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**Turkish Constitutional Court decisions on interim  
measure regarding expulsion procedures**

**REPORT BY**

**Serhat KÖKSAL**  
**Rapporteur-Judge, Constitutional Court, Turkey**

## **Turkish Constitutional Court decisions on interim measure regarding expulsion procedures**

### **A) RELEVANT LAW**

Although there is no constitutional provision on Turkish Constitutional Court's decisions on interim measure requests, this issue is regulated under Article 49 of Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey (Law No. 6216) and Article 73 of the Rules of Procedure of the Constitutional Court. The said regulation is as follows:

#### **1) Article 49-5 of Law no. 6216:**

*“(5) The Sections may, ex officio or upon request of the applicant, decide for measures they deem necessary for the protection of the applicant's fundamental rights. In case a decision of measures is rendered, the decision on the merits must be rendered within six months at the latest. Otherwise, the decision on measures is revoked ipso facto.”*

#### **2) Article 73 of the Rules of Procedure of the Constitutional Court on “Measures”**

*Interim measure*

##### **ARTICLE 73**

*(1) Upon learning that there is a serious danger towards the life or material or moral integrity of the applicant, the necessary measures can be ruled upon ex officio by the Sections during the examination on merits or upon the request of the applicant.*

*(2) In relation to the applications which have been examined; upon learning that there is a serious danger towards the life or material or moral integrity of the applicant unless a decision of interim measure is made ex officio or upon the request of the applicant prior to the decision regarding the merits of the file, the admissibility examination of the application shall be carried out immediately by the Commissions, the application shall be sent to the relevant Section in order for the matter of interim measure to be concluded as well.*

*(3) In the event that the Section makes a decision of interim measure, it shall notify this to the relevant individuals and institutions for the necessary action to be taken.*

*(4) The decision in relation to the merits of the application regarding which an interim measure decision is made must be made within six months at the latest. Unless a new decision is made for the continuation of the interim measure, in circumstances where it is decided that the right of the applicant was not violated or it is decided to dismiss the application, the decision of interim measure shall be automatically lifted.*

### **B) THE PROCEDURE FOR INTERIM MEASURE**

#### **1) Individual Application Bureau:**

According to Article 63 of the Rules of Procedure of the Court, individual applications can be made in person to the Court or they can also be made via other courts or representations abroad.

The individual application forms shall be examined by the administrative staff at the individual application bureau to determine whether they request an interim measure or not. If the administrative staff identifies an interim measure request in the application form, they instantly inform the rapporteur-judge in charge of the individual application bureau of this situation without taking any other action on the file.

After the preliminary examination and registration proceedings to be conducted by the rapporteur-judge in charge of the individual application bureau, the file is referred without any delay to the rapporteur-judge in charge of examining the interim measure requests to conduct the necessary examinations.

## **2) Commissions – Sections**

In accordance with Article 49-5 of Law no. 62166216, the interim measure may be decided by the Sections during the examination on the merits of the application. Therefore, the individual application requesting interim measure shall be forwarded to the Section immediately.

The rapporteur-judge in charge of interim measure requests shall suspend the expulsion proceedings on the same day through a decision by the Section. Accordingly, the applicant is not deported until his/her request for interim measure is decided.

The chairman of the Section decides whether to include the relevant application file in the agenda of the Section's meeting.

The chairman of the Section decides on the meeting date and time for examining the individual application with interim measure request as well. In practice, the interim measure requests may be decided on the very same date depending on the circumstances of the request or it may be examined in the first meeting of the Section.

According to the statistical data by UYAP (National Judiciary Network), total number of interim measure requests filed from 23/09/2012 until 1/12/2015 is 2069. The distribution of these requests is 53 interim measure requests in 2012, 611 in 2013, 834 in 2014 and 571 requests in 2015. 1039 of these applications were decided without concluding the request for interim measure.

The Court decided for suspension of expulsion procedures in 36 decisions.

## **3) Execution of decisions**

If the interim measure request is accepted in an application, the decision is notified on the very same date by the Chief Rapporteur-Judges' Office directly to the relevant public authority and the applicant both verbally and in writing in accordance with Article 73 of the Rules of Procedure.

**C) EXAMPLES OF COURT'S DECISIONS ON "INTERIM MEASURE" REGARDING EXPULSION PROCEDURES:****1) Decision on Ilnar MIFTAKHOV application:****REPUBLIC OF TURKEY  
CONSTITUTIONAL COURT****SECOND SECTION  
DECISION ON INTERIM MEASURE**

**President** : Engin YILDIRIM  
**Judges** : Serdar ÖZGÜLDÜR  
Osman Alifeyyaz PAKSÜT  
Muammer TOPAL  
M. Emin KUZ  
**Rapporteur** : M. Serhat MAHMUTOĞLU  
**Applicant** : Ilnar MIFTAKHOV (Russian Federation citizen)  
**Counsel** : Atty. Tahir TOSOLAR

The applicant filed an individual application no. 2016/2016 on 1/2/2016 and requested the Constitutional Court to issue an interim measure to suspend the execution of proceedings for his deportation in accordance with the decision of Antalya Governorate Directorate of Migration Management dated 28/8/2015.

In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court dated 30/3/2011 and Article 73/1 of the Rules of Procedure of the Constitutional Court titled "*Interim Measure*", the Sections of the Court may, *ex officio* or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant's physical and moral integrity.

The Court requires information and documents to examine whether there is a serious threat against the applicant's life or physical and moral integrity in the present case. However, the execution of the decision for deportation during the examination of the individual application may lead to irreparable consequences. Therefore, the Court decides on 1/2/2016 to suspend the execution of the decision for applicant's deportation until the application is re-assessed upon collection of relevant information and documents.

**2) Decision on R.M. application:**

**APPLICATION OF R.M.**  
(Application Number: 2015/19133)  
Decision Date: 16/12/2015

**SECOND SECTION  
DECISION ON INTERIM MEASURE****CONFIDENTIALITY REQUEST**

**President** : Engin YILDIRIM  
**Judges** : Alparslan ALTAN  
Celal Mümtaz AKINCI  
Muammer TOPAL

**Rapporteur** : M. Emin KUZ  
**Applicant** : M. Serhat MAHMUTOĞLU  
**Counsel** : R. M. (Islamic Republic of Iran citizen)  
: Av. Çınar AKSOY

## **I. SUBJECT MATTER OF THE APPLICATION**

1. The application concerns the allegations that the applicants' right to life would be violated in his country if the decision of deportation issued for him was to be executed.
2. The applicant requests for an interim measure to suspend the procedures for his expulsion

## **II. APPLICATION PROCESS**

3. The application was lodged with the Constitutional Court on 8/12/2015. It was decided that the case be referred to the Section as Article 73 of the Rules of Procedure of the Constitutional Court (Rules of Procedure) requires that a request for interim measure shall be concluded by a Section of the Court.

## **III. THE FACTS**

### **A. The circumstances of the case**

4. The facts of the case, as stated in the application form and annexes thereto, may be summarized as follows:
5. The applicant, born in 1981, is a citizen of Islamic Republic of Iran
6. The applicant came to Turkey at an indefinite date and requested for "international protection".
7. The applicant maintained that he was convicted by Islamic Revolutionary Court of Esfahan for participating the demonstrations in his country at School of Medical Sciences in 2008.
8. The applicant alleged that he was accused of engaging activities to overthrow Islamic Republic of Iran and that the said crime is punishable with capital punishment.
9. The applicant maintained that the death penalties are not notified in writing to ease the summons of the respondents and extradition of criminals from foreign countries and he presented the translation of the summons issued by the 1<sup>st</sup> Revolutionary Court of Esfahan.
10. Kahramanmaraş Governorate Directorate of Migration Management decided on 3/12/2014 for the deportation of the applicant on the grounds that he violated his obligation to give signature imposed on him within the scope of his request for "international protection".
11. The case filed by the applicant for the cancellation of decision for deportation was dismissed on 21/10/2015 by the Administrative Court of Kahramanmaraş (E.2015/343, K.2015/984)
12. This judgment was notified to the applicant on 11/11/2015 and the applicant filed individual application in due time on 8/12/2015

### **B. Relevant Law**

13. Article 53 of Law No. 6458 on Foreigners and International Protection (dated 4/4/2013) titled "*Removal decision*" is as follows :

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

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

(3) *Foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of notification. The person who has appealed against the decision to the court shall also inform the authority that has ordered the removal regarding the appeal. Such appeals shall be decided upon within fifteen days. The decision of the court on the appeal shall be final. Without prejudice to the foreigner's consent, the foreigner shall not be removed during the judicial appeal period or until after the finalization of the appeal proceedings.*

#### **IV. THE COURT'S ASSESMENT AND GROUNDS**

14. The application form and its annexes were examined and it was adjudged with regards to requests for interim measure as follows:

##### **A. The applicants' allegations**

15. The applicant maintained that he would be sentenced to capital punishment in his country if the deportation decision is implemented, that he was deprived of the legal guarantees provided under national and international legislation during the case tried by the relevant administrative court and that his rights defined under Article 17(Personal inviolability, corporeal and spiritual existence of the individual) of the Constitution were violated.

##### **B. Assessment**

16. In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court dated 30/3/2011 and Article 73/1 of the Rules of Procedure of the Constitutional Court titled "*Interim Measure*", the Sections of the Court may, ex officio or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant's physical and moral integrity.

17. In the present case, the applicant maintained that he was convicted for his participation to the demonstration and protests in a university in 2008, that such activities are deemed as engaging activities to overthrow Islamic Republic of Iran and such people are sentenced to capital punishment and the applicant presented some information corroborating his allegations (see. §§ 8-9). As a matter of fact, Human Rights Report prepared for Iran by Human Rights Watch in 2015 states that a large number of crimes are punishable with capital punishment in Iranian law and that such sentences are executed.

18. For the reasons explained, as it is understood that the applicant would possibly face a serious threat against his "*life*" if he were to be deported at this stage, his request for interim measure must be accepted.

#### **V. JUDGMENT**

FOR THESE REASONS THE COURT, **UNANIMOUSLY,**

- A. ACCEPTS the applicants' request for an interim measure,
- B. SUSPENDS THE PROCEDURES FOR DEPORTATION of R.M. back to his country until a new judgment is issued by the Court,

C. DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

Done on 16 December 2015.

### 3) Decision on Uthman Deya Ud Deen Eberle application

#### REPUBLIC OF TURKEY CONSTITUTIONAL COURT

#### FIRST SECTION DECISION ON INTERIM MEASURE

#### APPLICATION OF UTHMAN DEYA UD DEEN EBERLE

(Application Number: 2015/16437)

Decision Date: 10/11/2015

#### FIRST SECTION DECISION ON INTERIM MEASURE

**President** : Burhan ÜSTÜN  
**Judges** : Nuri NECİGOĞLU  
Hicabi DURSUN  
Hasan Tahsin GÖKCAN  
Rıdvan GÜLEÇ  
**Rapporteur** : M. Serhat MAHMUTOĞLU  
**Applicant** : Uthman Deya Ud Deen EBERLE  
(USA and Pakistan citizen)  
**Counsel** : Atty. Seçil ASİ

#### I. SUBJECT MATTER OF THE APPLICATION

1. The application concerns the allegations that the applicant's (who is a citizen of the US) life would be threatened and his family unity would be impaired if the decision of deportation issued for him on the grounds that he endangered public security was to be executed.
2. The applicant requests for an interim measure to ensure stay of execution of the decision for his administrative detention and deportation.

#### II. APPLICATION PROCESS

3. The application was lodged with the Constitutional Court on 16/10/2015. It was decided that the case be referred to the Section as Article 73 of the Rules of Procedure of the Constitutional Court (Rules of Procedure) requires that a request for interim measure shall be concluded by a Section of the Court.

#### III. THE FACTS

##### A. The circumstances of the case

4. The facts of the case, as stated in the application form and annexes thereto, may be summarized as follows:

5. The applicant is a citizen of the United States of America and Pakistan
6. The applicant married to L.A., Turkish citizen, on 6/3/2014 and they had a daughter on 26/6/2015.
7. The applicant applied to Directorate General of Migration Management on 22/10/2014 and requested for a residence permit and he was granted such a permit on 11/12/2014.
8. The police issued a restriction decision on the applicant as a judicial procedure was initiated about him on 5/3/2015 (Ç-114) and another restriction decision was imposed on 17/3/2015 for endangering the public security (G-87). The information and documents in the case file does not explain why such decisions were issued.
9. The applicant was taken under administrative detention on 27/6/2015 while he was accompanying his wife giving birth at a private hospital in Yalova city and he was transferred to Kocaeli Deportation Centre (KGGM).
10. Kocaeli Governorate Directorate of Migration Management (Kocaeli Migration Management) decided on 2/7/2015 for the deportation of the applicant.
11. The case filed by the applicant for the cancellation of decision for deportation issued by Kocaeli Migration Management was dismissed on 25/8/2015 by the 1<sup>st</sup> Administrative Court of Kocaeli (E.2015/853, K.2015/972)
12. This judgment was notified to the applicant on 18/9/2015 and the applicant filed individual application in due time on 16/10/2015.
13. The applicant requested for an interim measure with the additional petition that he filed to the Constitutional Court on 6/11/2015.

## **B. Relevant Law**

14. Article 53 of Law No. 6458 on Foreigners and International Protection (dated 4/4/2013) titled "*Removal decision*" is as follows:

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

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

*(3) Foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of notification. The person who has appealed against the decision to the court shall also inform the authority that has ordered the removal regarding the appeal. Such appeals shall be decided upon within fifteen days. The decision of the court on the appeal shall be final. Without prejudice to the foreigner's consent, the foreigner shall not be removed during the judicial appeal period or until after the finalization of the appeal proceedings.*

15. Article 57-6 of Law No. 6458 titled "*Administrative detention and duration of detention for removal purposes*" is as follows:

*"The person placed under administrative detention or his/her legal representative or lawyer may appeal against the detention decision to the Judge of the Criminal Court of Peace. Such an appeal shall not suspend the administrative detention. In cases where the petition is handed to the administration, it shall immediately be conveyed to the competent Judge of the Criminal Court of Peace. The Judge of the Criminal Court of Peace shall finalise the assessment within five days. The decision of the Judge of the Criminal Court of Peace shall be final. The person placed under administrative detention or his/her legal representative or lawyer may further appeal*



*to the Judge of the Criminal Court of Peace for a review should that the administrative detention conditions no longer apply or have changed.”*

#### **IV. THE COURT’S ASSESSMENT AND GROUNDS**

16. The application form and its annexes were examined and it was adjudged with regards to requests for interim measure as follows:

##### **A. The applicants’ allegations**

17. The applicant maintained that his life would be threatened if he were to be deported to the United States of America, one of the countries that he is a national of, that his family unity would be impaired if the deportation decision was to be implemented as he would be separated from his wife and child and that his family unity is already impaired as he is still being detained at a deportation centre. The applicant alleged that that his rights guaranteed under Article 17 and 20 of the Constitution were violated.

##### **B. Assessment**

18. In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court dated 30/3/2011 and Article 73/1 of the Rules of Procedure of the Constitutional Court titled “*Interim Measure*”, the Sections of the Court may, ex officio or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant’s physical and moral integrity.

19. In the present case, the applicant maintained that his “*life*” would be threatened if he were to be deported to the United States of America, one of the countries that he is a national. However, he did not present any information or documents as to what type of threat to his life he would face in the country he were to be deported. The information and documents in the case file are not sufficient at this stage of the application to conclude that the applicant’s “*life*” would be threatened if he were to be deported to the United States of America.

20. On the other hand, the applicant had been living in Turkey by means of the residence permit issued by the Migration Management together with his Turkish citizen wife and child until the date he was taken under administrative detention. It is evident that, if the applicant is deported, then the applicant would be separated from his wife and child who is dependent to him until an unforeseen date. This situation raises a serious threat to the “*spiritual integrity*” of the applicant (*G.B. and other* [Interim Measure], App. No: 2015/15273, 17/9/2015, §§ 17-18). As a matter of fact, the ECtHR issued an interim measure in similar case and the deportation of a Georgian national living in Belgium with his wife and three children due to the crimes he committed was suspended until the conclusion of his application alleging that his right to respect for private and family life(see. *Paposhvili/Belgium*, [G.C.], App. No:41738/10, 16/9/2015).

21. For the reasons explained, as it is understood that there is a real and serious threat against the applicant’s “*spiritual integrity*”, his request for interim measure must be accepted in accordance with Article 73 of the Court’s Rules of Procedure.

22. However, the applicant who is kept under administrative detention at Directorate General of Migration in Kocaeli requests for an interim measure releasing him from detention. At this stage, as it cannot be concluded from the documents and information in the case file that there is a serious threat which requires an urgent interim measure to be issued for the applicant, his request for interim measure must be rejected.

## V. JUDGMENT

FOR THESE REASONS THE COURT, **UNANIMOUSLY**,

- A. REJECTS the applicants' request for an interim measure release his administrative detention,
- B. ACCEPTS the applicants' request for an interim measure to suspend his deportation procedures
- C. SUSPENDS THE PROCEDURES FOR DEPORTATION of applicant Uthman Deya Ud Deen EBERLE until a new judgment is issued by the Court,
- D. DECIDES that a copy of this judgment be notified to the applicant, Ministry of Interior Directorate General of Migration Management and Kocaeli Provincial Directorate of Police.

Done on 10 November 2015.

### 4) Decision on Abdolghafoor Rezaei application

**REPUBLIC OF TURKEY  
CONSTITUTIONAL COURT**

**SECOND SECTION  
DECISION ON INTERIM MEASURE**

**APPLICATION OF ABDOLGHAFOOR REZAEI**

(Application Number: 2015/17762)

Decision Date: 1/12/2015

**SECOND SECTION  
DECISION ON INTERIM MEASURE**

**President** : Engin YILDIRIM  
**Judges** : Alparslan ALTAN  
Celal Mümtaz AKINCI  
Muammer TOPAL  
M. Emin KUZ  
**Rapporteur** : M. Serhat MAHMUTOĞLU  
**Applicant** : Abdolghafoor REZAEI (Afghanistan citizen)  
**Counsel** : Av. Muhammed Hatip DURSUN

#### I. SUBJECT MATTER OF THE APPLICATION

1. The application concerns the allegations that the applicant (who is a citizen of the Afghanistan) would be subject to torture and ill-treatment and his family unity would be impaired as he would be separated from his wife and five children residing in Turkey if the decision of deportation issued for him was to be executed.
2. The applicant requests for an interim measure to ensure stay of execution of the decision for his deportation.

#### II. APPLICATION PROCESS

3. The application was lodged with the Constitutional Court on 18/11/2015. It was decided that the case be referred to the Section as Article 73 of the Rules of Procedure of

the Constitutional Court (Rules of Procedure) requires that a request for interim measure shall be concluded by a Section of the Court.

### **III. THE FACTS**

#### **A. The Circumstances of the Case**

4. The facts of the case, as stated in the application form and annexes thereto, may be summarized as follows:

5. The applicant, born in 1971, is a citizen of Afghanistan.

6. The applicant, together with his wife and five children, escaped his country and came to Turkey at an unidentified date.

7. The applicant requested for "*international protection*" from Turkey, his request was taken into registration and he was placed to Erzincan province on condition that giving signature at certain intervals.

8. Erzincan Governorate Directorate of Migration Management decided on 4/5/2015 for the deportation of the applicant on the grounds that he violated his obligation to give signature imposed on him.

9. The case filed by the applicant for the cancellation of decision for deportation was dismissed on 9/10/2015 by the 1<sup>st</sup> Administrative Court of Sivas (E.2015/608, K.2015/1568).

10. This judgment was notified to the applicant on 2/11/2015 and the applicant filed individual application in due time on 18/11/2015.

#### **B. Relevant Law**

11. Article 53 of Law No. 6458 on Foreigners and International Protection (dated 4/4/2013) titled "*Removal decision*" is as follows :

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

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

*(3) Foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of notification. The person who has appealed against the decision to the court shall also inform the authority that has ordered the removal regarding the appeal. Such appeals shall be decided upon within fifteen days. The decision of the court on the appeal shall be final. Without prejudice to the foreigner's consent, the foreigner shall not be removed during the judicial appeal period or until after the finalization of the appeal proceedings.*

### **IV. THE COURT'S ASSESSMENT AND GROUNDS**

12. The application form and its annexes were examined and it was adjudged with regards to requests for interim measure as follows:

#### **A. The applicant's allegations**

13. The applicant maintained that he lived under the threat of Taliban in his country, that he had to escape from his country as he did not have security of life and property, that he would have to be separated from his wife and five children residing in Turkey who are

dependent on him if he were to be deported. The applicant alleged that that his rights guaranteed under Article 17 and 19 of the Constitution were violated.

## **B. Assessment**

14. In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court dated 30/3/2011 and Article 73/1 of the Rules of Procedure of the Constitutional Court titled "Interim Measure", the Sections of the Court may, ex officio or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant's physical and moral integrity.

15. In the present case, the applicant maintained that his "life" would be threatened if he were to be deported to his country. The human rights reports on Afghanistan prepared separately by Human Rights Watch and UN High Commissioner for Refugees state that many people share the security concerns as alleged by applicant. It is seen that the administrative court did not conduct a research or examination on the applicant's allegations.

16. On the other hand, it is evident that, if the applicant is deported, then the applicant would be separated from his wife and five children and that he his family unity would be impaired until an unforeseen date. This situation raises a serious threat to the "spiritual integrity" of the applicant (G.B. and other [Interim Measure], App. No: 2015/15273, 17/9/2015, §§ 17-18).

17. As it is understood that the applicant may face a threat against his "*life and physical and spiritual integrity*" if he were to be deported at this stage, his request for interim measure must be accepted.

## **V. JUDGMENT**

FOR THESE REASONS THE COURT, **UNANIMOUSLY**,

- A. ACCEPTS the applicants' request for an interim measure,
- B. SUSPENDS THE PROCEDURES FOR DEPORTATION of Abdolghafoor Rezaei back to his country until a new judgment is issued by the Court,
- C. DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

Done on 01 December 2015.

### **5) Decision on Azizjon Hikmatov application**

**REPUBLIC OF TURKEY  
CONSTITUTIONAL COURT**

**SECOND SECTION  
DECISION ON INTERIM MEASURE**

**APPLICATION OF AZIZJON HIKMATOV**  
(Application Number: 2015/18582)  
Decision Date: 15/12/2015

**SECOND SECTION  
DECISION ON INTERIM MEASURE**

**President** : Engin YILDIRIM  
**Judges** : Alparslan ALTAN  
Celal Mümtaz AKINCI  
Muammer TOPAL  
M. Emin KUZ  
**Rapporteur** : M. Serhat MAHMUTOĞLU  
**Applicant** : Azizjon HIKMATOV (Uzbekistan citizen)  
**Counsel** : Atty. Uğur YILDIRIM

## I. SUBJECT MATTER OF THE APPLICATION

1. The application concerns the allegations that the applicant (who is a citizen of the Uzbekistan) would be subject to torture and ill-treatment and his right to life would be violated if the decision of deportation issued for him was to be executed.
2. The applicant requests for an interim measure to ensure stay of execution of the decision for his deportation.

## II. APPLICATION PROCESS

3. The application was lodged with the Constitutional Court on 4/12/2015. It was decided that the case be referred to the Section as Article 73 of the Rules of Procedure of the Constitutional Court (Rules of Procedure) requires that a request for interim measure shall be concluded by a Section of the Court.

## III. THE FACTS

### A. The Circumstances of the Case

4. The facts of the case, as stated in the application form and annexes thereto, may be summarized as follows:

5. The applicant, born in 1984, is a citizen of the Republic of Uzbekistan

6. The applicant came to Turkey through legal means in 2009 and requested for an “*international protection*”. He stated that he has become a target in his country as he was engaged in political opposition youth movements and that he had to leave his country.

7. On the other hand, the applicant’s application to United Nations High Commissioner for Refugees (UNHCR) for refugee status was approved on 30/6/2010 and the procedure for his placement to a secure third country is still continuing.

8. The applicant was caught on 5/3/2015 in a vehicle trying to pass to Syria through Kilis province; he was taken under administrative detention and transferred to Batman on the grounds that he created a threat for public order and security.

9. Batman Governorate Directorate of Migration Management decided on 14/5/2015 for the deportation of the applicant on the said grounds.

10. The case filed by the applicant for the cancellation of decision for deportation issued by Batman Migration Management was dismissed on 14/11/2015 by the Administrative Court of Batman (E.2015/1142, K.2015/2394)

11. This judgment was notified to the applicant on 4/12/2015 and the applicant filed individual application on the same day.

12. Before deciding on the request for interim measure, the Constitutional Court requested the information and documents relating to the applicant’s deportation from the Directorate General of Migration Management (Migration Management)

13. Migration Management, in their letter dated 7/12/2015, stated that they enter data in the form of security restriction codes for the foreigner who are considered to create a serious threat for public security and that the applicant was registered with G-87 restriction code for the purposes of “*preventing the foreigners from entering Turkey or using Turkey’s*

*geopolitical location as a route to armed conflict zones and fighting against international terrorism.”*

14. The said letter of Migration Management also stated that the applicant would not be deported until the Constitutional Court decides on the applicant's request for interim measure. Article 53 of Law No. 6458 on Foreigners and International Protection (dated 4/4/2013) titled "*Removal decision*" is as follows :

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

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

*(3) Foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of notification. The person who has appealed against the decision to the court shall also inform the authority that has ordered the removal regarding the appeal. Such appeals shall be decided upon within fifteen days. The decision of the court on the appeal shall be final. Without prejudice to the foreigner's consent, the foreigner shall not be removed during the judicial appeal period or until after the finalization of the appeal proceedings.*

#### **IV. THE COURT'S ASSESSMENT AND GROUNDS**

15. The application form and its annexes were examined and it was adjudged with regards to requests for interim measure as follows:

##### **A. The applicant's allegations**

16. The applicant maintained that there are systematic human rights violations in his country, that he may be subject to torture and ill-treatment due to his religious beliefs and political opinion, that he would face death threat when he is delivered to his country's authorities as he is being deported on "*terror*" grounds and that his submissions were not taken into consideration by the administrative court during the trial procedures. The applicant alleged that his rights defined under Article 17 and 36 of the Constitution were violated.

##### **B. Assessment**

17. In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court dated 30/3/2011 and Article 73/1 of the Rules of Procedure of the Constitutional Court titled "*Interim Measure*", the Sections of the Court may, ex officio or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant's physical and moral integrity.

18. In the present case, the applicant maintained that there are systematic human rights violations in his country and that his life would be endangered if he were to be deported as he is an opponent of the government in his country. The Human Rights Report of 2014/15 for Uzbekistan prepared by Amnesty International states that the persons deported by the foreign countries are under a "*real threat of torture and ill-treatment*". The Human Rights Report on Uzbekistan for 2015 prepared by Human Rights Watch states in details that thousands of activists opposing the government have been arrested and some of them have been sentenced to imprisonment.

19. On the other hand, it is seen that the administrative court did not conduct a research or examination on the applicant's allegations. Besides, the UNHCR approved the

applicant's request for refugee status and decided for his placement to a secure third country. If the applicant is deported to his country, he may not only be subject to ill-treatment in his country but may lose the right he acquired before the UNHCR to be placed in a secure third country as well.

20. For the reasons explained, as it is understood that the applicant would possibly face a serious threat against his "*physical and spiritual integrity*" if he were to be deported at this stage, his request for interim measure must be accepted.

## **V. JUDGMENT**

FOR THESE REASONS THE COURT, **UNANIMOUSLY**,

- A. ACCEPTS the applicant's request for an interim measure,
- B. SUSPENDS THE PROCEDURES FOR DEPORTATION of Azizjon Hikmatov back to his country until a new judgment is issued by the Court,
- C. DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

Done on 15 December 2015.



**TURKISH CONSTITUTIONAL COURT'S DECISIONS ON  
"INTERIM MEASURE" REGARDING EXPULSION  
PROCEDURES**

8th June 2016

SERHAT KÖKSAL

CONSTITUTIONAL COURT OF TURKEY  
Rapporteur-judge  
Deputy Secretary General



**PRESENTATION OUTLINE**

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**1. Legal Framework**

**2. The Procedure for Interim Measure**

- a) Individual Application Bureau
- b) Commissions – Sections
- c) Execution of Decisions

**3. Facts and Figures**

**4. Examples of The Court's decisions on "interim  
measure" regarding expulsion procedures**





# 1. LEGAL FRAMEWORK

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## Legal Framework

### **Article 49 of Law no. 6216:**

- *"(5) The Sections may, ex officio or upon request of the applicant, decide for interim measures they deem necessary for the protection of the applicant's fundamental rights. In case a decision of measures is rendered, the decision on the merits must be rendered within six months at the latest. Otherwise, the decision on measures is revoked ipso facto."*

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## Legal Framework

□ **Article 73 of the Rules of Procedure of the Constitutional Court on "Measures"**

*Interim measure*

**ARTICLE 73**

- (1) *Upon learning that there is a serious danger towards the life or material or moral integrity of the applicant, the necessary measures can be ruled upon ex officio by the Sections during the examination on merits or upon the request of the applicant.*
- (2) *In relation to the applications which have been examined; upon learning that there is a serious danger towards the life or material or moral integrity of the applicant unless a decision of interim measure is made ex officio or upon the request of the applicant prior to the decision regarding the merits of the file, the admissibility examination of the application shall be carried out immediately by the Commissions, the application shall be sent to the relevant Section in order for the matter of interim measure to be concluded as well.*

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## Legal Framework

- (3) *In the event that the Section makes a decision of interim measure, it shall notify this to the relevant individuals and institutions for the necessary action to be taken.*
- (4) *The decision in relation to the merits of the application regarding which an interim measure decision is made must be made within six months at the latest. Unless a new decision is made for the continuation of the interim measure, in circumstances where it is decided that the right of the applicant was not violated or it is decided to dismiss the application, the decision of interim measure shall be automatically lifted.*

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## 2. THE PROCEDURE FOR INTERIM MEASURE

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### 1. Individual Application Bureau:

- ❑ Individual applications can be made in person to the Court or they can also be made via other courts or representations abroad.
- ❑ The individual application forms shall be examined by the administrative staff at the individual application bureau to determine whether they request an interim measure or not. If the administrative staff identifies an interim measure request in the application form, they instantly inform the rapporteur-judge in charge of the individual application bureau of this situation without taking any other action on the file.

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## **1. Individual Application Bureau:**

- After the preliminary examination and registration proceedings to be conducted by the rapporteur-judge in charge of the individual application bureau, the file is referred without any delay to the rapporteur-judge in charge of examining the interim measure requests to conduct the necessary examinations.

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## **2. Commissions – Sections**

- the interim measure may be decided by the Sections during the examination on the merits of the application. Therefore, the individual application requesting interim measure shall be forwarded from the relevant commission to the Section immediately.
- The rapporteur-judge in charge of interim measure requests shall suspend the expulsion proceedings on the same day through a decision by the Section.
- Accordingly, the applicant is not deported until his/her request for interim measure is decided.

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## 2. Commissions – Sections

- The chairman of the Section decides whether to include the relevant application file in the agenda of the Section's meeting.
- The chairman of the Section decides on the meeting date and time for examining the individual application with interim measure request as well.
- In practice, the interim measure requests may be decided on the very same date depending on the circumstances of the request or it may be examined in the first meeting of the Section.

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## 3. Execution of Decisions

- If the interim measure request is accepted in an application, the decision is notified on the very same date by the Chief Rapporteur-Judges' Office directly to the relevant public authority and the applicant both verbally and in writing in accordance with Article 73 of the Rules of Procedure.

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## 3. FACT AND FIGURES

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### Fact and Figures:

- According to the statistical data by UYAP (National Judiciary Network), total number of interim measure requests filed from 23/09/2012 until 1/12/2015 is 2069. The distribution of these requests is 53 interim measure requests in 2012, 611 in 2013, 834 in 2014 and 571 requests in 2015. 1039 of these applications were decided without concluding the request for interim measure.
- The Court decided for suspension of expulsion procedures in 36 decisions.

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#### **4. EXAMPLES OF COURT'S DECISIONS ON "INTERIM MEASURE" REGARDING EXPULSION PROCEDURES:**

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##### **1) Decision on Ilnar MIFTAKHOV application:**

- The applicant filed an individual application no. 2016/2016 on 1/2/2016 and requested the Constitutional Court to issue an interim measure to suspend the execution of proceedings for his deportation in accordance with the decision of Antalya Governorate Directorate of Migration Management dated 28/8/2015.
- The Court requires information and documents to examine whether there is a serious threat against the applicant's life or physical and moral integrity in the present case. However, the execution of the decision for deportation during the examination of the individual application may lead to irreparable consequences. Therefore, the Court decides on 1/2/2016 to suspend the execution of the decision for applicant's deportation until the application is re-assessed upon collection of relevant information and documents.

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## **2. Decision on R.M. application:**

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### **Subject Matter Of The Application**

- The application concerns the allegations that the applicants' right to life would be violated in his country (Iran) if the decision of deportation issued for him was to be executed.
- The applicant requests for an interim measure to suspend the procedures for his expulsion

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## **2. Decision on R.M. application:**

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### **A. The Applicants' Allegations**

- The applicant maintained that he would be sentenced to capital punishment in his country if the deportation decision is implemented, that he was deprived of the legal guarantees provided under national and international legislation during the case tried by the relevant administrative court and that his rights defined under Article 17 (Personal inviolability, corporeal and spiritual existence of the individual) of the Constitution were violated.

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## 2. Decision on R.M. application:

### B. Assessment of The Court

- In the present case, the applicant maintained that he was convicted for his participation to the demonstration and protests in a university in 2008, that such activities are deemed as engaging activities to overthrow Islamic Republic of Iran and such people are sentenced to capital punishment and the applicant presented some information corroborating his allegations.
- As a matter of fact, Human Rights Report prepared for Iran by Human Rights Watch in 2015 states that a large number of crimes are punishable with capital punishment in Iranian law and that such sentences are executed.

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- For the reasons explained, as it is understood that the applicant would possibly face a serious threat against his "life" if he were to be deported at this stage, his request for interim measure must be accepted.

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## 2. Decision on R.M. application:

### JUDGMENT

- FOR THESE REASONS THE COURT, **UNANIMOUSLY,**
- ACCEPTS the applicants' request for an interim measure,
- SUSPENDS THE PROCEDURES FOR DEPORTATION of R.M. back to his country until a new judgment is issued by the Court,
- DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

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## 3. Decision on Uthman Deya Ud Deen Eberle Application

### SUBJECT MATTER OF THE APPLICATION

- The application concerns the allegations that the applicant's (who is a citizen of the US) life would be threatened and his family unity would be impaired if the decision of deportation issued for him on the grounds that he endangered public security was to be executed.
- The applicant requests for an interim measure to ensure stay of execution of the decision for his administrative detention and deportation.

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### **3. Decision on Uthman Deya Ud Deen Eberle Application**

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#### **A. The Applicants' Allegations:**

- The applicant maintained that his life would be threatened if he were to be deported to the United States of America, one of the countries that he is a national of, that his family unity would be impaired if the deportation decision was to be implemented as he would be separated from his wife and child and that his family unity is already impaired as he is still being detained at a deportation centre.
- The applicant alleged that that his rights guaranteed under Article 17 (Personal inviolability, corporeal and spiritual existence of the individual) and 20 (Privacy of private life) of the Constitution were violated.

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### **3. Decision on Uthman Deya Ud Deen Eberle Application**

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#### **B. The Court's Assessment:**

- In the present case, the applicant maintained that his "life" would be threatened if he were to be deported to the United States of America, one of the countries that he is a national. However, he did not present any information or documents as to what type of threat to his life he would face in the country he were to be deported. The information and documents in the case file are not sufficient at this stage of the application to conclude that the applicant's "life" would be threatened if he were to be deported to the United States of America.

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### 3. Decision on Uthman Deya Ud Deen Eberle Application

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- On the other hand, the applicant had been living in Turkey by means of the residence permit issued by the Migration Management together with his Turkish citizen wife and child until the date he was taken under administrative detention. It is evident that, if the applicant is deported, then the applicant would be separated from his wife and child who is dependent to him until an unforeseen date. This situation raises a serious threat to the "*spiritual integrity*" of the applicant (*G.B. and other* [Interim Measure], App. No: 2015/15273, 17/9/2015, §§ 17-18).

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### 3. Decision on Uthman Deya Ud Deen Eberle Application

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- As a matter of fact, the ECtHR issued an interim measure in similar case and the deportation of a Georgian national living in Belgium with his wife and three children due to the crimes he committed was suspended until the conclusion of his application alleging that his right to respect for private and family life(see. *Paposhvili/Belgium*, [G.C.], App. No:41738/10, 16/9/2015).

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### 3. Decision on Uthman Deya Ud Deen Eberle Application

- For the reasons explained, as it is understood that there is a real and serious threat against the applicant's "*spiritual integrity*", his request for interim measure must be accepted in accordance with Article 73 of the Court's Rules of Procedure.
- However, the applicant who is kept under administrative detention at Directorate General of Migration in Kocaeli requests for an interim measure releasing him from detention. At this stage, as it cannot be concluded from the documents and information in the case file that there is a serious threat which requires an urgent interim measure to be issued for the applicant, his request for interim measure must be rejected.

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### 3. Decision on Uthman Deya Ud Deen Eberle Application

#### C. JUDGMENT

- FOR THESE REASONS THE COURT, **UNANIMOUSLY,**
- **REJECTS** the applicants' request for an interim measure release his administrative detention,
- **ACCEPTS** the applicants' request for an interim measure to suspend his deportation procedures
- **SUSPENDS THE PROCEDURES FOR DEPORTATION** of applicant Uthman Deya Ud Deen EBERLE until a new judgment is issued by the Court,
- **DECIDES** that a copy of this judgment be notified to the applicant, Ministry of Interior Directorate General of Migration Management and Kocaeli Provincial Directorate of Police.

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#### **4. Decision On Abdolghafoor Rezaei Application**

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##### **Subject Matter of The Application**

- The application concerns the allegations that the applicant (who is a citizen of the Afghanistan) would be subject to torture and ill-treatment and his family unity would be impaired as he would be separated from his wife and five children residing in Turkey if the decision of deportation issued for him was to be executed.
- The applicant requests for an interim measure to ensure stay of execution of the decision for his deportation.

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#### **4. Decision On Abdolghafoor Rezaei Application**

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##### **A. The applicant's allegations**

- The applicant maintained that he lived under the threat of Taliban in his country, that he had to escape from his country as he did not have security of life and property, that he would have to be separated from his wife and five children residing in Turkey who are dependent on him if he were to be deported.
- The applicant alleged that that his rights guaranteed under Article 17 (Personal inviolability, corporeal and spiritual existence of the individual) and 19 (Personal liberty and security) of the Constitution were violated.

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#### 4. Decision On Abdolghafoor Rezaei Application

### B. Assessment of The Court

- In the present case, the applicant maintained that his "life" would be threatened if he were to be deported to his country. The human rights reports on Afghanistan prepared separately by Human Rights Watch and UN High Commissioner for Refugees state that many people share the security concerns as alleged by applicant. It is seen that the administrative court did not conduct a research or examination on the applicant's allegations.

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#### 4. Decision On Abdolghafoor Rezaei Application

- On the other hand, it is evident that, if the applicant is deported, then the applicant would be separated from his wife and five children and that he his family unity would be impaired until an unforeseen date. This situation raises a serious threat to the "spiritual integrity" of the applicant (G.B. and other [Interim Measure], App. No: 2015/15273, 17/9/2015, §§ 17-18).
- As it is understood that the applicant may face a threat against his "*life and physical and spiritual integrity*" if he were to be deported at this stage, his request for interim measure must be accepted.

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#### **4. Decision On Abdolghafoor Rezaei Application**

##### **C. JUDGMENT**

- FOR THESE REASONS THE COURT, **UNANIMOUSLY,**
- ACCEPTS the applicants' request for an interim measure,
- SUSPENDS THE PROCEDURES FOR DEPORTATION of Abdolghafoor Rezaei back to his country until a new judgment is issued by the Court,
- DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

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#### **5. Decision on Azizjon Hikmatov Application**

##### **Subject Matter of The Application**

- The application concerns the allegations that the applicant (who is a citizen of the Uzbekistan) would be subject to torture and ill-treatment and his right to life would be violated if the decision of deportation issued for him was to be executed.
- The applicant requests for an interim measure to ensure stay of execution of the decision for his deportation.

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## 5. Decision on Azizjon Hikmatov Application

### A. The applicant's allegations

- The applicant maintained that there are systematic human rights violations in his country, that he may be subject to torture and ill-treatment due to his religious beliefs and political opinion, that he would face death threat when he is delivered to his country's authorities as he is being deported on "terror" grounds and that his submissions were not taken into consideration by the administrative court during the trial procedures. The applicant alleged that his rights defined under Article 17 (Personal inviolability, corporeal and spiritual existence of the individual) and 36 (Freedom to claim rights) of the Constitution were violated.

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## 5. Decision on Azizjon Hikmatov Application

### B. Assessment

- In accordance with Article 49/5 of Law no 6216 on the Establishment and Rules of Procedure of the Constitutional Court and Article 73/1 of the Rules of Procedure of the Constitutional Court titled "Interim Measure", the Sections of the Court may, ex officio or upon request of the applicant, decide for an interim measure until review on the merits of the case if there is a serious threat against the applicant's physical and moral integrity.
- In the present case, the applicant maintained that there are systematic human rights violations in his country and that his life would be endangered if he were to be deported as he is an opponent of the government in his country. The Human Rights Report of 2014/15 for Uzbekistan prepared by Amnesty International states that the persons deported by the foreign countries are under a "real threat of torture and ill-treatment". The Human Rights Report on Uzbekistan for 2015 prepared by Human Rights Watch states in details that thousands of activists opposing the government have been arrested and some of them have been sentenced to imprisonment.

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## 5. Decision on Azizjon Hikmatov Application

### B. Assessment

- On the other hand, it is seen that the administrative court did not conduct a research or examination on the applicant's allegations. Besides, the UNHCR approved the applicant's request for refugee status and decided for his placement to a secure third country. If the applicant is deported to his country, he may not only be subject to ill-treatment in his country but may lose the right he acquired before the UNHCR to be placed in a secure third country as well.
- For the reasons explained, as it is understood that the applicant would possibly face a serious threat against his "*physical and spiritual integrity*" if he were to be deported at this stage, his request for interim measure must be accepted.

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## 5. Decision on Azizjon Hikmatov Application

### C. JUDGMENT

- FOR THESE REASONS THE COURT, **UNANIMOUSLY,**
- ACCEPTS the applicant's request for an interim measure,
- SUSPENDS THE PROCEDURES FOR DEPORTATION of Azizjon Hikmatov back to his country until a new judgment is issued by the Court,
- DECIDES that a copy of this judgment be notified to the applicant and Directorate General of Migration Management.

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- Briefly it can be said that Turkish Constitutional Court uses decision on interim measure as a means to protect the applicants' life or material or moral integrity in case he/she is deported to his/her home country.
- Decisions are taken on the same date of application so, it is an efficient way for an applicant to lodge application to the Court.

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- If there is an uncertainty that the applicants' life, material or spiritual integrity will be in danger in case he/she is deported, the court decides to take an interim measure to stop the expulsion and give chance to the applicant to give evidence for his/her situation.



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- Besides evidences submitted by the applicant, court runs its own investigation to put forward risks to applicants' fundamental rights.

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- Thank you for your attention!
- Questions are wellcome.

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