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No. Dok.202000011/14

Tirana ___/___/2020

Subject: *Recommendation on taking measures to respect the rights of aliens in the territory of the Republic of Albania in accordance with conventions and internal legislation*

General Directory of State Police
Chief Executive Ardi Veliu
Tirana

Dear Mr. Veliu,

On the first day of the beginning of this year, the Ombudsman stated and followed with concern the issue made public regarding the deportation of the Turkish citizen, H.Ç to Turkey by the Police State authorities.

The deportation case of the Turkish citizen H.Ç, who had been detained for nearly 6 months in the IECD "Mine Peza", took the attention of the national media and beyond, making it public from their part, as well as the attention of various europarlimentary.

In this context, in the Ombudsman's Office it is registered as a case on its own initiative, in order to conduct an independent administrative investigation, throughout the information gathered from the competent state institutions: the Local Authority of the Border and Migration of Tirana, the General Directorate of Prisons, IECD "Mine Peza", Prosecution Office in the Tirana District Court and Tirana District Court.

Circumstances of the case

H.Ç, born on **.**.**** has entered in the Republic of Albania through B.C.P Morina on 05.07.2019, with Turkish passport number *****, with identification data of the citizen and left again from B.C.P Morina toward Kosovo on 05.07.2019, with the same passport.

Subsequently, the citizen entered in the Republic of Albania through B.C.P Morina with Turkish passport number *****, on 08.07.2019 at 00⁰⁰ and was detained at Rinas Airport on 08.07.2019, at 03³⁰ (time set in the record of flagrante delicto arrest held by border police officers), in the moment when he has attempted to travel with the Austrian Airlines line to Austria and then to Canada with his Turkish passport and Canadian visa.

In the Prosecution Office of the Tirana District Court is registered the criminal proceeding no.5246, on 09.07.2019 against the citizen H.Ç, for the criminal offense “forgery of IDs, passports or visas”, provided by article 189/2 of the Criminal Code.

The Tirana Judicial Court with decision no.1146, on 11.07.2019 has decided:

- the assessment as lawful of the arrest in flagrante delicto of the person under investigation Mr.H.Ç.
- the imposition as personal security measure to the person under investigation Mr.H.Ç that of “imprisonment sentence”, provided by article 238 of the Code of Criminal Procedure.

An appeal was filed against this decision in the Court of Appeal in Tirana which with decision no.555, on 24.07.2019 has decided:

Approval of decision no.1146. act on 11.07.2019 of the Tirana District Court.

Due to the fact of being in detention, Prosecution Office of Tirana District has investigated the case and sent it to the court.

With decision of the Prosecution Office of Judicial District no.2933, on 19.12.2019 has decided:

- Pleading guilty of the defendant H.Ç for the criminal offense “forgery of ID cards, passports or visas”, provided by article 189/2 of the Criminal Code and his sentence of 13 months imprisonment.
- Pursuant to article 406/1 of the Code of Criminal Procedure 1/3 of the sentence is reduced by sentencing the defendant by 8 months and 20 days of imprisonment.
- The detention starts from the date of arrest on 08.07.2019.
- The order of annulment the canadian visa with no.***** with validate dates from 05.09.2017-04.06.2021 on page number 18 of the Turkish passport with no.***** of the citizen H.Ç which is completely forged.
- Material evidence seized with the minutes of meeting on 08.07.2019 turkish passport with no.***** to be returned to the defendant H.Ç.

With decision no.1016 Act, on 01.01.2020 from the Court of Tirana District it was decided to terminate the personal security measure “imprisonment sentence” decided with decision no.1146 Act, on 11.07.2019 for the citizen H.Ç. The prosecuting authority on 01.01.2020 has ordered the execution of the criminal decision no.1016, on 01.01.2020 of the Court of the Tirana District for the termination of the personal security measure assigned to the citizen H.Ç.¹

¹ In law No.8331, on 21.4.1998 "On the execution of the criminal decisions", as amended, Chapter I "Execution of no final court decisions", Article 21 "Immediate execution" provides that: Executed by the court order immediately after the announcement of the decision:

Decision no.2933, on 19.12.2019 of the Court of the Tirana District for the declaration as guilty of the citizen H.Ç for the criminal offense “forgery of IDs, passports or visas”, provided by article 189/2 of the Criminal Code and decision no.1016, on 01.01.2020 of the same court where the termination of the personal security measure “imprisonment sentence”, has been decided on 06.01.2020, as they have not appealed.

Meanwhile, on the same date 01.01.2020 from IECD “Mine Peza” the Local Authority of the Border and Migration of Tirana is notified regarding the execution of the decision to terminate the security measure for the turkish citizen H.Ç and release him.

After the declaration of this directorate, from the film footage of the IECD it is noticed that the citizen H.Ç was transported by a police car with license plate “Police 1605”, accompanied by 3 civilian police officers, at 17⁰⁸ on 01.01.2020.

Within this date or more precisely a few hours, the procedures related to his provision with a document by the Turkish Embassy, deportation is decided and signed, the immediate execution is made and within the same day, the person leaves by plane to the Turkish state.

Administrative investigation

More detailed information was requested to the Local Authority of the Border and Migration of Tirana regarding the dynamics of the issue, including the reasons and legal causes on the basis of which the deportation order was issued for this citizen and his immediate execution was carried out, if there was an asylum request by the turkish citizen presented to the albanian authorities, the reasons for not giving the opportunity to exercise the legal right of administrative and judicial appeal against the deportation order, as well as lack of transportation of the citizen to the Closed Center in Karreç until the execution of the deportation order as a legal obligation provided by law in article 109, point 2 of the law “On aliens”.

In its responses, the directory has provided that they are informed on 01.01.2020 from IECD no.302, “Mine Peza”, Tirana through the letter no.01/5 prot., on 01.01.2020 with the decision of the Court of the Tirana District no.1016, on 01.01.2020 the immediate release of the citizen H.Ç, announcement based on point 6 of article 139 of the law “On aliens”.

The authority pointed out that according to the verifications carried out referring this case with the institution of IECD 302 Tirana, it resulted that the citizen has not applied for asylum. During the interview of the citizen at the moment he was asked if he had submitted an asylum application in the Republic of Albania, he replied that he did not do so but had planned it at the moment he would be in the canadian state. Given the fact that

1. Criminal decisions containing innocence, exclusion of the convicted person from the sentence or termination of the trial of the case according to point 2 of article 462 of the Code of Criminal Procedure, as well as when illegal arrest in flagrante delicto or detention is found, ordering immediate release, except when there is an arrest warrant for another reason.

2. **Criminal decisions against a person with a precautionary security measure against whom a sentence equal to or less than the time of detention is given or another type of milder sentence, ordering immediate release, except when there is a precautionary measure of arrest for another reason.....**

the attempt to travel to Canada was in July 2019, we think that this response refers to that time of period.

According to the explanation in a written form of this authority, the turkish citizen H.Ç on 08.07.2019 at 14⁰⁰ was arrested in flagrante delicto for the ciminal offense “forgery of IDs, passports or visas”, provided by article 189/2 of the Criminal Code. He was arrested on 08.07.2019 at 03³⁰, deprived from the exit to the Republic of Albania, from the employees of the Border Police in B.C.P Rinas, as he tried to cross the albanian border, traveling by “Austrian Airlines” line with itinerary Tirana-Vienna-Toronto/Canada, with his turkish passport no.*****, with a suspected falsified canadian visa. He has provided as travel document his turkish passport with no.***** and on page 18 the canadian visa with no.*****, with the valid dates from 05.09.2017 to 04.06.2021, as a consequence of the investigations carried out in the laboratory of the examination of the documents in Rinas it resulted as falsified.

Pursuant to the law no.108/2013 on foreigners, in point 6 of article 139 ku citohet “penitentiary institutions must notify the authorities responsible for border and migration where the institution is located 24 hours before the release of an alien by this intitution”, on 01.01.2020, we were informed by IECD no.302 Tirana, for the release of the alien H.Ç who was being held under the security measure “imprisonment sentence”, the court’s decision to the citizen was annulment of the security measure and his immediate release.

After dealing with the relevant procedures the citizen was under the supervision of the directorate, in the premises of I.E.C.D. no.302 Tirana, where it was found out that he did not have a regular travel document. In fact his travel document was in possession of the Prosecutor’s Office of the Tirana Judicial District². Therefore, due to the contact with the Turkish Embassy in Tirana, the citizen was provided with a travel document (permit pass).

Further on response it is clarified that pursuant to the law no.108/2013 “On aliens”, article 109/point 1/letter “a” *“has entered illegally the territory of the Republic of Albania and there is information that he/she will transit illegally to other countries”* to this citizen was issued a “deportation order” no.2125, on 01.01.2020 and pursuant to article 112/point 2 and article 4/point 10, which states that “the expulsion order shall enter into force immediately if the presence of the alien poses a threat to national order and security” of this law his departure form the territory of the Republic of Albania was executed through B.C.P Rinas Airport.

In addition to these explanations, the transport of the above-mentioned citizen, to the border crossing poin Rinas, was conducted with the vehicle of LABM Tirana with license plate Police 1605, as driver the Inspector Çesk Ndoci, assistant of the Section of Illegal Migration and was accompanied by teh Head of the Sector LABM Tirana Chief/commissioner Besnik Zela and Chief of the Section of Illegal Migration, Commissioner Ilir Zhupa. The above-mentioned citizen did not object the deportation order.

His departure from the territory of the Republic of Albania through B.C.K Rinas Airport was executed immediately pursuant to point 2 of article 112 “The expulsion order

² The passport was returned effectively with the order for the execution of the criminal decision on 13.01.2020, where the procedural body has decided the execution of the crimnial decision no.2933, on 19.12.2019 of the Court of the Tirana District for the convict H.Ç., the return of the passport at the turkish address.

shall enter into force immediately if the presence of the alien poses a threat to national order and security ...”. This citizen is prohibited from entering the territory of the Republic of Albania until 31.12.2025.

Given that the criminal offense is committed by this citizen is a criminal offense committed at the border and covered by the Border and Migration Police, pursuant to point 10 of the article 4 of aliens “The State authority, responsible for assessing the threats to public safety is the responsible structure of the State Police”, so this decision is taken by this authority.

The directorate claims that the turkish citizen voluntarily signed the deportation order and did not oppose the implementation, there was no asylum application in our country by his part, after being interviewed he stated that he would do that in Canada.

Prosecution Office in the Tirana District Court has registered the criminal proceeding no.5246, on 09.07.2019 against the citizen H.Ç for the criminal offense “forgery of IDs, passports or visas”, provided by article 189/2 of the Criminal Code. The citizen was investigated with personal security measure “imprisonment sentence” provided by article 238 of the Code of the Criminal Procedure, determined by decision no.1146 act, on 11.07.2019 (arrested on 08.07.2019). On 27.09.2019 the criminal case against the citizen H.Ç was forwarded for trial to Tirana District Court, a trial that ended on 19.12.2019.

From the part of the prosecuting authority based on the acts of the file, it is requested the plead guilty of the turkish citizen H.Ç for the criminal offense provided by article 189/2 of the Criminal Code, with 13 months imprisonment sentence, a request accepted by the Tirana District Court with the criminal decision no.2933, on 19.12.2019 (pursuant to article 406/1 of the Code of Criminal Procedure 1/3 is reduced, finally sentencing the defendant to 8 months and 20 days of imprisonment).

With decision no.1016 Act, on 01.01.2020 by the Tirana District Court the termination of the personal security measure “imprisonment sentence” has been decided with decision no.1146 Act, on 11.07.2019 for the citizen H.Ç. The prosecuting authority on 01.01.2020 has ordered the execution of the criminal decision no.1016, on 01.01.2020 Court of the Tirana District for the termination of the measure of personal security imposed on the citizen H.Ç. Meanwhile with the execution order of the criminal decision on 13.01.2020 the prosecuting authority has decided to execute the criminal decision no. 2933, on 19.12.2019 of the Tirana District Court for the convict H.Ç.

With the letter no. 02 prot., on 01.01.2020, the order of the prosecutor was sent for the execution of the decision no. 1016 Act, on 01.01.2020 of the Court of the Tirana District for the termination of the security measure against the citizen H.Ç.

Findings

Based on the above administrative investigation and the documentation forwarded by the above-mentioned authorities, it is concluded that:

From the part of the prosecuting authority it is not requested the departure/expulsion of the turkish citizen H. Ç from the territory of the Republic of Albania, after serving the criminal imprisonment of sentence.

Also, the Court of the Tirana District has not been expressed in the decision regarding the expulsion of the citizen H.Ç from the territory of the Republic of Albania.

Regarding the procedure followed by IECD “Mine Peza”, 302 Tirana for the announcement of the release of the foreign citizen H.Ç, shkresa no.01/5 prot., on 01.01.2020, in compliance with the point 6 of article 139 of law no.108/2013 “On aliens”, amended where it is provided: *“Penitentiary institutions must notify the authorities responsible for border and migration where the institution is located 24 hours before the release of an alien by this institution.”* With reference to the subject mentioned above, it turns out that the sufficient time according to this law to take appropriate measures by the Central Authority of the Border and Migration is 24 hours. In this case it seems that deadline was not necessary for this authority and due to that the measures have been taken in a very short period of time.

Central Authority of the Border and Migration in Tirana admits that there has not been a request of application for asylum from the Turkish citizen, despite the fact that media has circulated and made public the film footage in the external premises of this authority, the voice of this person shouting: “..asylum, asylum”.

In accordance with law no.121/2014 “On asylum in the Republic of Albania” parashikohet se:

“Asylum” is the form of international protection that the Republic of Albania grants to refugees.”

“Asylum request” is any declaration of the foreigner or of the stateless person, expressed in whatever manner and at whatever time in front of competent authorities at border crossing points, or within the territory of the Republic of Albania, who seeks international protection in accordance with international conventions and the Albanian legislation.”

According to the UNCHR “On the status of Refugees” any application for international protection is considered as application for asylum, unless the alien clearly requests another type of protection for which he/she applies separately. The convention represents the most important international document for the protection of refugees.

In the Republic of Albania it is guaranteed the right of asylum seeker on aliens or the stateless person, who, owing to a well-founded fear of prosecution for reasons of race, religion, nationality, membership to a particular social group, or political opinion is outside his country of citizenship or his former habitual country of residence and has no possibilities or desire to seek the protection of that country, as a consequence of such circumstances, due to this fear.

Also, the principle of non returning is an obligation of the authorities not to return to or extradite or leave outside of the territory persons who have benefited or sought the right to asylum or other forms of protection.³

³ In these cases:

- a) to a country where their life or freedom is threatened for reasons of race, religion, nationality, membership to a particular social group or political opinion;
- b) to a country where there are credible reasons to believe that the asylum seeker may be under the risk of being subjected to torture or an inhuman and degrading punishment, or any other treatment provided for in the European Court for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court, or in the international treaties/conventions where the Republic of Albania is a party to;

This principle in accordance with the article 113 of law “On aliens” where it is determined:

“1. The alien who meets one of the following requirements shall not be subject to the expulsion order: d) based on grounded reasons to suspect that the alien might be punished to death, subjected to torture, inhuman and degrading treatment or punishment for discriminatory reasons in the country of origin or another country; ...”

The European Convention on Human Rights, in the protocol 7, ratified by the Republic of Albania, expressly provides that:

“Article 1 Procedural guarantees regarding the expulsion of aliens

- 1. An alien with a regular residence in the territory of a state **cannot be deported**, except in accordance with a decision taken in conformity with the law and must have the opportunity to:
 - a. to present reasons against his expulsion,*
 - b. to search for considering his case, and*
 - c. to be represented for these purposes before the competent authority or one or some persons designated by this authority.**
- 2. An alien cannot be expelled before the exercising of the rights listed in the paragraph 1.a, b and c of this article, when this expell **it is necessary in the interest of public order or or for reasons of national security.**”*

The convention in the sense of article 116 and 122 of the Constitution of the Republic of Albania is part of the local interim legislation and should be implemented directly. Whereas, in addition to this provision stated in the convention, law no.108/2013 “On aliens”, applies the principle as it is stated in the Convention, addressing the reasons for which the deportation orders may be issued, the right to appeal against the deportation order and the procedure for the execution of deportation orders.

In analyzing what it is stated in the Convention and the abovementioned of the albanian law, it is obvious that deportation can be conducted for a reason clearly provided by law, it is guaranteed to him the right to appeal and that the exception to this rule is realized only when it is foreseen in law: “if he poses a threat to national security”. In this case article 9, 109/d and article 110 of law states that the Minister of the Interior is the authority responsible for determining if the person poses a threat and due to that is declared as undesirable person and then be forced to leave the territory. The alien, declared or not as undesirable person for reasons of national order and security the authority responsible issues an expulsion order as the authority with the well-defined knowledge in the law and in the spirit of the provision of the Convention.

In the case of object under consideration, from the analysis of the normative framework and assessment of the text of the expulsion order issued by the Local Directory of the Border and Migration in Tirana, it results that it is an extreme measure taken contrary to the provisions of law no.108/2013 “On aliens”, as amended. Specifically, as it is mentioned above, the aliens can leave only for the reason which must be provided by law. Concretelly, the expulsion order, provides that it is in compliance with the point 1/a

c) to a country where there are credible reasons to believe that the asylum seeker may be under the risk of forced disappearance;

c) to their country of origin, in the case where foreigners have been granted one of the forms of protection in accordance with the provisions of this law;

d) to a third country, which may return or send the person to one of the countries indicated in letters “a” , “b” and “c”, of this article.

of the article 109 of law no.108/2013 “On aliens”, where it is defined the expulsion’s cause: “...that the aliena) has entered illegally in the territory of the Republic of Albania **and** there is information that he/she will transit illegally to other countries.” The conjunction “and” stipulates that the albanian law requires the fulfillment of both conditions cumulatively in order to give the state authority the right to order the expulsion of a person.

Regarding what we have addressed above, from the data of the citizen H.Ç did not enter illegally to the territory of the Republic of Albania. So it is clear that the first condition of law regarding the expulsion from the territory is not fulfilled, specifically “*the illegal entry in the territory of the Republic of Albania*”. There is no claim for entering illegally in the territory of the Republic of Albania. We emphasize that if it would be true, this action constitutes a criminal offense and has been analyzed by the prosecution office in the investigation of the case against this citizen. There is no doubt that the prosecution office has not concluded that such thing might have happened, as the charge which the person has been tried is another. Also, the enacting clause of the court decision shows that the passport travel document remains valid and is returned to the defendant. It is worth mentioning that according to Article 190 of the Code of Criminal Procedure, any forged act or document which has been seized for the purpose of committing a criminal offense is destroyed. The fact that the court has ordered the annulment of the canadian visa and has returned the seized passport to the citizen H.Ç, it reveals that his passport was a valid travel document. It also confirms that he had legally entered in Albania.

Thus, the assessment of the expulsion act clearly shows that it was not done as a result of a reason provided by law, as long as the two conditions for which expulsion is permitted are not cumulatively met. But even if the expulsion was done for a reason provided by law, the albanian law still recognizes the right to appeal against the expulsion decision. (article 110 of law no.108/2013 “On aliens”).

The authority responsible has not considered neither the possibility to the turkish citizen to declare voluntary removal from the territory within the time limit set nor an expulsion order. For this reason, if he had been given the opportunity as it is provided by law then the expulsion order by the authority responsible for border and migration would not be executed. Declaration of voluntary removal of the alien shall be considered by the authority responsible for border and migration when deciding whether to include the restrictive measure of prohibition of entry in the removal order, except for the cases where the declaration may not be considered because of public order and security interests.

The coordination of the state authorities in issuing the departure order and its immediate execution against H.Ç it is realized in the first day of 2020, as an official day off, regarding the fact that in such cases even during the normal working days and in a short period of time the inter-institutional cooperation it is difficult.

It is still ambiguous the way how the costs of the coverage of the return ticket (travel ticket) for the citizen H.Ç. Meanwhile the alien has disagreed his departure to airport and the central authority of the Border and Migration does not have the budget for returning the aliens.

The citizen H.Ç has been to the Turkish Embassy in Tirana for issuing with a permit pass, while according to the court decision no.2933, on 19.12.2019 the turkish passport with no.***** should have been returned to him, with condition of removing the canadian visa with no.***** on page 18. It results that his passport is

valid, but the execution of this criminal decision was on 13.01.2020 by the prosecuting authority, 12 days after his deportation from the territory of the Republic of Albania.

There is no evidence or claim in the acts and communication that in this case that the citizen should not have been waiting for the execution of the criminal decision issued by the albanian court.

Aforementioned, the Central Authority of the Border and Migration in Tirana has decided to deport this citizen.

Even in the case of the deportation, the transport of the citizen H.Ç to the Closed Center in Karreç is an obligation provided in articles 109/point 2 of law no.108/2013 "On aliens", as amended⁴ and not fulfilled from the Central Authority of the Border and Migration in Tirana, despite the claims raised by this authority that it is not implemented in this case. This obligation it is also confirmed in the instruction no.293, on 04.06.2015 of the Minister of the Interior "*On procedures of the treatment of illegally staying aliens in the territory of the Republic of Albania*".

The immediate execution of the deportation order no.2125, on 01.01.2020 does not find legal support. In article 112 of law it is defined the procedures and the way how the execution order is fulfilled. The immediate execution of the deportation is directly related to the threat to public order and security that comes as a result of the alien in the territory of the Republic of Albania.

From the documentation and explanations given by this authority, it is not confirmed or shown that there is any data that the presence of the citizen H.Ç in our country has threatened the national or public order and security. No documents have been made available by the relevant agencies or structures to confirm this fact.

According to the article 4, point 10 of law "On aliens", the state authority, responsible for assessing the threats to public safety is the responsible structure of the State Police. According to the organization and functioning of the State Police, bylaws in force for the implementation of the law "On Aliens", as well as all practices that have been followed for more than 7 years since the enactment of this law, this authority is exercised by the Department of Public Security and Criminal Police and not the Authority of the Border and Migration. The lack of this document for the assessment of the citizen H.Ç it he poses a threat for public security, by this structure, it is clear because on 01.01.2020 it was the day off and there has been no secretary or person responsible for the assessment of this case.

The citizen H.Ç has not given the right to appeal against this order, a right recognized in international acts (conventions ratified by our state), internal legislation, law no.108/2013 "On aliens", as amended. In the expulsion order, no.2125, on 01.01.2020 point 5 it provides the right to appeal, but in a ambiguous way, as article 122 of law no.108/2013 provides the right to appeal for the expulsion order in the closed center and not the expulsion order. In the same administrative act, the time limit set for the execution of this right has not been determined, but providing so the deadline of 0 days from the

⁴ 2. In case the alien becomes a subject of deportation by the authority responsible for border and migration, according to this article, he will be detained in a closed center as provided in article 121 of this law, till the deportation order is executed. In case of finding other alternative possibilities, of the implementation of temporary measures, as defined in section IV of this chapter, the latter have priority over detention.

date of declaration, for his departure from the territory of the Republic of Albania, and his immediate execution has taken place.

Article 110 defines this as a right on aliens and on the other hand as an obligation for implementation by the authority responsible: *“1. The alien shall have the right to appeal against the expulsion order of the authority responsible for border and migration, according to the legislation in force.. 2. The alien, until termination of the appeal proceedings, shall be kept under conditions of alternative measure of supervision or detention in the closed center, pending immediate removal, according to the order issued for this purpose.”*

The right to appeal to the court is a right related to the legal process of law, recognized by paragraph 10 of the Universal Declaration of Human Rights where it is expressly provided that: *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”* Article 14, paragraph 1 of the International Covenant on Civil and Political Rights⁵, article 6, point 1 of ECHR⁶ and article 42 of the Constitution of the Republic of Albania⁷ further confirm this right.

The right of access to justice is the constitutional principle by which the exercise of fundamental human rights and freedoms is guaranteed, an essential condition for the existence of the rule of law, which guides the organization and functioning of justice in the country. With the free access to court, as a public right, which gives the legal guarantee to the official in order to seek the state protection, by forcing the competent judicial authorities to pronounce on his claims.

The rule of law cannot be considered without giving individuals the right and opportunity to go to court. This right is closely linked to Article 6 of the ECHR, implying not only the right of the individual to go to court, but also the obligation of the state to guarantee him this opportunity.

Denial of the right to go to court and receive a final response from it to the allegations raised constitutes a violation of the fundamental right to a fair trial.

Also according to article 109, of law 108/2013, the alien shall be informed in writing, in a language of his or her understanding, or at least in English, of the enforcement of the administrative measure of expulsion against him or her by the responsible authority of the border and migration, with an explanation of the reason the order is issued, the date and place of enforcement, the manner of transportation to the country of destination and the period of validity of the prohibition of entry. It results that the expulsion order is written in English language, but there is no data in English language regarding the time limit set within the deportation must take place. In the albanian language text it states that the execution will take place within 0 days, but non of these is mentioned in the English language. So, even formally the copy of the derpotation order comunicated to our institution does not meet the requirements of the law and for this reason it turns out that to this citizen there has been denied the guarantees provided in the European Convention on Human Rights as well as in our law. In the text of the act does not appear any

⁵ “All persons shall be equal before the courts and tribunals.”

⁶ In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

⁷ “1. The liberty, property, and rights recognized in the Constitution and by law may not be infringed without due process. Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of charges against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.”

explanation either in albanian or english language that the deportee had no right to appeal against this order. In the judgment of the Ombudsman, the procedural right guaranteed to the citizens and on aliens must be effectively implemented, the deportation order text other than the reference to the legal basis has no other explanation as required by law regarding the reason for the issuance nor the date and place of enforcement or the manner of transportation of this citizen. All these legal provisions imply that the deportee must be clarified in a language that he effectively understands for all the abovementioned and it is up to the authority which makes the communication to prove that these actions are committed. It is true that there is a signature in the act that should belong to the Turkish citizen H.Ç., but the content of the deportation order does not prove that the obligations set out in Article 109 as above have been fulfilled. Neither the act nor the explanations give any information that the citizen posed a threat to the security of the country. It is worth mentioning that this citizen was detained and that there was no possibility that he was not in the police surveillance. Escort the alien to the Closed Center in Karreç would continue to meet the condition of keeping the person in a closed center and under police surveillance until the proceedings are carried out in accordance with the law.

We would also like to draw attention to the fact that during the administrative investigation we requested recordings of security cameras, mainly from the Rinas Station, to refute the public claim that the citizen had sought asylum but this right was denied. We have also requested some acts of a regulatory nature. The first ones were not made available on the grounds that they were administered by the General Directorate of State Police, and for the latter there were delays. Cooperation with the Ombudsman and at the same time avoiding bureaucracies in forwarding investigative materials and documents within the structures of the State Police, should be considered principles of joint work in defense of fundamental human rights and freedoms.

To conclude, violations consist of:

- the lack of taking into consideration or administrating the asylum application of the citizen H. Ç and not respecting the principle of not returning to the country of origin;
- issuing the expulsion order in violation of the law “On aliens”, both in terms of the existence of the cause of deportation as well as the manner of his execution;
- non compliance with the procedures and time limit set by law for the manner of the deportation;
- failure to exercise the right to appeal against the deportation order;

For these reasons, we must be aware that the contested violations related to fundamental human rights, recognized for decades by international acts, put Albania in a not favorable position at all, moreover at a time when we seek the integration of its rapid accession to the European Union.

Statements of the eurodeputies Ramona Strugariu and Marius Botoş, members of EU Delegation to the Stabilization and Association Agreement, in addition to expressing the concern over the compliance with the law in the case of the deportation of the turkish citizen, they suggest that these actions could jeopardize the country’s European prespective.

Regarding the above, based on point 3 of article 63 of the Constitution of the Republic of Albania, which states that: “*The Ombudsman has the right to make recommendations and to propose measures when he observes violations of human rights*”

and freedoms” as well as in support of article 21/b of law no.8454 on 04.02.1999 “On Ombudsman” as amended and it states that: “Ombudsman makes recommendations on how to remedy the infringement to the administrative institution that, in his judgement has committed violations of human rights and freedoms.”

RE COMMENDS:

- Priority analysis of the procedures followed and documentation drafted by the Local Authority of the Border and Migration in Tirana for the case of deportation of the Turkish citizen H.Ç, taking on the relevant responsibilities, as well as taking appropriate administrative measures or any other measures that will consider appropriate.
- Taking measures to draft a guideline to guarantee the respect of the rights of aliens defined in international acts and internal legislation of the Republic of Albania, as well as the non-recurrence in the future of these cases in flagrant violation toward them.
- Taking measures to ensure a better cooperation of all structures of the State Police with the institution of the Ombudsman, avoiding unjustified bureaucracies and delays during administrative investigations, for the forwarding of investigative materials and documents.

For the position you will take towards this recommendation and the measures that will be taken for its implementation, please let us know within the legal deadline of 30 days, as provided in article 22 of law no. 8454 on 04.02.1999 “*On Ombudsman*”.

While hoping on your understanding and cooperation,

OMBUDSMAN

Erinda BALLANCA

