scope

The purpose of this evaluation report is to analyse *the Action Plan on Human Rights: Free Individual, Strong Society, More Democratic TURKEY* (HRAP March) and *the Action Plan on Human Rights and Implementation Calendar Free Individual, Strong Society, More Democratic TURKEY* (HRAP April). In this context, the headings that may be directly related to migrants and refugees in the aforementioned documents are compiled as follows.

Page	Related Text
61	**AIM 4: PROTECTION AND PROMOTION OF THE FREEDOMS OF EXPRESSION, ASSOCIATION AND RELIGION** **4.4. Improving the Effectiveness of the Fight 4.4 against Hate Speech and Discrimination** C. The national and international developments will be tracked and periodical reports will be prepared on instances which constitute discrimination or hate speech/crime such as Islamophobia, xenophobia, migrant-phobia and racism. **Activity 4.4.c.** The national and international developments will be tracked and periodical reports will be prepared on instances which constitute discrimination or hate speech/crime such as Islamophobia, xenophobia, migrant-phobia and racism. **Institution Responsible:** Ministry of Foreign Affairs (International Level), Ministry of Interior (National Level) **Term:** Permanent
98	**AIM 8: PROTECTING VULNERABLE GROUPS AND STRENGTHENING SOCIAL WEALTH**
104	8.5. The Rehabilitation of Foreigners under International Protection or Temporary Protection and Strengthening of Their Access to Justice A. Strategies will be developed towards meeting the basic needs, such as health, accommodation and education, of foreigners under international protection or temporary protection and victims of human trafficking; in this scope, joint efforts will be conducted with non-governmental organisation in order to facilitate their social adaptation. **Activity 8.5.a.** Strategies will be developed towards meeting the basic needs, such as health, accommodation and education, of foreigners under international protection or temporary protection and victims of human trafficking; in this scope, joint efforts will be conducted with non-governmental organisation in order to facilitate their social adaptation. **Institution Responsible:** Ministry of Interior **Term:** 1 Year B. An effective remedy of application will be introduced to examine complaints concerning the conditions of accommodation at removal centres. **Activity 8.5.b.** An effective remedy of application will be introduced to examine complaints concerning the conditions of accommodation at removal centres. **Institution Responsible:** Ministry of Interior **Term:** 1 Year

	C. Secondary legislation work concerning alternative measures to "administrative detention" will be conducted and these measures will be implemented effectively. **Activity 8.5.c.** Secondary legislation work concerning alternative measures to "administrative detention" will be conducted and these measures will be implemented effectively. **Institution Responsible:** Ministry of Interior **Term:** 1 Year D. Measures necessary will be taken in order to facilitate the practical access of the foreigners, who are within the scope of the Law on Foreigners and International Protection, to an attorney and to ensure completion of proceedings within a reasonable time. **Activity 8.5.d.** Measures necessary will be taken in order to facilitate the practical access of the foreigners, who are within the scope of the Law on Foreigners and International Protection, to an attorney and to ensure completion of proceedings within a reasonable time. **Institution Responsible:** Ministry of Interior (Facilitation of Access to an Attorney) Ministry of Justice (Completion of Proceedings within a Reasonable Time) **Term:** 2 Years E. The forms concerning the rights of suspects, accused persons and victims that are prepared for foreigners will be translated into widely-spoken languages and provided to the persons concerned. **Activity 8.5.e.** The forms concerning the rights of suspects, accused persons and victims that are prepared for foreigners will be translated into widely-spoken languages and provided to the persons concerned. **Institution Responsible:** Ministry of Justice **Term:** 6 Months F. A database of offences committed against foreigners under international protection or temporary protection will be created. **Activity 8.5.f.** A database of offences committed against foreigners under international protection or temporary protection will be created. **Institution Responsible:** Ministry of Interior

	Term: 1 Year
105	**8.6. Combating Human Trafficking in an Effective Manner** A. The criminal provisions and penalties related to human trafficking will be reviewed in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings and the recommendations of GRETA. **Activity 8.6.a.** The criminal provisions and penalties related to human trafficking will be reviewed in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings and the recommendations of GRETA. **Institution Responsible:** Ministry of Justice **Term:** 6 Months B. Regular trainings will be offered to the judges, prosecutors and law enforcement officers assigned with offences related to human trafficking and a set of guiding principles will be drafted in regard to such offences. **Activity 8.6.b.** Regular trainings will be offered to the judges, prosecutors and law enforcement officers assigned with offences related to human trafficking and a set of guiding principles will be drafted in regard to such offences. **Institution Responsible:** Ministry of Interior (Law Enforcement Officers - Guiding Principles) Justice Academy of Turkey (Judges and Prosecutors) **Term:** Permanent C. Measures necessary will be taken effectively for the protection of victims of human trafficking and witnesses thereto; the effectiveness of the inspections against unregistered employment will be increased in order to prevent people from becoming victims to human trafficking. **Activity 8.6.c.** Measures necessary will be taken effectively for the protection of victims of human trafficking and witnesses thereto; the effectiveness of the inspections against unregistered employment will be increased in order to prevent people from becoming victims to human trafficking. **Institution Responsible:** Ministry of Interior **Term:** Permanent

B. Evaluation

Before proceeding to an assessment of the specific issues identified in the HRAP directly related to migration, it would be appropriate to examine the general approach of HRAP to migration management and its inclusiveness in the context of its link with human rights. It is observed that the issues related to migration management are compressed under the above-mentioned two headings in the HRAP, no direct aims related to migration are included in the other headings, and limited areas of activity are determined in the headings where issues related to migration management are included. However, migration management, especially the management of forced migration, is an issue that is organically linked to the field of human rights and requires special expertise in the field of law. As a matter of fact, this issue requires the sensitive protection of the balance between freedom and security, as stated both in the EU legislation and in the general justification of the Law on Foreigners and International Protection (LFIP), which is inspired by this legislation and is considered as the main national source of migration management in Turkey[9].

In order for migration management to be structurally capable of balancing freedom and security, it needs to be systemically aligned with the requirements of human rights law and, more specifically, international migration and refugee law. Therefore, improvements are needed not only in relation to the limited migration-related aims in the HRAP, but also in relation to other more general aims (in particular: a stronger human rights protection system, legal predictability and transparency, strengthening of personal liberty and security, safeguarding the physical and moral integrity of the person and the right to privacy).

The most obvious reason why these needs are not covered in the HRAP is considered as the need for specialisation in migration and refugee law in the judiciary, which also needs to be developed in the context of legal security and transparency in the context of the HRAP, but is not included in this scope. Although migration and refugee law is a field of law that has its own content and is related to more than one field of law such as human rights law, administrative law, constitutional law, international (private)

9 General Justification of the LFIP, https://www.goc.gov.tr/genel-gerekce18

law, criminal law, it is not considered as a separate field of law in Turkish law. In this context, it is not possible to fully specialise in this field either in academia, legal education or in the judiciary.

Although there is a case for assigning a specific chamber of the administrative courts to hold trials in this area (particularly in relation to the assessment of international protection applications and deportation decisions and residence permits), the lack of specialisation in academia, and indirectly in legal education, hinders specialisation due to the caseloads of the administrative courts on matters other than these. Furthermore, due to the lack of jurisprudence in the relevant cases as they cannot be carried to the Council of State and in particular the finalisation of deportation decisions by the courts of first instance, the judiciary is unable to render different judgements in similar cases, uniformity is not ensured and the relevant recent European Court of Human Rights judgements are not effectively reflected in practice. This interpretation also applies to the Criminal Judgeships of Peace, which are authorised to review administrative detention decisions.

The lack of specialisation in the context of the specific characteristics of migration and refugee law makes it difficult for the Criminal Judgeships of Peace, which are naturally specialised in the concepts and perspective of criminal law, to make uniform, consistent and coherent decisions in line with the legal requirements of the field as the final decision-making authority. It is observed that the same situation is also valid in terms of the use of the interpretation tools of the 1951 *Convention Relating to the Status of Refugees* (1951 Geneva Convention) and the realisation of a practice in compliance with the Convention.

Since Turkey applies the Convention with a geographical limitation, it does not apply the Convention to persons who have become refugees due to events occurring in Europe. However, the conditional refugee status (Art. 62 of the LFIP), which is shaped on the axis of geographical limitation in the LFIP, is defined in the same way as the refugee status (Art. 61 of the LFIP) in the Convention and the LFIP and is shaped on the axis of the same inclusion criteria. Therefore, it is a requirement of the principle of administrative consistency that the same criteria in both statuses are interpreted and evaluated in the same way. In this context, in

particular, in the evaluation of decisions on applications for international protection in the context of conditional refugee status, while the criteria in the Convention should be evaluated on the basis of the interpretative tools of the Convention (e.g. the Guidelines of the United Nations High Commissioner for Refugees), it is observed that these tools are almost never referred to in judicial decisions.

Thus, it is understood that judicial decisions on international protection do not include the standard of proof, the burden of proof, the scope of the reasons for persecution, the degree of connection between the reasons for persecution and the possibility of persecution. However, these are important issues that are subject to legal review within the scope of the reason element of the administrative act and should not be excluded from legal review within the scope of subsidiarity.

In this context, it is observed that some problems arising from the legislation are not explicitly addressed in the HRAP. For example, the regulations on temporary protection are shaped by a regulation. However, it is observed that this regulation (Temporary Protection Regulation) includes restrictions on fundamental rights and freedoms in contradiction with Article 16 of the Constitution, which stipulates that restrictions on the fundamental rights and freedoms of foreigners must be made by law and in accordance with international law, and Article 13 of the Constitution, which stipulates that they must be proportionate. As an example, Article 24 of the Regulation, which stipulates that temporary protected persons shall stay in certain provinces, is a provision regulated by the Regulation, although it results in the restriction of the freedom of residence and travel. In addition, it is known that the fact that temporary protected persons can leave the provinces they are in only with a road permit is regulated on the basis of a circular. In this case, a problematic outlook emerges in terms of both regulation by law and the criteria of conformity with international law and proportionality. Because, even if it is possible to limit this right by law, limiting it for an unlimited period of time raises question marks in terms of proportionality and compliance with international law, and prejudices legal certainty and predictability. A second example concerns Article 8 of the Regulation, which will be discussed in more detail below.
This is a provision regulating foreigners who cannot be placed under temporary protection, this provision also stipulates that these persons

shall be accommodated in a special place of temporary accommodation centres or in a separate temporary accommodation centre or in separate places to be determined by the governorates without an administrative detention order. It is clear from the wording of the provision that such harbouring is a deprivation of liberty. Therefore, while the relevant provision should be regulated by law by determining the conditions, duration, procedural safeguards and remedies of detention, its current form is limiting particularly the right to liberty and security of person in an incompatible way with the Constitution, the ECHR and the case-law of the ECtHR. Another example in this regard is Article 35(2) of the Regulation, which states that "those who fail to comply with their obligations despite being given a warning may be subjected to full or partial restriction in their utilisation of other rights, except for education and emergency health services". The problem in the examples given above also applies to this provision in the context of its relationship with fundamental rights and freedoms.

A generally problematic aspect of temporary protection is that it is organised in a way that is disconnected from the international protection regime. As a rule, temporary protection is an intermediate and pragmatic solution method that is not seen as an alternative to the main protection regime, the international protection regime, which is shaped by individual protection statuses (refugee, conditional refugee and subsidiary protection statuses). However, it is observed that the legislative arrangements render temporary protection an alternative to the international protection regime. The LFIP recognises the right to apply for international protection for all foreigners. However, it is understood that this right recognised by the Law has been abolished indefinitely by the Regulation (Art. 16). As a matter of fact, the Temporary Protection Regulation does not stipulate an upper time limit for temporary protection as in EU practice. This situation, on the other hand, both eliminates the transitivity between temporary protection and international protection and prevents access to a durable solution by creating a state of long-term refugee status, and in this context, it has negative consequences, especially in terms of integration and disproportionate restriction of fundamental rights and freedoms, as the protection status is not sufficiently secure.

In addition, the provision of the Law underpinning temporary protection and the related regulation does not stipulate that temporary protection is only for persons in need of protection due to events occurring outside Europe. Therefore, regardless of the current practice, it is generally understood that the temporary protection regime has the potential to affect persons who may fall within the scope of the 1951 Convention. Therefore, the provisions of the Regulation and, more generally, the temporary protection regime should be in line with the 1951 Convention. However, it is understood that this harmonisation is not observed. For example, while Article 54(2) of the LFIP, which is a reflection of Article 32 of the Convention regulating the circumstances under which a refugee lawfully present in the country may be deported, limits the grounds for deportation for international protection applicants and status holders in the context of public order and national security, the same guarantee is not provided for those under temporary protection.

It should be noted that similar observations can also be made with regard to the LFIP. For example, as underlined by the recent judgements of both the Constitutional Court and the ECtHR, in terms of deportation decisions, during the issuance and/or judicial review of the decision, the interest pursued by the deportation decision and the consequences of the issuance of this decision on the fundamental rights and freedoms of the person must be balanced in accordance with the proportionality requirement. One of the most prominent rights in this regard is the right to protection of private and family life. However, it is observed that there is no provision in the legislation on the obligation to make a balancing in this direction. As a second example, as mentioned in the judgements of the ECtHR, in order for the person concerned to have an effective remedy in the context of the prohibition of refoulement, the country to which the person concerned will be sent with this decision should be determined in deportation decisions. However, again, it is observed that there is no provision stipulating this condition in the legislation. It is concluded that both of these situations may cause contradictions in the context of human rights law and more generally constitute a significant deficiency in the context of legal security and predictability.

These points are given only as examples of what needs to be emphasised for a migration management system that is sensitive to fundamental rights

and freedoms and ensures legal security, predictability and transparency. Although it is considered a deficiency that many of the issues necessary for strengthening the migration management system in accordance with the requirements of the rule of law are not included in the HRAP, it is hoped that the specialisation in the field of migration and refugee law will pave the way for improvements that can have a permanent and structural impact in the future.

B.1. In Terms of the Struggle Against Hate Speech and Discrimination in the Context of Protecting and Promoting Freedoms of Expression, Association and Religion

Although changes and developments have been promised since 2021, when the Human Rights Action Plan was published, in terms of the aims of Increasing Effectiveness in Combating Hate Speech and Discrimination under the title of Protecting and Developing Freedoms of Expression, Association and Religion on page 59, and Protecting Vulnerable Sections and Strengthening Social Welfare on page 94 of the Human Rights Action Plan, it seems that the promises do not have a very positive reflection in practice, even though more than 3 years have passed.

Within the scope of the aim of protecting and promoting the freedoms of expression, association and religion, the prominent objective is to increase the effectiveness in combating hate speech and discrimination. In terms of the realisation of this aim for refugees and migrants, the focus is undoubtedly on combating xenophobia, racism and discrimination. Although the objective of combating hatred and discrimination is shaped within the scope of the aim of protecting the freedoms of expression, association and religion, the assessments under this heading also include the principle of equality due to the organic connection of hatred and discrimination with the principle of equality. At this point, firstly, the general outlook on hatred and discrimination against refugees and migrants will be given based on open sources, then the existing legal regulations will be analysed and the points of these regulations that need to be improved in the context of the envisaged goal will be mentioned, and then, taking into account the general outlook, whether there are developments on these points and their effectiveness will be discussed.

Studies conducted by various non-governmental organisations show that the perception of foreigners as othering, exclusion and, in some cases, xenophobia is prominent in the society. For example, a field study conducted by the Turkish Social Economic Political Research Foundation (TÜSES) (2021) in Istanbul revealed that the cultural, social and emotional distance of adult Turkish citizens residing in Istanbul towards Syrians is quite high; despite religious and historical commonalities, most Istanbulites marginalise Syrians culturally and avoid establishing social relations with them; and have prejudices about Syrians reducing the employment opportunities of locals, disrupting the population balance by having too many children, posing a threat to the modern lifestyle, making it difficult to benefit from public spaces and services, increasing sexual assaults against women and children, posing a risk of terrorism and influencing the results by voting in elections. In line with these findings, the study found that Istanbulites have extremely negative feelings about foreign migrants in general and Syrian asylum-seekers in particular (TÜSES 2021, 13). In the study conducted by the Centre for Humanitarian and Social Research (İNSAMER) (2021) focusing on the harmony between Syrian refugees and Turkish society, it is reported that the relationship between Turkish society and Syrians goes through five stages; this process, which starts with a good welcome and sympathy, is shaped by internal or verbal unrest, political provocation, discrimination and social rejection and direct targeting, respectively (İNSAMER 2021, 8). Within the scope of direct targeting, it is shown that racist situations predominate among the reasons for attacks against Syrians analysed in the study with a rate of 33% (İNSAMER 2021, 12).

The study also states that discrimination has started to extend not only to Syrians under temporary protection status but also to Syrians who have acquired Turkish citizenship (Ibid, 9): “Due to the existence of those who think that Syrians who have acquired Turkish citizenship cannot have the same rights and responsibilities as a Turk, many people are forced to hide their Syrian origin in order to avoid harassment and hardship”. The Human Rights Association’s (İHD) report on *the Rights Violations against Refugees* (2022) also states that acts of discrimination and acts based on hatred and the perceptions that are the source of these acts have increased in the society. It is also stated that hate attack-based applications to the association have a significant place among the applications made for

other reasons (İHD 2022, 5). In the *Migration and Earthquake Report* (2023) of the Migration Research Association (GAR), which focuses on the mechanisms of acceptance and exclusion towards earthquake refugees who came to Istanbul, it was pointed out that refugees were at the focus of hate speech and it was emphasised that the marginalisation and enmity towards refugees deepened immediately after the earthquake and afterwards (GAR 2023, 4). The Humanitarian Policy Group (HPG) preliminary report titled Refugee Advocacy in Turkey also states that refugee organisations have witnessed an increase in hate speech against Syrian refugees (Meral et. al 2021, 18).

On this background, it is necessary to question to what extent the existing legal instruments on hate and discrimination are effective in combating the situation in question. When the Constitution is analysed as a basis for regulations on hate and/or discrimination, it is seen that Article 5 (fundamental aims and duties of the state), Article 10 (equality before the law), Article 12 (nature of fundamental rights and freedoms), Article 14 (non-abuse of fundamental rights and freedoms), Article 17 (inviolability of the person, his/her material and spiritual existence), Article 26 (freedom to express and disseminate thought) of the Constitution can be associated with combating hatred and discrimination, and in this context, a connection can also be established in terms of freedom of religion and conscience (Art. 24), freedom of thought and opinion (Art. 25), freedom of science and art (Art. 27), freedom of the press (Art. 28), freedom of association (Art. 33) and the right to organise meetings and demonstrations (Art. 34), especially in terms of the limits of these rights. In particular, it should be noted that the Constitution's provision on equality is also effective in the context of equal provision of the fundamental rights and freedoms included in the Constitution, and that the scope of this equality includes the negative obligation of fundamental rights and freedoms as well as the positive obligation to protect them from violation. In this context, it can be stated that it is a constitutional necessity to eliminate inequality between foreigners and citizens in the context of preventing hatred and discrimination, and to ensure hate and discrimination activities against foreigners by both increasing the effectiveness of legal regulations and activating implementation.

However, there is a point to be emphasised at this point. The principle of equality in the Constitution is not for 'absolute' equality, but for 'relative' equality. In this case, the fact that the rights provided to persons under a certain status are not provided or provided differently to persons with a different status does not constitute a situation contrary to equality alone. Furthermore, Article 12 of the Constitution guarantees that 'everyone', without distinction between foreigners and citizens, is entitled to fundamental rights and freedoms that are personal, inviolable, inalienable, inalienable and inalienable, and thus the principle of equality and generality is adopted in Turkish law on foreigners. However, this does not mean that the fundamental rights and freedoms of foreigners cannot be restricted differently from those of citizens.

In the Turkish foreigners' law system, where equality and generality are accepted as the rule and restriction different from citizens as the exception, the constitutional basis for the limitation of the fundamental rights and freedoms of foreigners is shown in Article 16 of the Constitution. Article 16 of the Constitution stipulates that the fundamental rights and freedoms of foreigners (different from those of citizens) may be restricted on the condition that they are in accordance with international law and regulated by law. From this point of view, if there is no special regulation regarding the limitation of the rights of foreigners in any Law, equal application will be valid, and if such a regulation is included, the limitation will be valid and will not be considered as discrimination, provided that it is also in accordance with international law. For example, restrictions on the right to freedom of residence and freedom of movement, such as entry and stay in the country, which are made by law and in accordance with international law, shall not be deemed to violate inequality.

However, although race is listed as a ground for discrimination under Article 10 of the Constitution and the relevant provision guarantees the principle of equality for all individuals without discriminating between foreigners and citizens, without prejudice to the framework we have mentioned regarding the limitation by using the expression 'everyone', when the legal regulations that are directly applicable in practice are analysed, serious doubts arise as to whether they have the scope and sanctioning power to effectively combat hatred and discrimination against foreigners. In this framework, three regulations (at the legal level) stand out. The first one

is the Turkish Penal Code (TPC) No. 5237, the second one is the Law No. 6701 on the Human Rights and Equality Institution of Turkey (LHREIT) and the last one is the Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television (LRT).

In the existing legal regulations, it is observed that there is no regulation specifically for foreigners within the scope of hate speech and discrimination. For example, although the crime of hate speech and discrimination is regulated under the heading of 'crimes against liberty' in the Turkish Penal Code (TPC, Art. 122), it is limited to the acts of 'preventing a person from selling, transferring or renting a movable or immovable property that is publicly available, preventing a person from benefiting from a certain service that is publicly available, preventing a person from being employed, preventing a person from engaging in an ordinary economic activity, due to hatred arising from differences in language, race, nationality, colour, sex, disability, political opinion, philosophical belief, religion or sect'. Due to the nature of the field of criminal law, in which the prohibition of legality and comparison is strictly applied, neither the reasons for hate and discrimination in question nor the acts that fall within the scope of the offence on these grounds can be expanded through interpretation.

Therefore, although the reasons of language, race and nationality can be considered within the scope of the offence for foreigners, it becomes controversial whether the elements of the offence will be formed in the case of hatred and discrimination that is not specifically related to these concepts, for example, just because the individual is a foreigner or is under international protection/temporary protection in the country. On the other hand, the acts considered within the scope of the offence should be considered limited in number due to the above-mentioned prohibition of legality and comparison. In this context, even an act committed with the intention of hate and discrimination, other than the aforementioned acts, may not be accepted within the scope of this offence. Although it is possible to establish a connection with some other offences under the Turkish Penal Code, it seems difficult to mention that the regulation of these offences is a source of direct and effective struggle, since discrimination and hatred against foreigners are not directly included in the definition of the offence.

Furthermore, it is difficult to understand how effectively the Turkish Penal Code's provision on hate and discrimination is used specifically in the context of xenophobia and racism. In fact, the Ministry of Justice General Directorate of Judicial Records and Statistics Justice Statistics reports, which are published regularly every year, do not include specific statistics on hate and discrimination offences. Although there are statistics provided under the heading of 'Crimes against Liberty', it is not clear to what extent the data within this scope is related to hate and discrimination offences. In this case, it is naturally not possible to access data on hate and discrimination offences against foreigners.

However, it is understood from the studies of non-governmental organisations and professional organisations that the implementation of this crime is not effective for migrants and refugees for two reasons. The first of these is that migrants and refugees are insecure and hesitant to report cases that may fall within the scope of the crime and to apply to justice; the second is that the authorities remain passive in this regard (İHD 2022, 4; The Union of Turkish Bar Associations 2016, 88; INSAMER 2021, 18). Indeed, considering that the relevant offence is in the category of offences whose prosecution is not subject to complaint, i.e. it can be investigated ex officio, and considering the above-mentioned background, it can be concluded that the relevant provision of the Turkish Penal Code should be more effective.

At this point, another issue that should be underlined in terms of effective struggle is that the deterrence of the punishment for the aforementioned offence is questionable. In this regard, it is reported that the lack of deterrent verdicts in some cases filed against racist incitement offences may also create a result that increases racism-based acts (INSAMER 2021, 19). In addition, as an example that investigations are not carried out effectively enough in terms of crimes committed against foreigners with hate and discrimination motives, the press statement made by the lawyers of the Izmir Bar Association representing the rights organisations following the case regarding the incident in which three Syrian workers were burned to death in Güzelbahçe district of Izmir province on 16 November 2021 (Izmir Bar Association 2022a). In the statement, it is stated that the incident was first characterised as an accident because the necessary investigations and evaluations were not made, the witness

statement was not taken into account, but the investigation was initiated after the perpetrator confessed.

Considering the second regulation in the legislation on the subject, the LHREIT, it is seen that Article 3 titled 'the principle of equality and prohibition of discrimination' and Article 5 titled 'the scope of the prohibition of discrimination' of this Law address the broader grounds of discrimination such as 'race, colour, language, religion, belief, ethnic origin'. In addition, these regulations have a relatively broad framework in terms of the scope of the prohibition (Art. 5). On the other hand, Article 7(1)(g) of the relevant Law, titled 'cases where a claim of discrimination cannot be brought', stipulates that 'different treatment of non-citizens arising from the conditions of their entry and residence in the country and their legal status' cannot be subject to a claim of discrimination.

It can be stated that the inclusion of this provision in the Law prevents the effective evaluation of acts of discrimination and hatred against migrants and refugees. This is because the limits of the restriction have already been determined on the basis of the principle of equality, which we mentioned above on the constitutional axis. The differential treatment of a foreigner due to his/her status as a 'foreigner' cannot be characterised as discrimination, provided that it is clearly stated in the law and in accordance with international law. However, the wording of the aforementioned provision (Art. 7/1/g of LHREIT) has a very broad nature that exceeds this scope.

To illustrate with an example, the application of visas to foreigners upon entry to the country and the requirement for them to obtain a residence permit in order to stay legally in the country beyond the visa or visa exemption period is a treatment regulated by the Law and in accordance with international law. Therefore, it cannot be characterised as discrimination. On the other hand, the refusal to enrol a child of primary school age in school due to his/her temporary protection status or international protection status, or the refusal to provide health services to a foreigner due to the aforementioned status constitutes discrimination due to the status of the person concerned, but it becomes controversial whether it will be considered as discrimination due to the relevant regulation. Nevertheless, in terms of hate and discrimination against

foreigners, the fact that the Human Rights and Equality Institution of Turkey (HREIT) has evaluated and finalised a small number of applications in this regard (HREIT 2021) and prepared a special report on the subject (HREIT 2023) can be considered as relatively positive developments. However, in the face of the general situation mentioned above, the fact that the number of applications made to and decided upon by HREIT is quite low is an indication that sufficient steps have not been taken to make application to HREIT more effective.

Another regulation on discrimination and hatred in the legislation is the LRT. Article 8 of the LRT, entitled 'principles of broadcasting services', stipulates that broadcasting services may not, *inter alia*, incite the public to hatred and enmity or create feelings of hatred in the public by discriminating based on race, language, religion, gender, class, region or sect (Art. 8/1/b); may not be contrary to the principle of respect for human dignity and the right to privacy; may not contain derogatory, insulting or slanderous statements that humiliate individuals or organisations beyond the limits of criticism (Art. 8/1/ç); may not contain or encourage publications that discriminate or humiliate individuals on the grounds of race, colour, language, religion, nationality, gender, disability, political or philosophical opinion, sect or similar reasons (Art. 8/1/e). However, since it is known that discrimination and hate speech are disseminated through the media, and that acts of hate attacks are encouraged through these means (İHD 2022, 14; Meral et. al 2021, 38; İNSAMER 2021, 17), it is not possible to say that the relevant regulations are effectively implemented or that steps have been taken to ensure effective implementation. Another issue that should be emphasised in the context of the impact of the media on discrimination and hatred is that the public is often misinformed by people who are claimed to be 'experts'. It should be added that no effective effort to prevent disinformation is visible in this regard.

In this framework, it is difficult to speak of an overall effective outcome in terms of efforts to combat hatred and discrimination. This is because there is no significant impact on strengthening legal safeguards, ensuring effective access to legal safeguards and protecting the public against misinformation and incitement. In addition, it is not possible to access statistical data on access to legal guarantees.

B.2. Protecting Vulnerable Sections And Strengthening Social Welfare

In the jurisprudence of the European Court of Human Rights, persons in need of asylum are legally recognised as a vulnerable group[10]. This vulnerability makes it necessary to take additional measures and facilitating measures in the access of individuals recognised as vulnerable to rights and procedures. It is observed that the HRAP addresses its human rights-related objectives related to persons in need of international protection mainly under this heading of empowerment of vulnerable groups. In this context, the rehabilitation of foreigners under international protection and temporary protection and strengthening their access to justice and effectively combating human trafficking are the two main objectives under this heading. The assessment on the axis of these two main objectives will be evaluated on the basis of the activities envisaged for these objectives, the current situation indicators obtained from open sources and the analysis of legal legislation and practice.

B.2.a. In Terms of Access to Right to Education

The right to education can be considered as a right that has improved in terms of access effectiveness, especially since the influx of forced migration from Syria. However, although there are binding regulations on children's right to education in both national and international law, there is no source directly regulating the right to education of refugee children in our national law (Mülteci-Der 2021, 5). The lack of this source may create problems in cases where children do not yet have international protection applicant identity documents or temporary protection identity documents at the time of enrolment in schools. Despite the fact that the right to education is guaranteed to 'everyone' without any limitation, especially in terms of primary education, the need for this source is important in order to eliminate such problems and to develop a uniform practice.

The influx of forced migration from Syria and the presence of many children of compulsory education age within this influx has led to the necessity of determining an effective strategy for access to education. In this framework, access to education was first provided through Temporary

10 MSS v. Belgium and Greece, App. No. 30696/09, 21.01.2011, para. 251.

Education Centres (TECs) and during this period, the adapted Syrian curriculum was implemented in Arabic with the help of Syrian volunteer education personnel. During this period, although it was assumed that the situation in Syria would improve in a short period of time and returns would take place, as the situation evolved into a permanent one, the need to include the Syrian population in the education system arose. TECs were completely closed and a policy change was implemented to enrol students in schools under the Ministry of National Education (MoNE). UNICEF'in (2022, 2). (s. 30)

As noted in the *Final Report on Documenting the Education Response to Syrian Children under Temporary Protection in Turkey*, Turkey's education policy has become increasingly inclusive for Syrians under temporary protection since 2016. Education coverage has included psychosocial support services and special education needs. However, the same report states that although the enrolment rate in primary school is almost 80 per cent, it remains around 50 per cent at high school level (Ibid, 3). Thus, it is understood that there is an inverse correlation between the increase in the level of education and the enrolment rate. In the related report, it is pointed out that there are three factors that cause Syrian children to remain outside the school system. These are listed as mobility, work pressure and cultural attitudes. In this context, the economically and socially unstable lives of families force them to move to cities and regions with more security and better opportunities (mobility), thus hampering children's access to education.

In addition, due to economic and unstable living conditions, boys are encouraged to work to help the family financially while girls are encouraged to work at home (work pressure) and finally, early marriage of Syrian girls, shorter duration of compulsory education in Syria and parents' reluctance to place their daughters in mixed classes may cause delays in school enrolment (cultural attitudes) (Ibid, 21). In this framework, it has been identified that there are six factors that need to be addressed in order to eliminate these effects and to improve access to education (Ibid, 3). These are: negative reactions towards migrants and low levels of integration, low Turkish language proficiency, the need for more socially inclusive learning environments, lack of educational arrangements for multicultural learning, Syrian children are often forced to work at home

or outside the home instead of attending school, and the Accelerated Education Programme (AEP), which aims to integrate Syrian and other non-Turkish-speaking migrant children who have never been enrolled in school or who have not attended school for at least three years, into school at a level appropriate to their development, has not been widely implemented (AEP is implemented in 75 Public Education Centres in 12 provinces in partnership with UNICEF and MoNE). Another programme that is considered to be in need of improvement in terms of its expansion is the Project for Supporting the Integration of Syrian Children into the Turkish Education System (PIKTES). This programme is implemented within the scope of a project and its objective is to contribute to the successful integration of foreign children into the public education system (from pre-primary to secondary education) while maintaining the quality of education for the host community in 29 project provinces with high foreign population density[11].

Although the developments in terms of access to education are seen as positive, it is also understood that there are still issues that need to be improved in general. The first of these is the need to take effective steps towards integration in general. As mentioned above, one of the barriers to school enrolment, especially for Syrian children after a certain level, is the mobility of families for better opportunities due to unstable (insecure) statuses, children having to work outside or at home, and cultural reasons. All of these reasons are related to various aspects of integration. Another issue that needs to be improved is to ensure the continuity of some of the practices that are currently seen as positive in terms of effectiveness. Since some of these practices are linked to projects, there are hesitations about ensuring their continuity. Another point is that the effectiveness of access to education in general and the needs at this point cannot be comprehensively evaluated due to limited data (Mülteci-Der 2021, 7). Although more comprehensive data is shared for Syrians living under temporary protection in Turkey, it is stated that up-to-date statistical data on those under international protection are not shared (Ibid).

11 PIKTES, https://piktes.gov.tr/cms/Home/Hakkimizda.

B.2.b. In Terms of Access to Health Rights/Services

In terms of access to health, it is possible to make similar observations with access to the right to education. In other words, although improvements have been made in this area, there are still issues that need improvement. Foreigners under international protection who do not have health insurance or the ability to pay benefit from General Health Insurance (GHI) subject to the provisions of the Law No. 5510 on Social Security and General Health Insurance (Law on Foreigners and International Protection - LFIP, Art. 89/3/a). An amendment to the LFIP in 2019 limited the duration of this practice to one year. However, the amended provision states that the one-year time limit will not be sought for those in special need and those deemed appropriate by the Ministry to continue their insurance registration. Considering that the evaluation process of international protection applications usually takes longer than the 6-month period specified in the legislation (MHM 2017, 8), it is possible that at the end of the one-year period, the person's application has not been finalised and is still in the status of applicant.

For applicants, access to work depends on obtaining a work permit within 6 months of registration and they are also obliged to reside in a specific province. In this case, if an applicant who does not have health insurance or the ability to pay is unable to access work in the province where he/she is registered, it is unlikely that he/she will have any registered source of income that can ensure his/her ability to pay. In the above-mentioned provision, there is no explicit guarantee that the GHI will continue to operate for those in such situations, and the Ministry of Interior is given a very broad mandate to continue the implementation of the GHI after one year. The right to access health insurance can be considered within the scope of economic and social rights that states are obliged to provide in line with their capacities.

In this context, it may be possible to limit the right of access for foreigners by assessing human resources and financial capacity. From this point of view, it can be concluded that the amendment to the legislation has a reasonable and justifiable purpose to balance the financial and human resource burden and to eliminate the inequality that would arise from the indefinite provision of protection to all persons who are in need of

protection because their application has not yet been finalised, but it does not provide objective and foreseeable guarantees for (especially) applicants who are in need of protection but cannot afford to pay; this is an issue that needs to be improved at the legislative level in terms of effective access to health services.

For those under temporary protection, Migrant Health Centres (MHCs) operate in areas where Syrians live in large numbers. MHCs provide services within the scope of the EU-Turkey "SIHHAT Project". These centres are affiliated to district Community Health Centres established to provide basic and preventive health services to Syrians and to overcome language and cultural barriers in this process. It is reported that there are 190 MHCs in 32 provinces within the scope of the SIHHAT Project and that the personnel employed within the framework of the project consist of general practitioners, specialist physicians, dentists, psychologists, social workers, midwives/nurses, laboratory and X-ray technicians, interpreters, patient guidance and support staff[12]. It is understood from the information on the Project that more than 93 million examinations and 2.5 million surgeries were performed between 2011-2021, more than 930 thousand migrants[13] were intervened by 112 Emergency Health Services teams, and 8.6 million doses of vaccine were administered between 2014-2021 in accordance with the national vaccination calendar.

The first phase of the project was completed and the second phase was launched under the name "SIHHAT 2". Within the scope of the second phase, it is emphasised that reproductive health services, mental health and psychosocial support services, immunisation services, mobile health services, cancer screening services and health literacy trainings are prioritised[14]. These developments can be considered as very important and positive in terms of access to health for Syrians under temporary protection. However, it is also reported that there are aspects of this implementation that need to be improved or some problematic issues that arise in access to health in general. In the study conducted by GAR

12 SIHHAT, http://www.sihhatproject.org/hakkimizda.html

13 Although Syrians under temporary protection are included in the scope of the project, this terminology has been adhered to since the term 'immigrant' is used on the (official) website where information about the Project is conveyed.

14 SIHHAT, http://www.sihhatproject.org/sihhat2_faaliyetler.html

(2020, 16, 17) on the obstacles and facilitators in front of migrants' access to health services in Istanbul, the prominent issues at this point are listed as follows: (1) Arabic-speaking health workers are employed in MHCs. Although this service is very important for Syrians under temporary protection, it results in the exclusion of other foreigners under international protection or in an irregular situation; (2) This practice has distanced civil society from the field of health, and the scope of work of NGOs, which previously provided primary health care services to migrants (regardless of their status) in the clinics of private Civil Society Organisations (CSOs), has been narrowed; (3) discriminatory practices in terms of access to health are sometimes reported. This situation, especially in the case of Syrian women, can manifest itself in the form of reducing women's health status to reproductive health and addressing their reproductive problems with discriminatory and racist media discourses; a similar situation is seen in the case of persons with disabilities, the elderly, persons living with HIV or infectious diseases, LGBTI+ persons; this situation creates an environment of insecurity in terms of health rights, those concerned avoid applying to health services and try to find alternative ways.

In addition, it is also reported that especially those who are not registered or whose identity cards have been cancelled or who live outside the province where they are registered face serious difficulties in accessing health services, that in some cases patients are held hostage due to non-payment of bills, that even in emergencies, health service personnel are forced to report unregistered patients, and that those with serious illnesses do not want to enter hospitals as there is a risk of deportation if they are detected; this situation resulted in these people being forced to turn to health institutions under the counter and being forced to receive unqualified health services (İHD 2022, 9).

B.2.c. In Terms of Access to Accommodation

Based on the current statistical data of the Presidency of Migration Management, the number of foreigners living in Turkey with a residence permit is 1,107,307. The three provinces with the highest number of foreigners living in Turkey with residence permits are Antalya, Istanbul and

Ankara[15]. Furthermore, the same data shows that 19,017 international protection applications were made as of the end of 2023. The publicly available statistical data of the Presidency of Migration Management does not indicate how many people reside in Turkey with international protection status. However, the number of people living in Turkey under temporary protection (as of 21.03.2024) is reported as 3,130,768[16]. The majority of these people (3,070,703) live outside temporary accommodation centres with their own means. Statistical data also indicate that 46.428 irregular migrants were apprehended[17].

There are no detailed provisions in the legislation on the right to accommodation for persons under international protection and temporary protection. Although there are references to reception centres for international protection applicants (Art. 95 of the LFIP) and temporary accommodation centres for those under temporary protection (Art. 23 of the LFIP), it is observed that in practice, the need for accommodation is mainly left to the means of the foreigners concerned. It can be assessed that the provision of the right to accommodation, which can be considered within the scope of economic and social rights, is limited by the capacity and resources of the state, just like access to health services within the scope of insurance. For this reason, it may be considered reasonable to provide this opportunity under certain conditions and in a limited manner only to those who cannot access accommodation with their own means.

However, there may also be a risk of a violation of the prohibition of ill-treatment, in particular with regard to international protection applicants, in cases such as inadequate reception conditions, where the asylum-seeker is forced to live in poor conditions due to the extremely limited availability of accommodation. In this respect, the judgement of the ECtHR in MSS v. Belgium and Greece[18] is noteworthy. In this judgment, the Court considered the situation of the asylum seeker from Afghanistan, who

15 The Presidency of Migration Management, https://www.goc.gov.tr/ikamet-izinleri

16 The Presidency of Migration Management, https://www.goc.gov.tr/gecici-koruma5638

17 The Presidency of Migration Management, https://www.goc.gov.tr/duzensiz-goc-istatistikler

18 MSS v. Belgium and Greece, para. 250-264.

was deprived of accommodation due to inadequate reception conditions and forced to live on the streets, as ill-treatment and, *inter alia*, found a violation in the context of the negative obligation under Article 3 of the European Convention on Human Rights (ECHR), which regulates the prohibition of torture and ill-treatment.

On this background, when the situation in Turkey is assessed, it is seen that there is no effective alternative for those who cannot access accommodation in any way, especially for international protection applicants (AIDA 2023, 82, 83). Although it is understood that reception centres were opened during the period when the LFIP entered into force and even it was planned to increase their number, it is understood that these reception centres were later converted into removal centres due to the high number of asylum seekers and the agreement between the EU and Turkey. It is reported that there is currently only one reception centre (AIDA 2023, 82).

International protection applicants can only be accommodated in the provinces where they are registered. In this case, it can be concluded that if the foreigner cannot access accommodation in the province where he/she is registered, either for economic reasons or due to discrimination, he/she has almost no other alternative. Considering that international protection applicants can only apply for a work permit 6 months after registration (Art. 89/4/a of the LFIP), it can be assessed that this situation carries the risk of either forcing them to work unregistered (unlawfully) or to live in inappropriate conditions. Considering that the establishment of reception centres, as mentioned above, is limited to the capacity and resources of the state, it is understood that the establishment of removal centres is included in the scope of the cooperation with the EU in the context of migration control[19], but it is not clear whether this cooperation has a content towards the establishment of reception centres or whether there is any development in this direction.

Another situation, indirectly related to the right to housing and more directly to the right to freedom of residence and the right to protection

19 For projects in this direction, see the Presidency of Immigration Management, https://www.goc.gov.tr/kurumlar/goc.gov.tr/evraklar/Goc- Projeleri/GOC-PROJELERI2/GİGM-_-PROJELER-TABLOSU-biten.pdf; No. 7, 11.

of private life, relates to dilution policies[20] and the right of persons under international protection and temporary protection to stay in the provinces where they are registered. As of May 2022, more than one quarter of the total population in any area or region of Turkey is prohibited to be foreign nationals. In this framework, some neighbourhoods were closed to temporary protection registration, international protection registration, residence permits, and change of province of residence for foreigners under temporary protection or international protection and residence permits.

As of 1 July 2022, the number of closed neighbourhoods was increased to 1169[21]. Adana, Ankara, Istanbul, Izmir, Muğla and Antalya are some of the provinces that fall into this category[22]. It should be underlined at this point that it is legally necessary to make an individual assessment at the point of determining and evaluating the placement of persons in the axis of the dilution policy and to take into account the effects of the said placement on the fundamental rights and freedoms of the person concerned. In this regard, there is no publicly available and accessible regulation on these procedural safeguards in the legislation.

B.2.d. In Terms of the Status of Persons Under Administrative Detention

Administrative detention has an impact directly on the right to liberty and security of person and indirectly on other fundamental rights and freedoms. It is particularly important that administrative detention, which is a measure resulting in deprivation of liberty, should be carried out within the limits of the right to liberty and security of person. In the context of the relevant provisions of the Constitution, the jurisprudence of the Constitutional Court, the European Convention on Human Rights (ECHR) and the case-law of the ECtHR, administrative detention practices must be regulated by law in terms of the quality of the law, clearly stipulating

20 See the Presidency of Immigration Management, https://www.goc.gov.tr/mahalle- kapatma-duyurusu-hk2

21 See the Presidency of Immigration Management, https://www.goc.gov.tr/mahalle-kapatma-duyurusu- hk2

22 AIDA, Country Report: Turkey 2021, https://asylumineurope.org/wp- content/uploads/2022/08 AIDA-TR_2021update_summary_Turkish.pdf, s. 4.

its limits and conditions, objection procedures and other procedural safeguards[23].

What is meant by "law" here is law in the narrow and formal sense. In this context, when the practices of deprivation of liberty for the purpose of migration control are evaluated, it is necessary to point out that there are two problematic and prominent situations in Turkish practice. The first one is related to the detention until the transfer/removal and administrative detention decision is taken, and the second one is related to the detention in temporary accommodation centres of those who fall within the scope of Article 8 of the Temporary Protection Regulation (TPR), which regulates the persons who cannot be under temporary protection. Although both practices have the characteristic of depriving the person of liberty, they do not meet the legal requirements mentioned above (Mülteci-Der 2023). There is a need for clear, comprehensible, understandable and procedural safeguards to be established by "law" on these two issues, which are considered to be of a structural nature; otherwise, the realisation of these practices without a legal basis carries the risk of resulting in a continuous violation of the right to liberty and security of person.

Another prominent issue regarding administrative detention practices is the assessment of the conditions of administrative detention and ensuring that persons under administrative detention have effective access to justice/legal assistance. At this point, it is understood that the criteria of the Council of Europe Committee for the Prevention of Torture (CPT) are taken as a basis for the assessment of conditions and periodic examinations by external audit mechanisms are allowed. In this context, the last CPT visit, which included removal centres, was carried out in 2022. The report on this visit has not yet been published. However, in a press release regarding this visit, it was stated that the conditions in the removal centres were worrying, especially due to overcrowding[24]. Within the scope of the national prevention mechanism, it should be noted that HREIT stands out in particular.

23 See Abdolkhani and Karimnia v. Turkey, App. No. 30471/08, 22.09.2009, paras. 125-135; Z.N.S. v. Turkey, App. No. 21896/08, 19.01.2010, para. 56; Charaili v. Turkey, App. No. 46605/07, 13.04.2010, para. 66.

24 OHCHR, Press Release, https://www.ohchr.org/en/press-releases/2022/09/turkiye-needs-strengthen-effective-torture-prevention-measures-un-experts, 2022.

In this context, it is understood that HREIT has carried out visits to removal centres and contributed to training activities within the scope of the "Support Project for Enhancing the Capacity of Removal Centres within the Framework of International Human Rights Standards" carried out by the United Nations International Organisation for Migration (IOM) in cooperation with the Presidency of Migration Management[25]. Although these developments are considered positive, when the visit reports of HREIT are examined, it is seen that no activities or assessments have been made regarding the conditions of persons held in the special places of Temporary Accommodation Centres within the scope of Article 8 of the aforementioned TPR. Furthermore, despite the operation of inspection mechanisms, there are findings from the field that point to the need to improve the conditions in removal centres.

In the İHD Report on Rights Violations against Refugees (2022, 5), it is stated that 106 cases of rights violations in removal centres were considered. Furthermore, in a press statement made by the Izmir Bar Association, it was reported that in the Izmir Removal Centre, about 100 migrants and refugees from Afghanistan were subjected to torture and ill-treatment, forced to sign "voluntary return documents" and forcibly fingerprinted[26]. The need for an effective intervention emerges in order to closely monitor and investigate these allegations and to take urgent steps for improvement. Indeed, the ECtHR's judgement in Akkad v. Turkey[27], which is also relevant to this issue, concludes that the treatment of persons under the effective control of the authorities amounting to ill-treatment (treatment during transfer) and the signing of voluntary return forms without procedural safeguards (including translation services) can be considered as violations under Article 3 of the ECHR, which regulates the prohibition of torture and ill-treatment, and Article 13, which regulates the right to an effective remedy.

25 HREIT, https://www.tihek.gov.tr/geri-gonderme-merkezi-mudurlerine-insan-haklari- egitimi-verildi

26 Izmir Bar Association, https://www.izmirbarosu.org.tr/Sayfa/2881/geri-gonderme-merkezindeki-iskence-iddialari-derhal-sorusturulmalidir; for similar allegations about Harmandalı Removal Centre in 2021 see Izmir Bar Association, https://www.izmirbarosu.org.tr/Sayfa/2889/harmandali-geri-gonderme-merkezi-yine- iskence-iddialari-ile-aniliyor

27 Akkad v. Turkey, App. No. 1557/19, 21.06.2022, paras. 82-92, 104-115.

In this context, it can be assessed that there is a need to activate the remedies to HREIT and the Ombudsman's Office, which are currently non-judicial individual remedies for allegations of ill-treatment, as well as to strengthen the means of access to legal assistance, including access to a lawyer, and to regulate the legal framework for voluntary return, in particular by clarifying procedural safeguards.

One of the problems reported in terms of access to justice in Removal Centres is the difficulties in accessing legal aid, including interpretation services, in these places. It is reported that such difficulties are experienced not only in removal centres but also in airport transit zones, border gates and sometimes police stations (MHM 2019, 17 et al.). Although it is known that various projects have been implemented especially in terms of refugees' and asylum-seekers' access to justice, in the light of the information provided, it is understood that these efforts have not yielded a fully effective result and that this issue needs improvement.

Another important point to be emphasised in terms of access to justice concerns the access to an effective remedy for persons detained in special places in temporary accommodation centres within the scope of Article 8 of the aforementioned LFIP. Since the detention of these persons in temporary accommodation centres is not subject to an administrative detention decision and is de facto, there is a risk that applications to the Criminal Judge of Peace, which is the judicial remedy against administrative detention decisions taken under Articles 57 and 68 of the LFIP, regarding the detention of these persons may be rendered irrelevant. The fact that this practice is carried out as an action without being based on an administrative act (administrative detention decision) carries the risk of causing the same problem in terms of applications to administrative courts. At this point, the violation of the right to freedom and security of person and the right to effective remedy comes to the fore (Mülteci-Der 2023, 36). In order to solve this structural problem, as we have emphasised above, it is considered essential to regulate the conditions and scope of such detentions by law, including remedies and procedural safeguards.

It can be stated that the most important recent development in terms of administrative supervision practices is the preparation of the secondary regulation on alternative obligations to administrative supervision. This

regulation entered into force in 2022 under the name of Regulation on Alternative Obligations to Administrative Detention (RAO). The LFIP can be characterised as a very positive development in terms of the application of administrative detention, which is a measure depriving the person of his/her liberty, as a measure of last resort, the establishment of a system in accordance with the case-law of the ECtHR for states that include alternative practices in their national systems by taking into account the principle of proportionality in practice, and the scope of persons in the vulnerable group is addressed on a wider axis than the persons with special needs in the LFIP.

Nevertheless, it is necessary to underline that there are still points that need to be improved in relation to the RAO and its implementation, and some issues that should be clarified in this regard (Mülteci-Der 2023, 20 et seq.). Firstly, it is observed that Article 61/2 of the LFIP, which is related to situations where the continuation of administrative detention is not deemed necessary, does not include a situation where the imposition of an alternative obligation on the person concerned would be sufficient. Although, in practice, it is understood that the sufficiency of the alternative obligation should be considered as a reason to terminate the administrative detention due to the effect of the provision of Article 7(3) of the RAO stating that "the assessment to be made regarding the continuation or extension of the administrative detention decision shall also include the assessment of whether alternative obligations can be applied", it should be underlined that it would be appropriate to explicitly mention this issue in the Law in order to ensure legal security.

The second point in need of clarification concerns persons for whom Article 61 (a,b) of the Implementing Regulation of the LFIP stipulates that the deportation order cannot be executed within six months of being placed in administrative detention, or for whom it becomes clear after being placed in administrative detention that the deportation order (pursuant to Article 55 of the LFIP) should never have been made in the first place. There is no clarity in the legislation as to whether alternative obligations under the RAO can be imposed on persons whose administrative detention should have been terminated in these cases, due to the relationship of the administrative detention decision with the deportation decision. Another problematic issue in terms of clarity is that there is no provision in the

legislation on the proportionality assessment of alternative obligations among themselves. Considering that alternative obligations also have a limiting effect on fundamental rights and freedoms (such as the right to respect for private life, the right to privacy of communication, freedom of movement...), it is necessary to make a proportionality assessment regarding the impact of the obligation on these rights and freedoms.

However, it is understood that there is no explicit provision in the legislation on this issue. Of course, even in the absence of such a provision, it is obligatory to make this assessment on the basis of both Article 13 of the Constitution, which emphasises proportionality, and the European Convention on Human Rights (ECHR) and the case law of the ECtHR. However, there should be no doubt that the explicit mention of this issue in the legislation will pave the way for an effective and fair implementation by ensuring legal security and certainty. Another situation that arises in terms of uncertainty and needs to be clarified is whether a foreigner who was initially placed under administrative detention but whose detention was terminated due to the expiry of the detention period and subjected to alternative obligations will be placed under administrative detention again if he/she violates these obligations (Mülteci- Der 2023, 24). The answer to this question is not included in the legislation, but the need for clarification arises in parallel with the need for the limitation of the right to liberty and security of person to be clearly and foreseeably regulated by law.

Another issue regarding alternative obligations is that some of the alternative obligation types in the RAO have not yet been effectively operated (e.g. voice recognition, electronic monitoring, mobile applications). It is understood that the infrastructure work required for the effective operation of these applications has not yet been completed. In this case, it is possible to talk about the existence of provisions/ alternatives that are passive although they are included in the legislation.

B.2.e. In Terms of the Application of the Reciprocity Condition regarding "Legal Aid" in the Context of Access to Justice

Access to justice in general and access to legal aid in particular is considered to be important in terms of access to a lawyer for persons

under international protection or temporary protection. It is observed that the LFIP and TPR refer to the relevant provisions of the Law on Lawyers in order for individuals under international protection and temporary protection to benefit from legal aid. However, as mentioned above, this method of access to legal aid sometimes fails to function effectively in practice. An important reason for this situation is the different practices of the bar associations and the limited budgets of legal aid. However, the Code of Civil Procedure No. 6100 (CCP) also contains provisions on legal aid between Articles 334-340. Pursuant to Article 334 of the CCP, "persons who are partially or wholly incapable of paying the necessary trial or proceeding expenses without causing significant hardship to themselves and their families may benefit from legal aid in their claims and defences, temporary legal protection requests and enforcement proceedings, provided that their requests are not manifestly groundless".

Unlike the practice under the Law on Lawyers, legal aid under the CCP is granted by the court and the fees of the lawyer appointed by the bar association upon the request of the court are covered by the Treasury; temporary exemption from all trial and proceedings expenses is provided; and it is possible for the state to pay all expenses to be incurred during the lawsuit and enforcement proceedings in advance. All judicial expenses postponed due to the legal aid decision and the advances paid by the state are collected from the person who is in the wrong at the end of the lawsuit or enforcement proceedings (CCP, Art. 339/1); however, if it is clearly understood by the court that the collection of the judicial expenses paid or exempted by the state due to the legal aid decision will cause the victimisation of the beneficiary of legal aid, the court may decide to exempt the beneficiary from payment in whole or in part in the judgement (CCP, Art. 339/2).

Article 31 of the Administrative Procedure Law No. 2577 stipulates that the provisions of the CCP regarding legal aid shall also be applied in administrative proceedings. Therefore, this legal aid institution regulated in the CCP may be effective not only in civil proceedings but also in administrative proceedings. However, Article 334(3) of the CCP stipulates the condition of reciprocity for foreigners to benefit from legal aid within this scope. In our legislation, exemption from the reciprocity requirement is only granted to international protection status holders in respect of

persons in need of international protection (Art. 88/1 of the LFIP). There is no explicit regulation in this regard for international protection applicants or persons under temporary protection. Therefore, in practice, as can be seen in the example of the decision below, there may be cases where the courts reject the request for legal aid for these persons by requiring reciprocity.

On this background, the Constitutional Court's recent judgement on the individual application[28] of Mohamma Salem Pashto and Nazı Salem is considered to be important and should be included here. This decision is based on the allegation that the rejection of the applications of the applicants with international protection status, *inter alia*, for legal aid in civil proceedings on the grounds of reciprocity violates the freedom of the applicants to seek justice as regulated under Article 36 of the Constitution. It is noteworthy that the Court, which found a violation in relation to this allegation, made the following findings irrespective of the applicants' international protection status: *"§75. ...the reciprocity requirement in paragraph (3) of Article 334 of Law No. 6100, which forms the basis for the intervention, restricts foreigners from benefiting from legal aid with a categorical approach without taking into account their special circumstances (status, ability to pay, etc.). This approach will result in the deprivation of the right to file a lawsuit by foreigners, who are clearly unable to pay due to their social and economic status, solely on the grounds that the reciprocity condition is not fulfilled. This may lead to serious problems in the context of the right of access to the courts. §As regards the reciprocity requirement for foreigners to benefit from legal aid, it is understood that there is no general acceptance among democratic states in international law, and that the reciprocity requirement is not sought for foreigners according to comparative law examples in cases where they are legally residing, as a matter of fact, the ECtHR's domestic judgement on the subject is in a similar direction (see §§ 48-53). §77. In the case in question, the Court decided to reject the applicants' request for legal aid without taking into account their personal and economic situation, solely because the reciprocity condition was not fulfilled. The aforementioned article of the Law No. 6100 orders the Court to decide on the utilisation of legal aid by foreigners only on the basis of the principle of reciprocity. §78 By imposing*

28 Mohamma Salem Pashto and Nazı Salem [GK], B. No: 2019/26339, 17/5/2023.

the requirement of categorical application of the reciprocity condition, the judge was left with no discretion to assess whether the foreigners wishing to bring proceedings were in fact unable to pay, taking into account their economic and social situation in each particular case. This situation has resulted in the applicants, who do not have any income, being obliged to pay court fees and costs, which are considerably high compared to the conditions of the country, and also facing the difficulty of paying costs in excess of the advance on expenses in the ongoing proceedings, resulting in the elimination or serious complication of their ability to pursue their compensation claims before the judicial authorities or to continue the ongoing litigation. §79 In this respect, in the concrete case, the application of the reciprocity condition in the wording of the law that constitutes the basis for the intervention as an absolute rule, preventing the foreigners who file a lawsuit from benefiting from legal aid without giving them the opportunity to evaluate their situation, leads to a practice arising from the law itself and in conflict with constitutional guarantees."

As can be seen, the main basis of the Court's ground of violation is based on the unconstitutionality of the Law. Since the application in question is an individual application, the Court cannot conduct a concrete norm review and order the annulment of the relevant provision of the Law on the grounds of unconstitutionality. However, it is clearly understood from the Court's determination that the main issue here is the unconstitutionality of the relevant norm. Accordingly, the necessary amendment to the relevant provision of the CCP is a necessity in line with the objective of effective access to justice for persons under international protection and temporary protection. Although it would be difficult to talk about a concluded activity in line with the periodic goals of the HRAP (especially in terms of access to a lawyer), as the relevant Court decision is relatively recent, this issue may not be characterised as a deficiency in the realisation of the relevant objective envisaged in the HRAP. Nevertheless, putting this issue on the agenda and making the relevant amendment as soon as possible can be seen as meaningful in terms of the consistency of the will behind the judicial reform and the related efforts to realise the HRAP.

B.2.f. In Terms of Combating Human Trafficking and Protection of Victims

Regarding the fight against trafficking in human beings and the protection of victims, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) in its first report on Turkey in 2019[29] described the entry into force of the Regulation on Combating Trafficking in Human Beings and Protection of Victims, which is the main legal regulation on the subject, as a positive development. However, in terms of areas for improvement, the following points stand out[30]: the absence of a national anti-trafficking action plan and insufficient involvement of civil society in the planning, implementation and evaluation of national anti-trafficking policies; the need to strengthen efforts to launch awareness-raising campaigns on trafficking in human beings for different forms of exploitation and to discourage demand for the services of trafficked persons; the need to improve victim identification by promoting a multi-agency approach involving specialised NGOs, social workers, child protection specialists and health personnel, together with specialised authorities; the need to proactively identify victims of trafficking for labour exploitation; the need for measures to facilitate and secure access to compensation for victims of trafficking; the need to increase the accommodation capacity of shelters; the need to prioritise the identification of gaps in the investigation and prosecution of trafficking cases in order to ensure effective, proportionate and dissuasive convictions; and the need to systematically conduct financial investigations into trafficking cases and improve victims' opportunities to participate in court proceedings.

The report also notes that the vast majority of victims of trafficking in human beings are returned to their country of origin immediately after identification, without the benefit of the 30-day recovery and reflection period and without the opportunity to participate in investigations and court hearings. It should be noted that preparations are currently underway for the second report of GRETA, which will be published

29 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, https://rm.coe.int/report-concerning-the-implementation-of-the-council-of-europe-conventi/1680981563, 2019.

30 Council of Europe, https://www.coe.int/en/web/anti-human-trafficking/-/greta-publishes-first-report-on-turkey

in 2024. It is stated that "The offences and penalties for trafficking in human beings will be reviewed taking into account the Council of Europe Convention on Action against Trafficking in Human Beings and the GRETA recommendations". An important development in this context was the increase in the lower limit of the penalty for this offence by changing the phrase "three years" to "five years" in Article 79(1) of the Turkish Penal Code on migrant smuggling with the amendment made on 28/3/2023[31]. In terms of taking into account the intersection of migrant smuggling and trafficking in human beings, the Government of the Republic of Turkey has partially fulfilled its promise in this regard. The only article in the HRAP that promises amendments and corrections in relation to foreigners under international protection and temporary protection is this article.

The other articles foreseen and promised to be amended in the Action Plan are the articles that facilitate the procedure and implementation and accelerate the solution of problems. However, when GRETA's report is analysed, it is seen that there are other issues that may fall within the scope of the above-mentioned activities and require amendments in the legislation, but no amendments have been made for these. For example, GRETA, in its relevant report, states that in order to harmonise the definition of trafficking in human beings (offence) in Article 80 of the

31 The relevant provision of the TPC regulating migrant smuggling is as follows: "With the aim of obtaining direct or indirect material benefit, through illegal means; a) introducing a foreigner into the country or enabling him to stay in the country, b) enabling a Turkish citizen or foreigner to leave the country,
The person shall be sentenced to imprisonment from five years to eight years and to a judicial fine from one thousand days to ten thousand days. (Additional sentence: 22/7/2010- 6008/6 Art.) Even if the crime remains at the attempted stage, the punishment shall be imposed as if it had been completed.(2) (Additional sentence: 22/7/2010- 6008/6 Art.) The crime must be committed in such a way that the victims; a) pose a danger to life, b) are subjected to a humiliating (3) (Amended: 6/12/2019-7196/56 Art.) If this offence is committed by more than one person together, the penalty to be imposed shall be increased by up to half, and if it is committed within the framework of the activities of an organisation, the penalty to be imposed shall be increased by up to half, and if it is committed within the framework of the activities of an organisation, the penalty to be imposed shall be increased by half to one third. (4) If this offence is committed within the framework of the activities of a legal person, security measures specific to them shall be imposed on the legal person."

Turkish Penal Code[32] with Article 4 of the Council of Europe's Convention on Action against Trafficking in Human Beings[33], the terms servitude and other forms of sexual exploitation should be added to the scope of types of exploitation; and that there is a need to fully ensure that the instrumental acts of the Convention, such as 'taking advantage of a person's vulnerability' and 'providing gain or benefit in order to obtain the consent of persons who have control over another person', are clearly covered in law and practice[34].

Although it is stated in Turkey's response to the GRETA Report, especially with regard to the second requirement, that these issues are applied within the scope of court decisions and that the expression "taking advantage of helplessness" in Article 80 of the Turkish Penal Code covers the expression

32 The relevant provision is as follows: "(1) (Amended: 6/12/2006 - 5560/3 Art.) Whoever introduces persons into the country, takes them out of the country, supplies them, abducts them, takes them from one place to another or transports them or harbours them by using threats, pressure, force or violence, abuse of influence, deception or by taking advantage of the possibilities of control over persons or their helplessness in order to force them to work, to serve them, to make them prostitute or to subject them to slavery or to provide them with body organs shall be sentenced to imprisonment from eight to twelve years and a judicial fine up to ten thousand days. (2) The consent of the victim shall be invalid if the acts constituting the offence are committed for the purposes specified in the first paragraph. (3) In cases where persons under the age of eighteen are procured, abducted, taken or transferred from one place to another or harboured for the purposes specified in the first paragraph, the perpetrator shall be sentenced to the penalties specified in the first paragraph even if none of the instrumental acts of the offence have been used. (4) Security measures shall also be imposed on legal entities for these offences."

33 "Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of 'vulnerability' or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". The emphasis in the definition is ours.

34 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Turkey, First evaluation round, 08.10.2019, paras. 56, 57, https://rm.coe.int/report-concerning-the-implementation- of-the-council-of-europe-conventi/1680981563.

"exploiting vulnerability"[35], it can be stated that the relevant amendment is still necessary in the context of the GRETA Report and thus the Council of Europe Action Convention in order to clarify the "law" in the Report and to provide a "full" guarantee in practice. It is also important to underline at this point that, particularly for irregular migrants but also for those under international protection (predominantly applicants) or under temporary protection, it is important that the expression "taking advantage of a person's vulnerability" is clearly enshrined in the legislation. The term "vulnerability" is translated as "helplessness" in the official translation of the Convention. However, in the original English text of the Convention, this expression is referred to as vulnerability. The term "vulnerability" is a concept that includes the state of helplessness but has a broader content than it and has a special meaning in the field of migration law.

In terms of GRETA's recommendations related to combating trafficking in human beings and victim protection, especially the establishment of a national referral mechanism, strengthening the capacity on the subject on the axis of projects, especially in cooperation with IOM and the International Centre for Migration Policy Development (ICMPD), providing trainings for members of the judiciary, and taking steps in cooperation with civil society on the axis of projects can be considered as positive developments[36]. In addition, in the activity report[37] of the Presidency of Migration Management for 2022, it is understood that 8025 victim identification interviews were conducted in 2021 and the number of identified victims of trafficking in human beings was determined as 442, and both of these figures are above the targeted figures.

While this development is also considered positive, two points in the same annual report are noteworthy. The first is that there is an item on the ratio

35 Ibid, para. 52.

36 See IOM, https://turkiye.iom.int/tr/news/iom-ve-gib-turkiyede-insan-ticaretiyle-mucadele-icin-yeni-proje-baslatti; The Presidency of Migration Management, https://www.goc.gov.tr/insan-ticaretiyle-mucadele-ve-magdurlarin-korunmasi-egitimi-gerceklestirildi; The Presidency of Migration Management, https://www.goc.gov.tr/insan-ticaretiyle-mucadele-egitimi-gerceklestirildi

37 See The Presidency of Migration Management 2022 Annual Activity Report, https://www.goc.gov.tr/kurumlar/goc.gov.tr/Kurumsal/Strateji/2023-Mayis-/2022-Yili- Faaliyet-Raporu.pdf, 58, 59.

of victims benefiting from the voluntary and safe return programme to the identified victims and that a certain ratio is targeted in this item. At this point, although the inclusion of such a ratio in the annual report can be understood statistically, the fact that a target has been set in this regard raises some concerns. Considering the necessity of an open, uncoerced consent for the voluntary return of victims of trafficking in human beings, it becomes questionable whether a predetermined target in this direction will lead to pressure on the victims in practice.

For this reason, it should be emphasised that performance evaluations for voluntary return of victims of trafficking in human beings, who have been subjected to serious human rights violations and who need to be treated sensitively in terms of making healthy decisions due to their lack of will in this process, should be supported by other indicators that will confirm the compliance of the implementation with the law. Another issue that should be mentioned in the annual report is the number of shelters. It is seen from the Report that the number of shelters was determined as 3 as of 2021, which is below the targeted number (4). However, the current statistical data of the Directorate of Migration Management shows that the number of shelters is 2[38]. According to this data, the total capacity of shelters is determined as 42 people. Taking into account the above-mentioned number of finalised victim identification interviews, it can be concluded that the number and capacities of shelters still need to be improved.

38 The Presidency of Migration Management, https://www.goc.gov.tr/insan-ticareti-ile-mucadele-istatistik

C. What Happened Related to the Migrants And Refugees Agenda in Turkey From 2021 to the Present:

C.1. Turkey's Migration Agenda in News And Reports

When we look at the main incidents related to migrants and refugees on Turkey's agenda after HRAP 2021:
On 15 March 2021, a woman's mostly burnt body was found on the roadside in Şanlıurfa. The investigation revealed that the body belonged to **Futem Alhamadi**, a Syrian national. Urfa Provincial Women's Platform consisting of women from the Confederation of Public Employees Union (KESK), Şanlıurfa Bar Association, the Association of Lawyers for Freedom (ÖHD), the Republican People's Party (CHP), the Peoples' Democratic Party (HDP) and Yaşamevi Association made a declaration on 22 March 2021. In the statement, it is pointed out that there is no special mechanism in Turkey where women who do not have a work or residence permit can file a complaint against violence they may face, and stated the following: "However, silence and acceptance in the face of violence can turn such negative acts into a facilitating, encouraging and repetitive situation. For this reason, all women, especially asylum-seeking women, should not remain silent about these problems they face, but should file a complaint through law enforcement or with the legal assistance provided by bar associations and non-governmental organisations, and that those who commit these acts should be punished by taking the necessary actions without discrimination, and for this purpose, the ways for asylum-seekers to access interpreters and legal support should be increased, and the existing mechanisms should be made functional and operated". (22.03.2021, Ses.org).

On 14 April 2021, **the Refugee Media Association** made a criminal complaint against Istanbul MP Ümit Özdağ, who made discriminatory and targeting statements about Syrian refugees and associations. In the petition submitted to Izmir Chief Public Prosecutor's Office by the executives of the association, it is stated that Özdağ's social media posts committed the crimes of "inciting or humiliating the public to hatred and

hostility (Article 216 of the Turkish Penal Code)", "insult (Article 125 of the Turkish Penal Code)", "hate and discrimination (Article 122 of the Turkish Penal Code)" (14.04.2021, Evrensel).

On 10 August 2021, two people got wounded in a fight in a park in Altındağ district of Ankara, and they were taken to hospital but one of them died in hospital. Emirhan Yalçın, a Turkish citizen, lost his life. Since the person who injured the deceased was a Syrian, attacks against Syrians took place and the attacks became massive on the night of 11 August by crowds apparently organised from different parts of the city. The attackers stoned houses, burnt cars, smashed windows of shops, carried their belongings to the streets and burnt them. Some asylum seekers were injured during these attacks and a pogrom terror was experienced. On the night of these attacks, the security forces failed to take the necessary measures and did not disperse the masses. All kinds of outbursts were allowed under the supervision of the police. The following day, human rights defenders went to Önder neighbourhood of Altındağ district for observation purposes, but it was observed that some of the asylum-seekers were evacuated from the streets where the attacks took place and some of them were waiting in their houses in fear and there was an uneasy silence on the streets. Shops and houses were damaged, some damaged shops were covered with tarpaulins and the intensity of the damage was observed in some of them. Again, it was observed that flags were hung on some houses in the living areas of the asylum seekers in order to protect them from a possible attack and there were people hanging flags on some shops. It is also observed that although the main streets of Battalgazi and Önder neighbourhoods are partially opened to vehicle passage, almost all passages from the main street to the alleys are blocked with police barricades and police officers are waiting at the entrances of the streets (13 August 2021, İHD).

On 23 August 2021, **the Human Rights Association (İHD)** announced the "First Semi-Annual Human Rights Violations Report in Eastern and South-eastern Anatolia 2021". The 140-page report, which is based on multiple methods, is based on individual applications made by victims to İHD, as well as information obtained from local sources and the scanning of news reports by press organisations following the cases of violations. In the report, it is stated that human rights violations continued to intensify in the focused period, "There has been a significant increase in violations such as

torture and ill-treatment, repression against freedoms of expression and association, ongoing violations in prisons, hunger strikes, violations due to military operations and bans, and male violence" (23.08.2021, Bianet).
On October 13, 2021, F. A. S., a refugee who has been living in Istanbul for four months, made a press declaration **at Human Rights Association (İHD)** Istanbul office, stating that she was subjected to racist and discriminatory behaviour, verbal and physical violence of her neighbours who threatened her and her children to death. F.A.S. stated that the attack was committed physically on 1 September by her neighbour who lives in the same building and that other neighbours were also involved in the incident and that she was subjected to ill-treatment when she went to the police station to complain about the incident.
1 November 2021: 16 organisations, mostly working in the field of migration and refugee rights, made a joint written statement for 11 refugees who posted on social media while eating bananas against a person who targeted Syrians in a street interview on social media and said "I cannot eat bananas, you buy kilos of bananas" and were detained and deported for this reason. Reacting to the deportation decisions, the organisations said "No one can be deported for exercising their freedom of expression" (01.11.2021, Sendika.org).

On 12 November 2021, **Bolu Mayor** Tanju Özcan announced that they will submit a proposal to the city council to increase the wedding fee of foreign nationals living in the city to 100,000 Turkish Liras. Özcan had previously announced on 27 July 2021 that foreign citizens would be charged 10 times more for some services. The Human Rights Association's Commission on Racism and Discrimination filed a criminal complaint against CHP's Bolu Mayor Tanju Özcan for his racist and discriminatory remarks such as "The water rate for asylum seekers will be increased 10 times". In the petition for criminal complaint, it was noted that Özcan's words against asylum seekers were within the scope of hate crime. It was emphasised that Özcan's statement was against both the Turkish Criminal Code and the European Convention on Human Rights, to which Turkey is a party. In the petition submitted to the Bolu Public Prosecutor's Office, the following was stated: "Considering the effects of representative officials on the society, there is a danger that this discriminatory and marginalising approach will reach dangerous dimensions and turn into a social hatred." The petition demanded an investigation and indictment against Tanju Özcan (27 July

2021, İHD). On 1 January 2022, Bolu Administrative Court issued a stay of execution on these decisions of Özcan, who was investigated for "hate and discrimination".

On 2 December 2021, the public prosecutor decided not to initiate an investigation against Abdulkadir Şahiner, **mayor of Sungurlu district of Çorum**, for his discriminatory statements against refugees. The complaint filed by a citizen on the grounds that Şahiner's statements committed the crime of "inciting the public to hatred and hostility or insulting the public" was rejected by the Public Prosecutor on the grounds that the definition of "citizenship" is required for the elements of the crime of "inciting the public to hatred and hostility or insulting the public" regulated in Article 216 of the Turkish Penal Code (02.12.2021 , Medyascope).
As of May 2022, it is prohibited by law for more than a quarter of the total population of any area or region of Turkey to be foreign nationals. This rule covers both foreigners living in Turkey permanently and those who are only visiting the country. 781 neighbourhoods in different provinces were closed to address registration for temporary protection, international protection and residence permits, registration of foreign nationals holding residence permits and registration of foreign nationals under temporary or international protection who wish to change their city of residence, except for new-borns and nuclear family reunifications.

Mahşid Nazemi, an Iranian refugee living in Izmir, was detained on 8 November at the immigration office where she was called on the grounds of "missing signature" and taken to Aydın Repatriation Centre to be deported to Iran (14.11.2022, T24).

One week after the earthquakes on February 6, between 13-19 February, there was a very intense agenda on the impact of the disasters on the living conditions of migrants and refugees.

HDP Women's Assembly Spokesperson Acar-Başaran, who is carrying out solidarity activities in Elbistan after the earthquake, said: "We also met with Syrians, they are also anxious. Their house were also destroyed but they feel as if they have to make explanations all the time" (16.02.2023, Bianet).

Nur Derya and İhsan Çelepkolu, who wrote an article for the online news platform **Bursa Muhalif**, reported that nearly 100 of the nearly 200 refugees who came to Bursa from the earthquake zone were not placed anywhere and that they were staying in cafes and that they were struggling to hold on to life under difficult conditions against the rising racism as well as the destruction caused by the earthquake (16.02.2023, Sendika.org).

Vahap Seçer, **Mayor of Mersin Metropolitan Municipality**, stated that Mersin was affected by the earthquake in many ways due to its location, but especially due to the migration it received after the earthquake, and said that "Mersin is the 11th province, other than 10 provinces, that were directly affected most intensely by the earthquake" (16.02.2023, İHA).

Mersin Labour and Democracy Platform components called for permanent shelter solutions for earthquake victims who had to migrate to other provinces due to the earthquake. In its statement, the platform pointed out that the attacks targeting migrants started to increase after the earthquake and said: "We reject the racist approaches over Syrians and other asylum seekers and invite our people to common sense" (15.02.2023, Birgün).

The Peoples' Bridge Association also made a press statement in Izmir and said "Let's fight against discrimination and racism together. Let's be in solidarity without discriminating people, taking into consideration all living beings affected by the earthquake" and drew attention to the increasing racism against migrants after the earthquake (15.02.2023, Gazete Duvar). In a call prepared in six languages (Turkish, Kurdish, Arabic, Armenian, Russian and English), **the Coordination for Combating Hate Speech in Earthquakes** called for common sense and urged individuals and media outlets not to disseminate generalising, discriminatory and targeting content (13.02.2023, Bianet).

We Want to Live Together Initiative, the Association of Lawyers for Freedom (ÖHD), the Progressive Lawyers Association (ÇHD) and the Human Rights Association (İHD) Istanbul Branches organised a press conference at the İHD office on racist attacks against refugees in the earthquake zone. In the statement, it was pointed out that in addition to the attacks, there are discrimination and violations of rights in the field of

disaster management, especially in terms of access to services and aids, and it was pointed out that "the state is more wrong than deficient in this regard" (14.02.2023, Evrensel).

Taha Elgazi, a member of the **Asylum Seeker Rights Platform**, evaluated the situation after the earthquake and pointed out that there was no problem between migrants or people of different ethnic backgrounds who knew each other and were next door neighbours, but attacks against Syrians increased after Ümit Özdağ's statements (12.02.2023, Bianet).
The Progressive Lawyers Association (ÇHD) announced that they have filed a criminal complaint against those who targeted refugees in the earthquake zone, especially the Victory Party chair Ümit Özdağ, on the charge of "inciting hatred and hostility among the public". The statement also drew attention to the fact that migrants living in the earthquake zone and forced to leave their cities are caught between the conflicting regulations of the Migration Administration and the Disaster and Emergency Management Presidency (AFAD), and that they face racist and discriminatory practices of transport companies when they try to solve the transportation problem on their own. The statement of ÇHD concludes with stating that "migrants are subjected to discrimination during search and rescue operations, that they cannot benefit equally from the aid materials delivered to the region for water, food, supplies, heating and shelter needs, and that they become hesitant to even ask for help because they are targeted as looters with hate speech" and emphasises that the principle of legal security cannot be suspended under any circumstances (13.02.2023, Bianet).

The Syrian Observatory for Human Rights (SOHR) reported that the bodies of 1745 people who lost their lives in earthquakes in Turkey were sent to Syria (17.02.2023, Bianet).

On 27 April 2023, **the Human Rights Watch** issued a statement referring to an incident on 11 March 2023 in which Turkish border security officials allegedly opened indiscriminate fire on Syrians at the Syrian border and used excessive force and ill-treatment against asylum seekers and migrants attempting to cross into Turkey. It was demanded that the Government of Turkey prevent these unlawful incidents, initiate legal proceedings against the border guards responsible for the related human rights violations,

and end the long-standing impunity for these violations by holding them accountable for their actions (27.04.2023, HRW).

On 5 April 2023, HDP Kocaeli MP Ömer Faruk Gergerlioğlu brought the death of **Jeannah Danys Dinabongho Ibouanga** (17), a Gabonese national whose lifeless body was found in the Filyos Stream in the centre of Karabük on 26 March 2023, to the agenda of the Grand National Assembly of Turkey. On 24 January 2023, after the last hearing, lawyer Gülyeter Aktepe stated that Dina was subjected to racism in Karabük and sexual proposals were found on her phone and added: "We are aware of the kind of racism migrants are subjected to in Turkey". The next hearing of the case, in which the murder suspect is still under arrest, will be held on 29 April 2024.

The Human Rights Foundation of Turkey (HRFT) called for an end to all forms of discrimination and hate speech against refugees/asylum seekers on 20 June 2023 on the occasion of World Refugee Day. It is declared in the statement that at least 21 refugees/asylum-seekers lost their lives due to racist attacks in Turkey between January 2020 and November 2022, 90 refugees lost their lives in 2022 and 37 refugees lost their lives in labour killings in the first 5 months of 2023.

On 28 July 2023, **the Presidency of Migration Management** issued a notification stating that "Syrian nationals residing in Istanbul despite being registered in a province other than Istanbul should return to their provinces of registration until 24 September 2023" (20.09.2023, AA).

Speaking at the press conference organised by **the Asylum Seekers' Rights Platform** on 19 September 2023 at **the Association for Solidarity for Human Rights and Oppressed People** (MAZLUMDER), lawyer Gülden Sönmez said: "Even asylum seekers who are not even involved in any crime are kept in police stations for 3 months. They are forced to sign the return text under the name of voluntariness" (19.09.2023, Bianet).

Vezir Mohammad Nourtani (50), an Afghan refugee worker who collapsed while working in an unregistered and precarious mine in Zonguldak, was murdered on 9 November 2023 and his body was tried to be destroyed by burning. It was learnt that the reason for this murder, which makes one's blood freeze, was that the mine owner, who had previously been

sentenced for illegal mining, was afraid that the probation of his earlier sentence would be cancelled. Three suspects involved in the murder are still under arrest and the case is ongoing. **The Migrant Trade Union Initiative, the Workers' Party of Turkey (TİP) and leftist organisations** protested the murder with a press statement in front of the Miners' Monument in Ankara on 13 November 2023. In the statement, it was pointed out that this level of violence against migrants was not the first time and it was stated that "if we remember, we witnessed it in the murders of Syrian construction workers Mamoun al-Nabhan, 23, Ahmed Al-Ali, 21, and Muhammed al-Bish, 17, in Güzelbahçe, İzmir 2 years ago". Noting that the judicial process regarding these murders in 2021 is still ongoing, the statement said, "This impunity and lawlessness causes the death of more migrants, more women, more workers. The state, with its judiciary and police force, does not put an end to this order of lawlessness and injustice and remains a spectator to the crimes committed."

Syrian refugee **Hasan Muhammed** (28) died in Akyurt Repatriation Centre in Ankara where he had been held for a week. Taha Elgazi from **the Asylum Seeker Rights Platform** stated that Muhammed was taken to the Repatriation Centre a week ago due to problems with his identity card and his family was informed of his death on 3 January 2024. The family, who suspects that their child was tortured to death, announced that they will initiate a legal process.

On 9 January 2024 in Gaziantep, a 15-year-old Syrian boy was beaten to death and sexually abused by his friend's family because he knocked his friend down during a game. The attackers were arrested. In its statement, **the Labour Party Gaziantep Provincial Organisation** emphasised that the attack was not isolated and stated that the perpetrators of the attack were "empowered by the government's unlawful decisions on refugees" and "acted with the knowledge and thought that nothing would happen even if they committed it" and pointed to the systematic impunity in similar attacks.

On 13 February 2024, a group of lawyers working with refugees in Istanbul announced that they have not been able to reach their refugee clients for 11 days since the operations against refugees following the attack on the Santa Maria Church on 28 January (13.02.2024, Bianet).

On 28 February 2024, the Minister of Interior Ali Yerlikaya announced that 192,934 foreigners were checked at "Mobile Migration Points" in Istanbul since 19 July; 80,000 irregular migrants were apprehended between 1 June 2023 and 23 February 2024, and 56,120 of them would be deported (28.02.2024, Hürriyet).

On 15 March 2024, Iranian academic Dr. Shiva Kavani, whose visa application was not accepted due to the expiry of her residence period in Canada and who has been staying at Istanbul Airport for 2 months, was sent to the Repatriation Centre in Silivri.

C.2. Turkey's Migration Agenda in Selected Press Statements

46 press releases made individually or jointly by different institutions between 22 January 2021 and 13 November 2023 were scanned and the general framework of the agendas subject to the statements was compiled. This framework includes the following statements: Attack on a Syrian cardboard collector in Antalya (21 March 2021), detention of Iranian Afshin Sohrabzadeh in Eskişehir for repatriation (5 April 2021), rights violations and ill-treatment in Izmir Harmandalı Repatriation Centre (23 June 2021, 13 May 2021), different practices against UK applicants at Izmir Harmandalı Repatriation Centre (4 October 2021), arson against Syrian workers in Güzelbahçe, Izmir (16 November 2021), looting against Syrians in Güzelbahçe, Izmir (29 November 2021), attack against Syrians in Esenyurt, Istanbul (12 January 2022), death of 19 people as a result of being pushed back in İpsala, Edirne (2 February 2022), ill-treatment of Afghans in Harmandalı Repatriation Centre, Izmir (17 April 2022), in Ankara, violent police intervention to the opening of the signboard of the Somali-run SAAB Café (17 June 2022), ill-treatment in İzmir - Harmandalı GGM (14 July 2022 and 19 July 2022), fire in the house of a Syrian family in Bursa (9 November 2022), incidents against migrants and refugees after the earthquakes of 6 February (6 February 2023), the ban on flights from the earthquake zone for Syrians (10 February 2023), the ban on crossings to Syria during the Ramadan Feast (26 April 2022), the rising hate campaign against migrants and refugees in the run-up to the Presidential and General Elections (28 May 2023).

D. Conclusion: Findings and Discussion

D.1. In Terms Of Combating Hate and Discrimination

- It is observed that the tendency towards discrimination, exclusion, racism and xenophobia against refugees and migrants has strengthened within the society, sometimes reaching a level that leads to attacks.

- It is understood that legal regulations on hate and discrimination are not effective enough in terms of providing guarantees and deterrence directly for foreigners. The same situation is also observed in the implementation of existing legal regulations. Uncertainties in the status of the aforementioned foreigners make it difficult for them to use complaint mechanisms.

- The lack of statistical data on crimes against foreigners, in particular hate and discrimination offences, makes it difficult to make an objective assessment of the effective investigation and prosecution of these offences.

- Information from the field includes allegations that the implementation is not effective especially at the investigation stage of such crimes.

- Within the scope of combating hate and discrimination, it is understood that the media is effective in misinformation and incitement of the society, but this area is not sufficiently intervened.

D.2. In terms of protecting vulnerable groups and strengthening social welfare: Access to education, health and the law

- Regarding access to education, it is understood that especially children between the ages of 10-18 cannot access education effectively. The reasons for this situation include frequent relocation due to uncertain

and insecure status, boys having to work outside and girls having to work at home, cultural approaches dominating due to integration problems, and girls not being able to access education.

- Although there are practices that give source to positive developments in education, the fact that these practices are based on projects leads to the questioning of their effectiveness in terms of their sustainability and dissemination.

- In terms of education, compared to Syrian children, data on children under international protection are obscured and data sharing is not effective enough.
- The fact that Migrant Health Centres (TECs) are operating in the context of the SIHHAT project can be considered as a positive development in terms of access to health.

- However, the fact that the period for those under international protection, especially international protection applicants, who are unable to pay or do not have health insurance, to benefit from general health insurance has been reduced to one year, and that the administration has been granted a very broad and non-objective authority to make exemptions for this period is considered problematic in terms of access to health services.

- In general, it is reported that unregistered foreigners have great difficulties in accessing even emergency health services, that they hesitate to go to health centres for fear of being reported, and that instead they are exposed to unqualified health conditions by trying to benefit from under the counter formations.

- In terms of access to accommodation, it can be assessed that the possibility of access to accommodation is quite limited, especially for international protection applicants, and this situation poses a risk of violation of the prohibition of ill-treatment if the persons concerned are forced to live in poor conditions.

- At this point, the fact that the number of reception centres has been reduced and converted into removal centres and that there is only one reception centre has a negative impact on the situation regarding accommodation.

- There are no accessible and detailed legal safeguards regulated by law that ensure that the dilution policy is implemented by assessing the individual situation of foreigners and balancing the impact of the implementation on the fundamental rights and freedoms of the person.

- Article 8 of the Temporary Protection Regulation (TPR) stipulates that foreigners who cannot be placed under temporary protection shall be held in a special place in temporary accommodation centres without an administrative detention order. The aforementioned regulation and its implementation point to a 'de facto' deprivation of liberty that lacks a legal basis and is applied without conditions, procedure, duration and procedural safeguards. It can be stated that there is a structural problem at this point, and that it is an obligation arising from both the Constitution and the ECHR to regulate this practice by law in a way to meet the above-mentioned conditions and to establish an effective remedy for this practice.

- The same applies to transfer/referral and detention until a decision on administrative detention is taken. Although these situations also constitute deprivation of liberty in essence, there are no regulations on the procedures and principles of these practices at the legal level.

- Regarding the conditions of administrative detention, there are allegations by Bar Associations and NGOs of cases of torture and ill-treatment. There appears to be a need for these to be effectively investigated and for conditions to be effectively monitored.

- Although it is seen that the ways for external review are run short, it is understood within the framework of the information conveyed from the field that the need to strengthen and activate individual complaint mechanisms regarding the conditions of administrative

detention and to strengthen access to lawyers/legal assistance continues.

- There are allegations that voluntary return forms are forcibly signed in removal centres. The ECtHR judgement in Akkad v. Turkey also presents a negative picture in this regard. In this context, it is necessary to ensure that the procedural safeguards of voluntary return practices, including remedies, are clear, accessible and unambiguous.

- The entry into force of secondary legislation on alternatives to administrative detention is a positive development. However, there is a need for the effective implementation of this regulation and the elimination of some uncertainties in the legal framework.
- As regards access to justice, there is a need to take the necessary structural steps to eliminate the unconstitutionality of the reciprocity requirement in Article 334 of the Code of Civil Procedure, based on the Constitutional Court's individual application decision on this issue.
- Regarding the fight against trafficking in human beings and the protection of victims, although it is understood that significant progress has been made within the scope of various projects, it is necessary to ensure the necessary procedural safeguards, especially in terms of the voluntary return of victims with their explicit and uncoerced consent, and to make clear arrangements in this regard and to include these practices in the performance criteria of the Presidency of Migration Management.

- It is understood that there is still a need to increase the number of shelters for victims of trafficking in human beings and to cooperate more effectively with non-governmental organisations in this regard.

This report has been produced by the Human Rights Association with the financial assistance of the European Union.

Its contents are the sole responsibility of Human Rights Association and can in no way be taken to reflect the views of the European Union.

Human Rights Association | February 2024


İNSAN HAKLARI DERNEĞİ
HUMAN RIGHTS ASSOCIATION
KOMELEYA MAFÊN MIROVAN
1986