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Report

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ADMINISTRATIVE DETENTION UNDER THE NORMATIVE FRAMEWORK OF NATIONAL AND INTERNATIONAL LAW

Basic Principles and Minimum Standards for Detention Conditions



**International
Refugee
Rights Association**
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Report

Administrative Detention Under the Normative Framework of National And International Law: Basic Principles and Minimum Standards for Detention Conditions

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What Does This Report tell?

Administrative detention is a decision to keep a foreigner in a country in repatriation centers for a certain period of time. The implementation of this decision is determined within the scope of specific international conventions and national legislation. In this context, this report addresses the issue of minimum conditions required for administrative detention to be considered legal, primarily within the scope of Turkish Domestic Law and international regulations on administrative detention.

Furthermore, this report includes a comparison of the concepts of administrative detention, detention and arrest. In the remainder of the report, the minimum conditions for administrative detention are discussed. The European Court of Human Rights (ECHR)'s approach to the issue of administrative detention is another aspect explored within the scope of this report. Finally, the report offers recommendations regarding the local judicial remedies against unlawful administrative detention. According to this report, it should be taken into consideration that in cases where there is a violation of the minimum conditions prescribed for administrative detention, an application can be made to the ECHR in the event that all available domestic remedies have been invoked and exhausted.

ministrative detention is dependent on their actual compliance with conditions addressed in relevant legal framework and discussed in this report.

The report, which elaborates the minimum conditions required for the administrative detention to be considered legal, will primarily discuss the issues surrounding national and international regulations regarding administrative detention. Subsequently, the concepts of administrative detention, detention and arrest will be analysed in a comparative perspective. The minimum standards for administrative detention conditions will be explained in the remainder of the report. Afterwards, the approach and the jurisprudence of the ECHR on the issue will be elaborated. Finally, the domestic legal remedy for compensation for damages occurred due to administrative detention decisions will be provided.

International Regulations on Administrative Detention

Administrative detention, which is a precautionary measure applied in the process of deportation of foreigners, is an internationally applied practice. In the event that administrative detention, which is acknowledged by international and national regulations, is unlawful, violations of many fundamental rights and freedoms may come to the fore. This situation gives rise to the responsibility of both the institution that implements the administrative detention and ultimately the state in which the administrative detention is implemented.

As will be mentioned below, the practice of administrative detention is acknowledged in both national and international regulations, and reports on the conditions of detention have been produced by many institutions. The full legitimacy of the implemented ad-

The main framework of administrative detention, which is applied for various reasons in many legal systems, is determined according to universal human rights standards. The compliance of detention conditions with human rights standards also prevents arbitrary detention. Thus, administrative detention has been the subject of various international regulations.

The scope of minimum conditions for administrative detention is generally determined by the provisions of the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 3 of the ECHR, titled 'Prohibition of Torture', stipulates that no one shall be subjected to torture or to cruel, in human or degrading treatment or punishment. Article 5 of the Convention, titled 'The

Right to Freedom and Security', states that everyone has the right to freedom and security, and that no one can be deprived of his/her liberty except in the specified cases and in accordance with a procedure prescribed by law.

ICCPR commands the following provision in Article 9: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." The following article, article 10, titled 'The Rights of the Detainees' include the following provision: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Apart from the aforementioned international conventions, The United Nations Standard Minimum Rules for the Treatment of Prisoners of 1957 and the Basic Principles for the Treatment of Prisoners (1990) and the European Prison Rules: Recommendation No. R (87) 3 and Rec (2006) 2 of the Committee of Ministers of the Council of Europe and the reports of the Committee for the Prevention of Torture, established with the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment included the minimum conditions to be applied for administrative detention.

National Regulations on Administrative Detention

Regulations regarding the administrative detention of foreigners in Turkey are prescribed by Law No. 6458 on Foreigners and

International Protection (LFIP). Article 57 and the following articles of the aforementioned Law contain detailed provisions regarding such as the reasons for the administrative detention decision to be taken, the duration, the circumstances in which the detention will be extended, the judicial remedies available against the administrative detention decision, alternative obligations to administrative detention, repatriation centers and the services to be provided in these centers.

According to relevant regulations, administrative detention decision is issued by the governorship for whom a deportation decision is issued, those who may abscond or disappear, who violate rules for entry into and exit from Turkey, who use fraudulent or unfounded documents, who do not leave Turkey in the granted period without an acceptable excuse, who constitute a threat to public order and security or public health shall be under administrative detention by decision of the governorate. Administrative detention

of the aforementioned persons is not the only mechanism to be resorted to. Likewise, the amendment to the LFIP adopted on 6/12/2019 determined that foreigners may be subject to various alternative obligations instead of administrative detention. Accordingly, foreigners for whom an administrative detention decision has not been issued or for whom no longer under administrative detention may be subject to obligations such as to reside at a specific address, to produce a notification, to return based on a family status, repatriation assistance, counselling, to take part in public interest services on a voluntary basis, to bail out and to be given electronic monitoring.

As a rule, the duration of administrative

The main framework of administrative detention is determined according to universal human rights standards.

detention in repatriation centers of the foreigner for whom an administrative detention decision has been issued should not exceed six months. However, if the deportation process cannot be completed because the foreigner does not cooperate or does not provide correct information or documents about his/her country of origin, it is possible to extend the administrative detention period for a maximum of six months. The fact that the administrative detention decision has been issued for six months does not necessarily mean that the foreigner cannot be released during this period. Likewise, relevant legislation stipulates that the competent governorship will evaluate regularly in a monthly basis whether there is a necessity for the continuation of the administrative detention, and even when deemed necessary, foreigners who are not deemed to be detained under administrative detention will be released immediately, without waiting for a period of thirty days.

The results of the administrative detention decision and the evaluations made regularly every month must be notified to the foreigner or his/her legal representative or lawyer, together with the reasons behind the adoption of such decisions. Furthermore, if the foreigner under administrative detention is not represented by a lawyer, the foreigner or his/her legal representative must be informed about the outcome of the decision, appeal procedures and deadlines. From the wording and letter of the relevant regulation, it is understood that the abovementioned notification is one of the obligations of the administration, and that the administration does not have the discretionary power to not notify at this point. Otherwise, it cannot be said that the administrative detention applied during the deportation process was carried out conformably with due process of law, and as a result, this situation would result in a violation of Article 19 of the Turkish Constitution and Article 5 of the ECHR.



A frame from an administrative detention center in Van, 2021, Anadolu Agency

As stated, administrative authority may terminate the administrative detention measure ex officio as a result of its evaluation. However, if the administration does not make a decision in this direction, the foreigner must lodge an appeal against an administrative decision with the competent judiciary authority. According to paragraph 6 of Article 57 of the Law, the foreigner who has been under administrative detention, his/her legal representative or his/her lawyer may appeal against the administrative detention decision to the Criminal Courts of Peace. This appeal, which does not stop the administrative detention, must be decided by the Criminal Courts of Peace judge within five days and the judge's decision is final. It is not possible to take legal action against this decision. However, in cases where the administrative detention conditions have disappeared or changed, it is possible to re-apply to the Criminal Courts of Peace.

Foreigners in administrative detention are held in repatriation centers. The law does not include a detailed regulation on the establish-

The concept of administrative detention is essentially a state of deprivation of freedom of an administrative nature.

ment, management, operation, transfer, control and transfer of foreigners to repatriation centers, and it is stated that the procedures and principles regarding these aspects shall be governed by a regulation. For this purpose, the Regulation on the Establishment, Management, Operation and Control of Reception and Accommodation Centers and Repatriation Centers was adopted and published in the Official Journal on 22/04/2014. This Regulation contains provisions regulating issues such as the working principles of repatriation centers, their operation and the services to be provided at these centers.

The services to be provided to foreigners in repatriation centers are prescribed in Article 59 of the LFIP. While the issues that are not related to foreigners under administrative detention are governed by the aforementioned regulation, the issues that concern them directly are included in this law. Accordingly, emergency and basic health services, which cannot be afforded for by the foreigners, shall be provided free of charge in repatriation centers. It is forbidden to deprive these services to foreigners on the grounds that their fees are not paid. Likewise, during the period of administrative detention, foreigners shall be allowed to have access to and receive visits from his/her relatives, notary, legal representative and lawyer and to have access to telephone services. Restricting these facilities will constitute a violation of both the LFIP and the regulations on fundamental rights and freedoms such as the ECHR.

Comparison of Administrative Detention with Other Types of Detention

Administrative detention, which serves to keep foreigners, for whom a deportation decision has been issued, under custody until their deportation, is similar to the “detention” and “arrest” measures used in criminal

law. Administrative detention is ultimately a practice of detention and results in the deprivation of liberty of individuals. Nevertheless, the concept of administrative detention differs from the aforementioned measures as it is not a measure related with commission of a crime.

The concept of administrative detention is essentially a state of deprivation of freedom of an administrative nature. In criminal law, detention and arrest are implemented pursuant to a decision given by judicial authorities. On the other hand, no decision issued by judicial authorities is required for administrative detention to be implemented, and the decisions of the governorships, which are executive institutions, are considered sufficient. While administrative detention is applied only to foreigners, the addressee of arrest and detention in criminal law can be anyone, regardless of being a citizen or foreigner.

Administrative detention should only be applied in repatriation centers established for this purpose, as it differs from detention and arrest measures in criminal law. Administrative detention in police custody or prisons is unlawful. Since foreigners in administrative detention are subject to this measure only due to administrative requirements, if these foreigners are held in police custody or prisons under exceptional circumstances, they must be kept in separate places from detainees and convicts.

Minimum Requirements for Administrative Detention

There are many national and international institutions that examine and evaluate the administrative detention conditions and prepare reports. While some of them are public institutions and organizations, the others are non-governmental organizations. At this point, it should be pointed out that the institu-

tion that carries out the most comprehensive study on the minimum requirements for administrative detention and publishes reports on this subject is the European Committee for the Prevention of Torture. Its full name is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, and it is established within the framework of the Council of Europe in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, which was adopted in 1987 and entered into force in 1989.

With its scheduled or ad hoc visits to the states party to this convention, the Committee may visit civilian or military detention centers, prisons, hospitals, mental hospitals, foreigners' guesthouses, etc., where torture and similar practices are likely to occur. The Committee aims to provide international supervision and cooperation on the prevention of torture through the reports it issue and the recommendations contained in these reports. The Committee for the Prevention of Torture is able to release a public statement on the issue if the concerned states parties refrain from cooperating or make no improvements in line with the Committee's recommendations.

In cases where it is deemed necessary to deprive persons of their liberty for a long time, according to the minimum requirements regarding administrative detention, which emerged from the reports of the Committee, these persons should be kept in centers pursuant to a program suitable for their legal status, under appropriate physical conditions and supervised by qualified personnel especially trained for this purpose. It is also important that such centers are adequately equipped, clean and well-maintained, and that adequate living space is provided for foreigners accommodated in these places. The

impression of a prison environment should be avoided as much as possible, and scheduled activities should include outdoor exercise, access to a room during the day, radio/TV, newspapers/magazines, and other appropriate leisure areas.

The European Committee for the Prevention of Torture states that the scope of service provided to individuals held in administrative detention should be commensurate to the duration of detention. According to the Committee, foreigners held in administrative detention have the right to access to a lawyer, access to a medical doctor, and to inform



Irregular migrants to be deported in Van, Turkey.

a relative or a third party of their choice about the deprivation of liberty from the very first moments of the restriction of their freedom. The right of access to a lawyer should include the right to speak in private with the lawyer and to access to legal advice on matters related to residence, detention and deportation. Accordingly, foreigners in administrative detention should be able to access to legal aid when they are not in a position to appoint and retain the services of a lawyer themselves. Foreigners in administrative detention should be examined as required by a doctor or a fully qualified nurse reporting to the doctor, if they are within the scope of the right of access to a medical doctor. This right should include the right to be examined by a doctor of their choice.

In addition to these three basic rights, foreigners in administrative detention should also have the right to request consular assistance. Since foreigners who have become a target in their own country may not want to contact their national authorities, the exercise of this right especially should be left to the discretion of relevant foreigners.

According to the Committee, foreigners should have the right to maintain contact with the outside world during their detention, in particular to make frequent phone calls and to be visited by relatives and representatives of relevant organizations. In addition, it has been emphasized by the Committee that the right of detainees to inform a third party regarding their detention status should be guaranteed from the beginning of the detention period, ruling out exceptional circumstances. Those under administrative detention should be given the opportunity to maintain relationships, especially with their families or close friends.

In the reports of the Committee, it has been emphasized that authorities should exercise flexibility in the application of visit or telephone contact rules for foreigners under administrative detention's family members and close friends who live far away and therefore do not have the opportunity to visit regularly. In such cases, visitation times should be allowed to accumulate and/or better facilities should be provided to foreigners in order for them to contact family members and close friends by phone.

The rooms of the people in administrative detention should be clean, in a suitable size for the number of accommodated people, and adequately lit (except for sleeping periods) in a way that is suitable for reading. Toilet and bathroom facilities should be provided to foreigners held in administrative detention under conditions suitable for pri-

vacy, and drinking water service should be provided to them at all times. The Committee also stated that the food service provided to these foreigners should be ensured in terms of quantity and quality, and provision of running water service in the rooms is a part of this obligation.

Another minimum standard is that the rooms are suitable to be exposed to daylight and fresh air. It has been stated that keeping the temperature or coldness of the room at levels appropriate for the environment should not be underestimated as it will affect a person's well-being, and in extreme cases may affect his/her health. From this point of view, rooms used by foreigners, especially in the repatriation centers located in provinces with a warm climate must be cooled down with air conditioning etc. The Committee also made it clear that those held in administrative detention should also be exposed to fresh air on a daily basis.

The Committee states that it would be beneficial for both foreigners in administrative detention and civil servants to have a clear and unambiguous internal regulation in all institutions restricting liberty. This internal regulation also needs to be translated into several languages. This is because in the event that foreigners do not speak Turkish, it would be impossible to say that an internal regulation issued only in Turkish fulfills its main purpose. By its nature, the internal regulation should primarily be informative and address the widest range of issues, rights and duties related to daily life in the repatriation center. The internal regulation should also include disciplinary procedures and guide foreigners held in administrative detention to find out about the alleged violation and to apply to an independent authority against any sanctions imposed.

Another conclusion drawn from the European Committee for the Prevention of Tor-

ture's reports is that a complaint mechanism should be established about the conditions of detention and access to this complaint mechanism by foreigners should be guaranteed. As a matter of fact, the inspection of repatriation centers by independent authorities is a key element in preventing ill-treatment. Notwithstanding, on-site inspection visits by the complaint mechanism should be both frequent and unannounced. In addition, inspectors should be given the authority to conduct private interviews with foreigners held in administrative detention and to examine all issues related to their treatment.



Detained Migrants

The implementation of certain screening procedures to identify vulnerable foreigners and to provide them with access to appropriate care is also one of the minimum requirements, according to the Committee. To serve this purpose, it would be appropriate to have, as a minimum, a qualified nurse in all repatriation centers. In particular, the nurse should carry out the first medical screening of new arrivals, receive requests to see a doctor, undertake the procurement and distribution of prescribed drugs, maintain medical documents and supervise general hygiene conditions.

The European Committee for the Prevention of Torture also recommends that

all signs of injury, statements made by foreigners who alleges that he/she has been subjected to mistreatment, and the relevant doctor's findings be duly recorded on a form specifically designed for this purpose. In this context, procedures should be developed to ensure that the records are kept for each injury case consistent with allegations of ill-treatment regarding the person concerned, and these records should be brought to the attention of the court or prosecutorial authorities on a regular basis.

Minimum Standards for Detention Conditions from the Perspective of the ECHR

State Parties, in accordance with Article 3 of the ECtHR, are obliged to ensure that foreigners in administrative detention are kept in conditions compatible with human dignity, that detention is implemented in a manner and form that does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that their health and well-being are adequately protected, taking into account the practical requirements of administrative detention. The ECHR has evaluated the applications regarding administrative detention on the grounds that the minimum requirements have been violated, within the scope of the "prohibition of degrading treatment" prescribed in Article 3 of the Convention. According to the Court, the restriction of freedom applied in accordance with subparagraph (f) of the first paragraph of Article 5 must be carried out in good faith in order for it not to be considered arbitrary; there must be a reasonable link between the administrative detention decision and its justification; the place where the foreigner is detained must be appropriate; and the duration of the detention must serve its purpose.

According to the ECtHR, if other members of the same family are also under ad-

ministrative detention, all possible efforts should be made not to separate them from one another. However, the ECHR has ruled in many decisions that it is imperative to consider alternative measures before an administrative detention decision is taken, especially for vulnerable persons such as children and families with children. In the case *Rahimi v. Greece*, the ECtHR found it contrary to article 3 of the Convention that an unaccompanied 15-year-old Afghan national, for whom a deportation decision was made, was kept in bad conditions for two days in a center established for irregular immigrants, together with immigrants over the age of 18.

In the case of *G.B. and Others v. Turkey*, in 2019, the ECtHR ruled that the conditions of the applicants' detention, consisting of three children and their mothers in repatriation centers, violated the prohibition of inhuman or degrading treatment prescribed in article 3, especially for children. The Court also found a violation of article 13 of due to the lack of an effective remedy regarding the conditions of administrative detention and ruled that the detention of children in Kumkapı repatriation center without an administrative detention decision violated the prohibition of arbitrary detention regulated in the first paragraph of article 5 of the Convention. Furthermore, it also found a violation of the fourth paragraph of the same article on the account of the failure of a legal remedy mechanism to take proceedings by which the lawfulness of detention can be decided speedily by a court and release of the person taken under custody ordered if the detention is unlawful.

It should be noted that during its evaluations of applications regarding the unlawfulness of administrative detention, the ECtHR takes into account the European Prison Rules: Recommendation No. R (87) 3 and



*A detention Center in Van, Turkey. (2021)
DHA*

Recommendation Rec (2006) 2 on the European Prison Rules of the Committee of Ministers of the Council of Europe and the reports of the Committee for the Prevention of Torture, together with the relevant provisions of the ECHR and the ICCPR. The ECtHR also emphasized that national legislation must have certain qualifications and that detention must not be arbitrary, emphasizing that administrative detention must be in accordance with the procedure prescribed by the law. According to the Court, procedural safeguards such as detention orders specifying the reasons for detention, legal aid, representation and access to effective remedies must be provided.

The ECtHR, in its examinations in the centers, decided that an area of 4 sq. m per person constitutes the minimum standard in this regard, and that an area of less than 3 sq. m per person would on its own lead to a finding of a violation of minimum conditions. The Court also recognizes that giving foreigners under administrative detention the opportunity to exercise outdoors for at least one hour each day is a fundamental guarantee of their well-being. Likewise, it was also mentioned that places to exercise outdoors must be of reasonable size and able to provide protection from bad weather conditions as much as possible.

Taking into account the regulations, recommendations, reports and case law of ECtHR that directly or indirectly address the minimum requirements for being held in administrative detention, it is concluded that in order for the administrative detention to be lawful, the following conditions must be fulfilled:

- There must be a real justification for deportation;
- Administrative detention should be prescribed in national law and implemented in good faith;
- The administrative detention decision must be closely linked to its purpose;
- Procedures must be carried out meticulously;
- The place and conditions of administrative detention should be appropriate and it should not be forgotten that "the measure is not for persons who have committed crimes in terms of criminal law, but for foreigners who have left their homeland for the purpose of obtaining a dignified life";
- The duration of the administrative detention must not exceed the reasonable period necessary to achieve the purpose of the detention;
- During the detention period, foreigners should be provided with adequate facilities for communication, meeting with family members and close friends, accessing fresh air and exercise;

- Rooms and other areas where the foreigners are held in administrative detention must adhere to certain standards in terms of size and lighting.

Compensation for Unlawful Detention and Conditions of Detention

There is no judicial mechanism foreseen by the Foreigners and International Protection Act (Law no. 6458) regarding complaints concerning material conditions of administrative detention and the unlawfulness of the detention. In the case of K.A.

the Constitutional Court concluded that there was no effective administrative and judicial remedy for compensation for the damage suffered due to inappropriate detention conditions. Constitutional Court changed its previous decision in the case of B.T. and decided that those whose rights have

been violated due to administrative detention conditions can file a full remedy action in the administrative judiciary, in accordance with article 2 of the Administrative Proceedings Law No. 2577.

Article 2 of the Law No. 2577 states that those whose personal rights are directly violated due to administrative actions and measures can refer to the administrative court for full remedy action. Accordingly, it has become possible to subject all kinds of damages arising from the actions and measures of the administration to a full remedy action to be filed in administrative courts. Since no distinction is made in terms of administrative measures or types of actions in the above-mentioned rule, it has been possible to demand compensation for the damage caused by any measure or action that falls under

It is possible to subject all kinds of damages arising from the actions to be filed in administrative courts.

the administrative function, through a full remedy action to be filed in the administrative courts based on this rule. Therefore, it can be inferred that Article 2 of the Law No. 2577 provides a sufficient legal basis for damages accrued due to any administrative action to be the subject of a lawsuit in the administrative judiciary. Subsequently, it has been concluded that it is possible for the damages arising from the unlawful conditions in repatriation centers to be subject to a full remedy action in administrative courts pursuant to Article 2 of the Law No. 2577.

In this context, in cases where the courts check whether the conditions of detention are in compliance with the relevant national and international law, and in the full remedy lawsuits submitted for their examination, if the administrative court determine that the conditions of detention in this framework are found to be unlawful, the court has the authority to award compensation, provided that there is a causal link between the damage and the conditions of detention.

However, in spite of the Constitutional Court's case law established by the case of B.T., the Court of Jurisdictional Disputes accepted that the applications for compensation claims due to unfair administrative detention should be heard by judicial courts (Decision of the Court of Jurisdictional Disputes, merits no. 2020/651, decision no. 2020/684). Following the aforementioned court decision, many cases pending in the administrative courts were refused to be heard on the grounds of lack of jurisdiction. However, taking into account the absence of the Court of Disputes decision at the time, the relevant cases issued and the case law formed by the decision of the Constitutional Court in the case of B.T., the regional administrative courts ruled that the refusal decisions on the basis of lack of jurisdiction are incompatible with the law and thus must be overturned, and that

the pending cases should be resolved by the administrative judicial authorities. Currently, there are full remedy actions pending before administrative courts.

Nevertheless, the Court of Jurisdictional Disputes stated that "the Law No. 6458 prescribes that an application against the administrative detention decisions are to be filed with Criminal Courts of Peace. Considering that the Court of Jurisdictional Disputes has no authority to determine which court shall have jurisdiction in these cases, it was concluded that this determination should be made within the relevant judicial branch". Based on this reasoning, the Court of Jurisdictional Disputes eliminated a problem and decided that the lawsuits requesting compensation for non-pecuniary damages arising from unfair administrative detention shall be submitted to judicial courts, however it brought another question by not determining which specific courts have jurisdiction within the judicial branch.

Therefore, as of the date of this report, foreigners who wish to claim compensation due to unfair administrative detention conditions in the current situation can file a lawsuit in the judicial courts, and the discussions on the appointment of the competent court continue. It is seen that there is no unity in practice due to the fact that there are still cases pending before administrative courts and it is in our opinion that this issue can be solved by the enactment of a specific law.

On the other hand, in cases where the applications made before the Criminal Courts of Peace on the grounds of unlawful administrative detention conditions are rejected, there is no judicial remedy for the allegations of illegality of administrative detention decisions. Considering the refusal decisions given by the Criminal Courts of Peace regarding the legality of the administrative detention

decisions, we believe that the allegations of illegality of these judicial decisions should be submitted to the Constitutional Court.

Nevertheless, foreigners held in administrative detention will be able to claim compensation for the damages accrued due to the conditions of administrative detention, even if it can be argued that the administrative detention decision is compatible with the law. Compensation for the actual damages accrued due to administrative actions which are defined as actions or inaction of the administration in the Turkish law is possible in accordance with article 13 of the Code of Administrative Procedure Law No. 2577. In this procedure defined as full remedy action, the foreigner must first make a written application to the administration in order to obtain compensation for the losses incurred due to the actions of the administration and claim the exercise of his/her right to compensation. In the event of partial or complete rejection of these requests, full remedy action may be filed before administrative courts by observing the time limits specified in the relevant law.

In sum, it is possible to divide the stages of administrative detention decisions into two headings. Accordingly, it is possible to claim compensation for both the unlawfulness of the administrative detention and the unlawfulness of the detention conditions. However, it is necessary to make a dual distinction in terms of the legality control of administrative detention. In cases where the administrative detention decision found to be unlawful by the Criminal Courts of Peace, a lawsuit with a claim for compensation may be filed, but there is no consensus in practice on which jurisdiction the lawsuit shall be filed. In cases where it is decided that the administrative detention decision is in accordance with the law, an individual application should be made to the Constitutional Court. For the compen-

sation of damages arising from the unlawfulness of the conditions of detention, a full remedy action should be before administrative courts.

Conclusion

The minimum standards of conditions of foreigners being held in administrative detention have been subject to various international and national regulations, primarily the ECHR, the ICCPR and the LFIP. In comparison with the international regulations that suffice with general provisions, situations of foreigners held in administrative detention are comprehensively addressed in the LFIP and the Temporary Protection Regulation. The minimum conditions for administrative detention are determined in the aforementioned regulations.

In addition to national and international regulations, many local and international institutions, especially the European Committee for the Prevention of Torture, have examined and evaluated the conditions of administrative detention. In particular, the comprehensive reports issued by the European Committee for the Prevention of Torture has concluded that in cases where it is necessary to deprive people of their liberty for a long time according to the provisions of legislation regulating foreigners, the physical conditions of the repatriation center must be suitable, and the scope of the services provided to the people held in administrative detention must be proportional to the duration of administrative detention, the foreigners must be granted with access to a lawyer and medical doctor, a clear and unambiguous internal regulation must be available in all institutions where people are kept in custody, and a complaint mechanism about the conditions of administrative detention must be available for concerned individuals.

The ECtHR evaluated the applications made on the grounds that the minimum conditions regarding administrative detention were violated in the context of article 3 of the ECHR, and stated that the administrative detention is prescribed in national law, that it must be closely related to the purpose it pursues, and that due process must be respected in the proceedings. In the light of information provided above, in cases where there is a violation of the specified minimum conditions, there is no doubt that an application can be made to the ECtHR in the event that the legal procedures in the judicial and administrative courts in domestic law is ineffective.



ADMINISTRATIVE DETENTION UNDER THE NORMATIVE FRAMEWORK OF NATIONAL AND INTERNATIONAL LAW

Basic Principles and Minimum Standards for Detention Conditions

The compliance of detention conditions with human rights standards also prevents arbitrary detention.

In cases where there is a violation of minimum standards for detention conditions, an application can be made to the ECHR in the event that the legal procedures in the judicial courts in domestic law is ineffective.

State Parties, in accordance with Article 3 of the ECHR, are obliged to ensure that foreigners in administrative detention are kept in conditions compatible with human dignity, that detention is implemented in a manner and form that does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that their health and well-being are adequately protected, taking into account the practical requirements of administrative detention.

