VAN BAR ASSOCIATION
MIGRATION AND ASYLUM COMMISSION

INVESTIGATION REPORT ON
THE MASSACRE OF MIGRANTS/ASYLUM
SEEKERS IN LAKE VAN
ON 27.06.2020

5 AUGUST 2020
I. INTRODUCTION

On June 29, 2020, around 13.00, the Van Bar Association received reports via a social media post of Ruşen Takva, an independent journalist based in Van, of a capsized boat in Lake Van, reportedly carrying over 100 refugees. Upon the receipt of the news, the Migration and Asylum Commission of the Van Bar Association decided to convene an emergency meeting and passed a resolution to establish a fact-finding mission to investigate further details of the reported incident.

“A boat belonging to Metin and Sedat Akbaş sank in [Lake] Van. Over 100 refugees are reported to be on board. The Governor’s Office has neither confirmed nor denied these allegations in its press statement. Citizens, however, stated they had seen migrants all day. Journalists are being denied access to the area.”

On the same day, Att. Jindar Uçar, Att. Jiyan Özkaplan, and Att. Helin Ö zgökçe, all members of the Migration and Asylum Commission of the Van Bar Association, travelled to the site, i.e., Çitören Village, and met the head of the village to collect preliminary information. The head of the village informed mission members that the owner of the capsized boat was from Gevaş district, the boat reportedly was carrying a total of 112 persons, the only survivor was M.A., the owner of the boat, and added that he was still “sitting on the shore to see whether new bodies would continue to wash ashore.”

Following this initial contact, and accompanied by the head of the village, our mission members made an attempt to reach the shore of Çarpanak Island to conduct an on-site examination. However, it was observed that the Gendarmerie staff had already established a checkpoint on the road heading to the shore and denied our mission members access to the site on the grounds that our mission failed to present authorisation granted by the Office of the
Public Prosecutor. However, during verbal communication with the Gendarmerie, our mission members ascertained that a person who was working as a watchman for a summerhouse in the village was detained. Our mission members then decided to contact the wife of the detainee. She told our commission that “On, June 28, 2020, a person named M.A. arrived at our house naked, asking permission to use our phone to contact his wife and children, and we agreed.” It was later ascertained that the watchman was detained on charges of aiding M.A. and failing to inform law enforcement units.

Given the gravity of this incident and based on our preliminary on-site research, our Commission decided to establish a fact-finding mission of voluntary lawyers in an effort to uncover all relevant facts of the incident and share findings with the public in a report. Members of this mission are Att. Mahmut Kaçan, member of the Board of Directors responsible for the Migration and Asylum Commission of the Van Bar Association, and Att. Helin Özugkçe, Att. Jindar Uçar, Att. Onur Can, and Att. Jiyan Özkaplan, all members of the Commission.

II-FACTS

Based on our preliminary on-site research and information obtained from the Van Office of the Chief Public Prosecutor, it has been positively established that the incident shared on social media had taken place. Our mission members also accessed the record of the statement dated June 29, 2020 of M.A., i.e., the only survivor, who, as part of the probe initiated into the incident, was interrogated at the Tuşba Gendarmerie Station on suspicion of migrant smuggling. In the said statement, the suspect shared the following:

**His cousin S.A. called him around mid-afternoon on June 27, 2020, saying “there will be “passengers” in the evening, you should come too”, that when his cousin used these words, he immediately understood that migrants would be transported because the passenger boat owned by his father isn’t normally used to carry people, and for this very reason, he understood that the coded word “passenger” stood for migrants, and that since he was frightened, he told his cousin that he didn’t want to come, but when his cousin told him that he had “no reason to be scared” and that “all have IDs”, he agreed to accompany his cousin,**

**That on the same day, around 19.30, his cousin S.A., who was steering the passenger boat, picked him up from his home on the lakefront, that at that time there were no other passengers on the boat except his cousin and himself, that S.A. told him they would collect and transport migrants from Çarpanak Island across to Reşadiye Village of the Tatvan district in Bitlis province, and apart from this information, he didn’t share anything else either on the numbers of migrants to be carried or other persons who would be transporting migrants to the said location,**

**That S.A., in fact, called him in to attend to the boat’s mechanical equipment, as he had other things to do, and S.A. also wanted to have an extra person accompanying him in the unlikely event of migrants causing a scene or disturbance on the boat, that it was not possible for S.A. to do all these tasks alone, that S.A. promised to pay him 750 TL when the job was done,**
That they initially sailed towards Çarpanak Island, that because he didn’t have sufficient skills, it was S.A. who steered the boat, that afterwards, they reached a point near Çarpanak Island around 21.50, that in order to avoid detection, they killed the lights, that he saw migrants huddled together on the sand in Çitören Village, that S.A. had a brief talk with another person who flashed lights towards them, that upon hearing their conversation, he understood that that person was of Afghan origin and that he was interpreting for and coordinating the migrants, that their vessel had then approached the coast for boarding, that the interpreter assisted them, that although he can’t recall the exact number of migrants admitted on board, he believes there were around 70-80 persons who boarded the vessel including 5-6 women and 1-2 children, that the double-decked boat was filled to the brim with these migrants, and after leaving shore, they set sail without putting the lights on, that they first sailed in shallow water along the coastline for some time, but around 22.05, they moved offshore and continued their cruise towards Bitlis for about an hour, and that it was at that point, the lake started to change and become rough,

That it was S.A. steering the boat, and in the meantime, he, himself, was regularly overseeing the cabin, but since it was overcrowded, he could not really get inside, that as waves were hitting hard, he decided to check the engine and panicked when he saw that the engine compartment was taking on water, that because he thought things would go awry, he immediately informed S.A., and urged him to steer the boat to take waves on the stern, that at that moment, the boat was violently tossed about as it was being battered by waves from the side, that while S.A. made an attempt to divert the boat, another wave hitting from the right side overturned the boat, leaving all passengers, including himself, under the hull, that he managed to escape thanks to an air pocket that formed by the door, that sometime later, he and some migrants on the boat successfully made it to the surface, that he realized that he had sustained multiple injuries, that when he was trying to stay afloat, he saw some other migrants, that he looked around and shouted out in an attempt to find S.A., that it was at that moment he saw S.A. and realised that S.A. had also made it to the surface before him and that S.A. was also searching for him, that later, they both swam towards each other, that since he had swallowed a lot of lake water, he felt that he would go down, that S.A. helped him to take off his clothes, that he told S.A. he “was at the end of his tether” and he “was going to sink”, and that S.A. tried to give him heart, that the incident took place around 23.00, and that he shouted out to other migrants who had managed to stay afloat “Follow my voice! Do not go elsewhere!” , that since the lake was rough, all he could do was to keep himself afloat, that he and S.A. tried to do so until around 04.00 or 04.30, that S.A. was exhausted by the constant beating of waves, swallowing water and bobbing up and down, that he tried to keep S.A. afloat until sunrise, and yet, at some point, he realised that S.A. was dead, that although his intention was to recover the body, he was almost completely exhausted, and therefore had to leave S.A.’s body and swim towards Çarpanak Island, and that he finally managed to reach land at that point.

The fact that there was only one survivor in this incident and that he was detained means that his statements are critical for shedding light on the incident. Notwithstanding several inconsistent and sketchy parts, this statement is still important as it illustrates the gravity of the incident. Needless to say, there is an imminent need for a further inquiry for the sake of an effective investigation, particularly concerning the contradictory statements.
As part of the investigation initiated by the Van Office of the Chief Public Prosecutor on the incident, the Van Criminal Peace Judgeship ordered 5 persons, including M.A., whose detailed testimony is referred to above, to be remanded on the grounds of their links to the incident.

The Court further issued a secrecy order on the investigation, citing that the evidence collection process is still ongoing and that other suspects are yet to be arrested. Thus, our Commission wasn’t able to access the full details of the investigation report until this day.

One family member who contacted the Van Bar Association in the aftermath of the incident shared several images sent over WhatsApp by their son, who they believed died in this incident, showing passengers onboard before it sank. The family member further testified that their son had recorded and taken pictures of almost every single moment and place following his entry into Turkey. This family member shared these images and video recordings with our Commission as well. Recordings show many asylum seekers/migrants onboard in the cabin, either standing or sitting, trading jokes, and that there was a child on his parent’s lap, that all were carrying backpacks, and that while some were dozing, others were standing, and holding tightly onto scarves and other pieces of clothing tied to the parts of the boat in an attempt to avoid the impact of the waves. We believe this recording is of critical importance as it illustrates the gravity of the incident. Our Commission will share all of these images and recordings over our official Twitter account (see: https://twitter.com/Vaniltica) following the publication of this report.

Members of the family sharing these images also conveyed that a fight broke out for unknown reasons between several people in the crowded group waiting for the boat on the shore, leading some persons to change their minds at the last minute and leave. It was further alleged that this group was later apprehended by the gendarmerie while travelling elsewhere. A video showing the reported fight was also shared with our Commission. Although the record clearly indicates that the site of the fight is the shore of Lake Van, our Commission wasn’t able to verify the reported apprehension of the latter group at the time of writing. This video is shared on our official Twitter account (see: the link above).

III. PRELIMINARY OBSERVATIONS AND FINDINGS

Following the incident dated 27.06.2020, authorities launched a search and rescue mission. While several bodies floating in the water were initially discovered, rescue teams couldn’t locate the wreckage of the capsized boat for days. It has been further observed that search and rescue operations were carried out by small fishing boats and coastguard vessels as Lake Van is a landlocked sea and operating teams lacked proper equipment. In the ensuing days, however, the Governor’s Office announced that Turkish Naval Forces joined the mission with professional teams and gear.

On July 8, 2020, the Ministry of National Defence finally published a press release stating that the specialised Underwater Search and Rescue Team (SAK in Turkish), involving first-class divers of the Turkish Naval Forces, was able to locate the sunken boat at a depth of 107 meters off Çarpanak Island in Lake Van. The images shared by the Ministry with the public
showed that several bodies were still on the deck and indicated that there were many other asylum seekers/migrants trapped and drowned below deck. According to the information communicated by the authorities to our mission, bodies in the sunken boat were located by a piece of equipment called a Remote Optical Watcher (ROW). Because it wasn’t possible for the Team to dive to a depth of 107 meters due to high pressure, bodies were therefore recovered with the assistance of a hook attached to the ROW. It was only possible for the Team to recover some bodies stranded inside after they managed to break open the closed sections of the boat.

At the time of publication of the present report, a total of 61 bodies have been retrieved while autopsy and identification procedures are still being carried out by the Van Forensic Institute. The information obtained by our Commission suggests that a number of the victims were identified as nationals of Afghanistan thanks to the assistance of the Istanbul Consulate of the Islamic Republic of Afghanistan. Similarly, it has been observed that some images taken to secure identification of bodies were also shared with the Istanbul Consulate of the Islamic Republic of Pakistan by the Van Office of the Chief Public Prosecutor. Authorities also appealed to relatives seeking the whereabouts of missing family members for the same purpose.

In addition, many families from Iran, Afghanistan and Pakistan looking for missing family members also approached and filed tracing requests with the Migration and Asylum Commission of the Van Bar Association. At the time of publication, the total number of these
applications from various countries was 17. In response, our Commission swiftly forwarded these documents involving images and identity details to the Van Office of the Chief Public Prosecutor. Our members also contacted the Van Forensic Institute and carried out identification procedures with the assistance of these images and details communicated by families. These efforts enabled our Commission to identify four bodies as being of Pakistani origin and to inform the families of the deceased accordingly. Our Commission members also closely liaised with relevant diplomatic representatives and in addition assisted families with filing requests with the Office of the Chief Public Prosecutor for the repatriation of the identified bodies to their countries of origin. As of this date, our Commission’s efforts in this respect are still ongoing.

The findings of our Commission as of 04.08.2020 indicated that 34 of the 61 bodies retrieved in the aftermath of the incident were of Afghan origin and because 3 bodies were in late-stage post-mortem decomposition and saponification, it wasn’t possible for the authorities to conclude the identification process using images. It has been further established that since these 3 bodies were among the originally retrieved bodies floating in the water, exposure to sunlight and oxygen contributed to saponification.

However, the integrity of bodies retrieved at a later stage from the wreckage was, by and large, not compromised, thus making visual recognition feasible. Forensic experts explained that the strongly alkaline nature of the water at a depth of 107 meters, low temperature, and high pressure were among the key factors slowing decomposition.

Finally, our Commission established that the unidentified bodies that were held in the morgue were buried in a paupers’ graveyard after the completion of the legally required 15-day period. Their graves were marked with information on the incident. Many other asylum seekers/migrants who lost their lives in previous similar incidents are also buried in this graveyard, located in the Seyrantepe neighbourhood of the Tuşba district of Van.
IV. WAS IT AN ACCIDENT?

Particularly from 2018 onwards, the number of asylum seeker/migrant deaths in Van has been soaring. We shall therefore address this grim reality in the forthcoming sections of this report and provide more detailed information collected by our Commission on similar recent incidents. In light of an earlier incident which took place in Adilcevaz district of Bitlis province, claiming the lives of 7 asylum seekers/migrants, our Commission is of the opinion that calling this latest event an accident would not be an accurate assessment.

- Fatal boat accident near Adilcevaz district on 26.12.2019

On 26.12.2019 around 01.00, while 20 metres from the shore of Lake Van, a boat carrying 79 asylum seekers/migrants from Pakistan, Afghanistan, Iran, Bangladesh and India sank after capsizing near Erikbağı Village of Adilcevaz district in Bitlis. Although 72 passengers survived, 6 died at the scene, and another pronounced dead later in the Adilcevaz State Hospital. Bodies were retrieved thanks to search and rescue efforts commenced on the same day.

A forensic post-mortem identified 4 victims as being of Bangladeshi origin and the bodies were returned to the Embassy of Bangladesh for repatriation. Later, 2 bodies were identified as being of Pakistani origin and returned to the Consulate of the Islamic Republic of Pakistan in Istanbul. The sixth body, however, remained unidentified and unclaimed, and was later buried in the paupers’ graveyard in Adilcevaz district after the completion of the legally required 15-day period.

As part of the investigation initiated by the Adilcevaz Office of Chief Public Prosecutor in the aftermath of the incident, 72 asylum seekers/migrants stated the following in their collective testimony as victims: “That they arrived in Istanbul, Turkey for work, that they paid 400-700 USD to Iranian migrant smugglers to secure their entry into Turkey, that on 23.12.2019, they arrived in Van through Iran, that around 70-80 persons were held in a house in Van for two days, that R.A., S.A., C.A. and M.Ş.A., who were all confirmed to be suspects following a police line-up, brought food and water during this period, that the suspects R.A.
and S.A. also visited the house to count heads, that after these 2 days, they received news that they would embark on their journey on 25.12.2019 around 19.00, that 2 white Ford Transit branded vehicles with detached seats arrived to pick them up from the house, that having commuted for around 1.5 hours, they reached the shore of Lake Van, that upon being instructed, all refugees went aboard, that there was 1 person steering the boat and he was later identified as Ş.A. thanks to a photo line-up, that after sailing for about 4-5 hours, on 26.12.2019, around 01.00 and only about 20 meters away from the shore, the boat capsized near Erikbaği Village of Adilcevaz district in Bitlis province, that all refugees on board fell into the water, that at the time of this incident, there was a person - whose identity remains unknown- waiting on the shore with a dog, that he picked up survivors with his Ford Transit branded vehicle, that he dropped them off in front of a gas station and left, and the gendarmerie later transferred them from the gas station to their premises.”

As part of the investigation initiated by the Adilcevaz Office of Chief Public Prosecutor, R.A., S.A., C.A. and M.Ş.A., who were all identified by surviving victims from an array of photos and referred to in detail in the above-cited testimony of the asylum seekers/migrants, as well as Ş.A., who was also identified as the person steering the vessel, were summoned to give statements on 28.12.2019 on suspicion of migrant smuggling and reckless killing and reckless injury resulting in the death/injury of more than one person. Following the completion of the initial procedures, all suspects, with the exception of Ş.A., were referred to the Adilcevaz Criminal Peace Judgeship with a request for the application of judicial control measures, and on the same day, the Court ordered the release of these individuals under judicial control in the form of reporting once a week to the local police station near their place of residence and a ban on travelling abroad.

Ş.A., who was identified by the surviving asylum seekers/migrants as the person steering the vessel, on the other hand, was initially detained on 28.12.2019, and upon completion of the testimony stage, he was later referred to the Adilcevaz Criminal Peace Judgeship with a request for detention on remand on suspicion of migrant smuggling and reckless killing and reckless injury resulting in the death/injury of more than one person. On the same day, the Adilcevaz Criminal Peace Judgeship issued a remand order. However, on 24.01.2020, the same court reviewing the release request filed by the defendant also ordered the release of Ş.A. under judicial control in the form of reporting twice a week to the local police station near the accused’s place of residence and a ban on travelling abroad.

The review of the investigation file further revealed K.A., another individual identified as the owner of the vessel, was detained on 13.03.2020, and upon the completion of initial procedures, he was referred to the Adilcevaz Criminal Peace Judgeship with a request for the application of judicial control measures, and on the same day, the Court ordered the release of K.A. under judicial control in the form of reporting once a week to the local police station near his place of residence and a ban on travelling abroad.

The review of the case file also suggested that no legal action was taken against several other suspects whose names were cited in the dossier. Testimonies of asylum seekers/migrants clearly indicate that other suspects involved include two drivers transferring the group from the safehouse on 25.12.2019 around 19.00 to the shore of Lake Van, and at least another person awaiting the arrival of the group alongside the vessel.
Finally, our review of the investigation initiated by the Adilcevaz Office of Chief Public Prosecutor on the incident dated 26.12.2019 at Adilcevaz indicates that the suspects R.A., C.A. and S.A. of the Adilcevaz incident and the suspects M.A. and S.A., who were steering the boat in the Çarpanak Island incident, had the same surnames, and R.A., C.A. and S.A. are registered at the same place of registry. Moreover, our Commission’s additional research into publicly open and available social media accounts of all suspects of both incidents suggests that these persons have strong personal connections.

V-LAKE VAN: A NEW ROUTE FOR HUMAN SMUGGLERS

Our Commission’s research findings suggest striking similarities and links between the two incidents reported above. In this connection, we believe it is critical to address the increasing significance of Lake Van in migrant smuggling prior to presenting a detailed review of the latter incident.

Owing to its geographical location, Van shares a long land border with the Islamic Republic of Iran, and it is therefore a major transit route for asylum seekers and migrants from Pakistan, Afghanistan, Bangladesh, Iran, and most recently, from African countries, seeking a path to Europe and other Western destinations. The majority of these individuals enter Turkey irregularly with the assistance of smugglers through Başkale, Çaldıran, Saray and Özalp, all towns of Van bordering on Iran, and continue their journey onwards.

Irregular border crossings, a continual phenomenon throughout the year, had nearly come to a halt due to the Covid-19 pandemic declared by the World Health Organisation in early 2020 compared to previous years’ figures. In addition, the rapid increase in the number of cases detected in Iran as well as unfavourable winter conditions prevailing in the region contributed to this decline. However, by the end of May 2020, the rise in temperatures and lockdown measures being eased on both sides of the border led to yet another impetus to this mobility.

On the occasion of World Refugee Day on June 20, 2019, our Commission published a report based on the information gathered through meetings with judicial and administrative
In addition, with a view to present a clearer picture and illustrate the gravity of this situation, we also believe it would be critical to recall the following similar incidents reported during the winter of 2020:

- On February 8, 2020, 13 migrants/asylum seekers were found frozen to death in the Sarıçimen neighbourhood of Çaldırın district after crossing the Iran-Turkey border. ([https://gazetekarinca.com/2020/02/vanda-13-multeci-donarak-yasamini-yitirdi/](https://gazetekarinca.com/2020/02/vanda-13-multeci-donarak-yasamini-yitirdi/))

- On February 15, 2020, 3 migrants/asylum seekers were found frozen to death around Kapıköy Border Crossing Point in Saray district, and 24 others exposed to the cold were taken to hospitals ([https://www.wanhaber.com/guncel/van-da-bir-multeci-faciiasi-daha-h251143.html](https://www.wanhaber.com/guncel/van-da-bir-multeci-faciiasi-daha-h251143.html)).

- On March 14, 2020, bodies of 7 migrants/asylum seekers, believed to have frozen to death, and identified as being of Afghan, Pakistani, and Syrian origin, were found scattered over a 1-kilometre area in Çaldırın district. ([https://www.evrensel.net/haber/399460/vanda-7-multeci-cesedi-daha-bulundu-insanlik-kar-altinda](https://www.evrensel.net/haber/399460/vanda-7-multeci-cesedi-daha-bulundu-insanlik-kar-altinda)).

In another incident, migrants/asylum seekers were saved from freezing to death on Lake Van, the new route for human smugglers. The incident was reported in the media as follows:

“On February 9, 2020, migrant smugglers took aboard 49 migrants/asylum seekers to transport them to the Tatvan district of Bitlis province. However, when a violent and heavy blizzard, around Deveboyu area of the İn neighbourhood in Gevaş district of Van province, made it impossible for the vessel to proceed further, those steering the vessel abandoned the migrants on a peninsula. The stranded migrants/asylum seekers who could not find a safe haven called security forces and asked for help. After a 5 hour-long intense rescue operation, all migrants/asylum seekers were transferred to a port of safety by another boat which traversed the 52 km distance to Deveboyu. ([https://www.milliyet.com.tr/gundem/yer-van-vasamak-icin-kendilerini-ihbar-ettiler-6141359](https://www.milliyet.com.tr/gundem/yer-van-vasamak-icin-kendilerini-ihbar-ettiler-6141359))”
Testimonies of asylum seekers/migrants clearly indicate that after the initial border crossing, migrant smugglers transported crowded asylum seeker/migrant groups to fixed safehouses and held them there for about 2 or 3 days awaiting the finalisation of preparations.

There are two major land routes for onward journeys from Van to western provinces. One is the highway on the northern shores of Lake Van, running parallel to the coastline and connecting the Erciş district of Van to the Adilcevaz district of Bitlis. The other is the roadway connecting the Gevaş district of Van to the Tatvan district of Bitlis.

It must be noted that the Balaban Gendarmerie Station, located in Değirmitaş Village of the Gevaş district in Van, is also known as one of the major checkpoints engaged in active and ongoing preventive measures on the Bitlis-bound section of the intercity highway. In addition, the Alpaslan Gendarmerie Station, located in Ünseli Village of the Muradiye district in Van, assumes a similar role on the Erciş-bound section of the highway.

After the World Health Organisation designated the Covid-19 outbreak a pandemic in early 2020, additional police checkpoints were established on the off-ramp lane within the prefectural borders of the Edremit and Tuşba districts of Van. These checkpoints were later converted into mobile police stations.

These inspection/checkpoints, all staffed 24/7 by law enforcement officials, and established on highways connecting Van to neighbouring provinces, appear to have pushed migrant smugglers to look for alternatives. Thus, these are the reasons behind Lake Van increasingly becoming a new route in recent years.

Detention of suspected human smugglers during stop-and-search of vehicles transporting migrants/asylum seekers, removal orders routinely issued for apprehended irregular migrants, and fatal road traffic crashes are also among other factors making the land route less appealing. With a view to illustrate this point, we believe it would be important to recall the following incidents reported on local and national media:

- On June 3, 2020, a minivan transporting 50 asylum seekers/migrants was stopped in Çimenli, located between Ahlat and Adilcevaz districts of Bitlis province, during a road control patrol. (http://m.selcuklugazetesi.com.tr/15-kisilik-minibuste-50-multeci-yakalandi/647/)
- On September 3, 2020, 145 asylum seekers/migrants, including 17 women and 19 children, who had paid 500 USD per person to human smugglers to reach European countries, were detected by the gendarmerie in 5 different vehicles in the Muradiye district of Van province during a road control patrol. Ö.Y., M.S., K.Y., G.G. and M.Ç., all drivers transporting asylum seekers/migrants were detained. (https://www.milliyet.com.tr/yerel-haberler/van/vanda-145-kacak-multeci-yakalandi-13010377)

- On November 6, 2018, around 18.00, after a 7-seater minibus with number plate 34 ZD 3395 transporting 21 asylum seekers/migrants tipped over and crashed into a ditch at Karapet Crossing of Bahçeşaray district in Van, 5 asylum seekers/migrants were killed, and 16 wounded, including 3 seriously injured. Another minibus parked around 500 metres ahead of the accident scene and carrying over 49 asylum seekers/migrants was detected. (https://www.evrensel.net/haber/365349/vanda-multecileri-tasiyan-minibus-kaza-yapti-5-olu-16-yarali)

- On May 16, 2019, 5 asylum seekers/migrants were killed, and 37 injured after a truck with number plate 38 UL 976 rolled over around 20.00 in the vicinity of Ağartı Village in Tuşba district of Van. (https://t24.com.tr/haber/van-da-multecileri-tasiyan-kamyon-devrildi-5-olu-37-yarali,821696)

- On July 26, 2020, 17 asylum seekers/migrants were killed and 50 injured after a minibus fell into a roadside ditch around Erçek neighbourhood of İpekyolu district between Van and Özalp. (https://tr.euronews.com/2019/07/18/van-da-gocmenleri-tasiyan-minibus-kaza-yapti-en-az-15-olu)

- On June 27, 2020, after a minibus transporting asylum seekers/migrants collided with a car in the Yumaklı neighbourhood of the Muradiye district in Van around 23.50, one asylum seeker/migrant was killed, and 42 were injured. (https://gazetekarinca.com/2020/06/vanda-multecileri-tasiyan-minibus-devrildi-bir-olu-41-yarali/)


Another incident where asylum seekers/migrants were held by human smugglers for 2 or 3 days pending the completion of transportation arrangements to western provinces has also been reported in the media:

- On September 12, 2018, Van Provincial Directorate of Security teams apprehended 244 Afghan and Pakistani origin asylum seekers/migrants after they were tipped off about these individuals being held in a three-storey house in the Hacibekir Neighbourhood of the İpekyolu district. (https://artigercek.com/haberler/van-da-3-katli-evde-244-multeci-yakalandi)
Interviews with Residents of a Fishing Village on Lake Van

Our mission members also held interviews with residents of a fishing village on Lake Van in the aftermath of the incident. Interviewees agreed to speak only on condition of anonymity, and during a group interview, explained the following:

“Lake Van has been an active route for asylum seeker/migrant smuggling for around the last 15 years, that law enforcement officials knew what was taking place but turned a blind eye to this situation, that as a matter of fact, there has been no single apprehension of migrants while being transported across the lake, and yet, in recent years, there was a dramatic surge in migrant smuggling activity, that boat owners seeking to generate more income operated overcrowded vessels, that these smugglers never operate alone, but as a part of a wider and organised network, that ringleaders are never in direct contact with the boat owners, that the coordination is sustained through other smugglers managing land transport, that these individuals- i.e. facilitators- are often those speaking the language of asylum seekers/migrants and thus capable of ensuring communication, that the role of these intermediaries is to secure contacts with the boat owners, that they pay 50-100 TL per asylum seeker/migrant, particularly during the off-season, that many people are involved in this business with different vessels, that asylum seekers/migrants are often disembarked beyond the checkpoints in the Tatvan, Ahlat and Adilcevaz districts of Bitlis province, and then transported towards western provinces by land.”

VI-MIGRANT SMUGGLING AND IMPUNITY

The term “irregular migration”, or irregular border crossings, primarily refers to the movement of persons that takes place outside the laws and procedures governing the entry into a State. While this often means border crossings from locations other than officially designated border gates, entry into a territory by land, air or sea with fraudulent documents is also another method. In other words, diverse methods are used to this end.

Under the Penal Code of Turkey, “migrant smuggling” is defined as any activity of any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain, enables a non-citizen or a stateless person or any other person who has been denied a permanent residence in Turkey by competent authorities to enter, or remain in, the country, or enables a Turkish citizen or a non-citizen to go abroad.

As part of the fight against migrant smuggling, Turkey took a number of steps towards harmonising its legislative framework with international standards and norms. To this end, for instance, Turkey added a separate provision criminalising migrant smuggling to its Penal Code by Law No. 4771 Amending Certain Laws, published in the Official Gazette on August 9, 2002, well before the Parliament on January 30, 2003 ratified the United Nations Convention against Transnational Organized Crime and its Additional Protocol against the Smuggling of Migrants by Land, Sea and Air, which was signed in December of 2000.

For many years, there was no specific provision criminalising migrant smuggling. Because relevant sanctions were included under other laws, either in the form of legal fines or imprisonment that could be converted into a judicial fine, these provisions did little to deter this
crime. Eventually, as per Article 2 of Law No. 4771 Amending Certain Laws, dated August 3, 2020, Article 201/a, amending Article 201, set criminal penalties for migrant smuggling.

After the new Penal Code, No. 5237, went into effect on June 1, 2005, the definition of the offence of migrant smuggling was revised and regulated under Article 79, providing for a heavier penalty.

As per the amended version, Article 79 reads as follows:

“Any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain: a) enables a non-citizen to enter, or remain in, the country, or b) enables a Turkish citizen or a non-citizen to go abroad, shall be sentenced to a penalty of imprisonment for a term of three to eight years and a punitive fine of up to ten thousand days. Where the offence remains as an incomplete attempt, the penalty shall be imposed as if completed.

The penalty to be imposed shall be increased by a half to two-thirds where the offence constitutes a danger to the lives of the victims or subjects the victims to degrading treatment.

Where the offence is committed in the course of the activities of a criminal organization, the penalty to be imposed shall be increased by one half.

Where the offence is committed by a legal entity, the relevant security measures shall be imposed upon that legal entity.”

Despite the heavy penalties envisioned under the Penal Code, it is reported that migrant smuggling has become an industry both for the two bordering countries and for persons whose livelihoods previously depended on the revenue from the petty smuggling of consumer goods such as tea, sugar, oil, and cigarettes as well as casual workers, but who have increasingly turned to migrant smuggling. For instance, M.A., the only survivor of the incident, declared his profession as a construction worker in his police statement.

Similarly, despite the heavy penalties envisioned for migrant smuggling, it has been established that in the majority of cases relating to the investigation or prosecution of this crime, judicial authorities have either refrained from ordering remand measures or issued release warrants shortly thereafter. For instance, in the incident which took place in the Adilcevaz district of Bitlis province on December 26, 2019 and which can be, in our opinion, connected with the most recent incident, 7 asylum seekers/migrants were killed. However, despite this high death toll, only 1 suspect was remanded in custody, and he was later released following a brief 27-day long detention period, whereas the remaining suspects were only subject to judicial control measures.

It has been further established that even in cases where courts issued a verdict of guilty, penalties are often determined based on the minimum limit foreseen by the law, and, in addition, maximum permissible deductions are applied. Moreover, the entry into force of Law No. 7242 Amending the Law on the Execution of Penalties and Security Measures and Other Certain Laws, published in the Official Gazette dated April 15, 2020, rendered convictions upheld on appeal meaningless as this amendment enabled convicted smugglers to avoid imprisonment without even having put a foot in prison.

Our mission members have also identified a number of social media accounts operated by migrant smugglers. These accounts contain open identity and contact details of smugglers
as well as posts amounting to ‘promotion’. It has been further established that these posts also contain detailed information on fees, travel, and accommodation arrangements, and where required, visual explanations on methods for creating authentic looking fake documents. Many of these ‘promotions’ and explanations were related to producing almost genuine looking residence permits and travel documents which legally must be issued by the Provincial Directorates of Migration Management in Turkey. Below, we present screenshots of some of these identified social media accounts belonging to migrant smugglers (All account names and images are pixelated by us).
1. The incident on 27.06.2020 which, in our opinion, can be defined as a massacre, is a continuation of the Adilcevaz incident on 26.12.2019, both in terms of their occurrence and perpetrators.

2. At the time of writing, 61 bodies had been recovered. It wasn’t an accident resulting in their death, but an intentional murder. Thus, given the available material facts, describing this incident as an accident would be tantamount to exonerating the perpetrators. The image showing the last moments of the victims in the hold of the boat, which was published both in this report and on the Twitter account of our Commission, clearly indicates that the fishing boat was filled beyond its capacity and that the material conditions were inhuman. (See: https://twitter.com/Vaniltica).
3. The judicial inaction as to similar incidents and the consequent culture/policy of impunity paved the way to this massacre. As a matter of fact, the ineffectiveness of the criminal investigation into the former incident, which took place only 6 months before this incident and claimed the lives of 7 asylum seekers/migrants, emboldened human smugglers. In other words, the nature of the offense in this former incident in Adilcevaz was classified as “reckless killing resulting in the death of more than one person” just as if it were an ordinary traffic accident. Moreover, after more than 7 months, the prosecution has yet to draw up an indictment on this incident.

4. While this heavy traffic of human smugglers operating fishing vessels for carrying asylum seekers/migrants across Lake Van is widely known by locals, it is striking that both the law enforcement units and other relevant authorities have yet to discover this situation.

5. As detailed previously, border areas with Iran are protected with high security measures including fortified borders posts, manned/unmanned aerial vehicles, thermal imaging cameras, and patrols, especially because of the lingering conflict in our region. Yet, given these intense measures, human smugglers successfully pulling off border crossings of crowded groups from widely known routes and without experiencing any obstacle are equally striking. In addition, there is concrete evidence obtained from criminal case files examined by the members of our Commission, all corroborating the existence of some corrupt border patrol agents, their active links with migrant smuggling networks, and finally, their facilitation of such border crossings in exchange for a bribe.

6. The 24/7 operating inspection/checkpoints established by the law enforcement units on the intercity highways compel asylum seekers/migrants to turn to perilous, and often deadly, routes. It has been further established that no international protection application lodged by asylum seekers/migrants apprehended in these inspection/checkpoints had been processed, and that based on copy-paste statements, these individuals were transferred to the Removal Centre for the purpose of deportation, and that they were eventually removed after being held for a prolonged period under administrative detention.

7. As it is publicly known, the United Nations High Commissioner for Refugees (UNHCR) opened a field office in Van in 1997. Thanks to the assistance afforded by this office, many asylum seekers who arrived in Turkey to seek protection had the opportunity to register their claims. Over several years, this office also continued to carry out refugee status determination in parallel with the Republic of Turkey. The availability of a UNHCR Field Office in the Van city centre also served to prevent many irregularly arriving asylum seekers from Iran in pursuing a further journey to European countries or to western provinces in Turkey. As of September 2018, the UNCHR handed over registration and refugee status determination to Turkish authorities and shut down the field office in Van. The number of refugee/migrant deaths in Van increased incrementally after this date. In interviews held with asylum seekers and migrants who had successfully reached Van, these individuals explained that they “don’t wish to lodge an asylum claim because of UNHCR’s withdrawal from the field and lingering uncertainties in the Turkish asylum system, and that the key reason for their arrival to Turkey is often for transit purposes, and that rather than wasting time in limbo in Turkey, they prefer to reach one of European countries to seek asylum.” Thus, it can be argued that both testimonies of asylum seekers/migrants and the rising tide of tragic and mass death of asylum seekers/migrants after the UNHCR’s withdrawal from the field indicate that attitudes of international organisations also play a role in these incidents. The silence of the UNHCR and the International Organisation for Migration (IOM) concerning these mass deaths is also striking.
8- Van has become a province where the entirety of the asylum system has evolved into a mere fight against irregular migration. It has been further observed that asylum seekers apprehended at borders or at checkpoints are systematically denied access to submitting their asylum applications and that other processed applications are adjudicated as per accelerated procedure set forth under Law No. 6458 on Foreigners and International Protection. In addition, the very fact that the EU-funded Van Kurubas Reception Centre was transformed into a removal centre clearly illustrates that the whole asylum system is predicated upon deportation. Thus, an asylum system focused on removals cannot be construed as a system offering effective access to international protection.

VIII- RECOMMENDATIONS

1- The investigation initiated by the Van Office of the Chief Public Prosecutor on the incident in Lake Van dated 27.06.2020 should be carried out in conjunction with the investigation of the Adilcevaz Office of the Chief Public Prosecutor with a view to establishing the whole material truth of the case. The investigation should be swift, thorough, and effective and should be conducted on the basis of the “right to life” enshrined under Article 2 of the ECHR and Article 82 on “wilful murder” of the Turkish Penal Code.

2- The Prosecution should carry out an independent and impartial investigation into the incident.

3- Identification of the number of victims as well as their identity details and nationalities, continuation of search and recovery operations, and immediate repatriation of identified victims to their families and countries of origin are essential requirements under humanitarian law. Since applications filed before our Commission and the Bar Association by victims’ families revealed that many couldn’t afford to travel to Turkey due to lack of economic means and the pandemic, necessary assistance should be extended to ensure their access to relevant authorities in Turkey.

4- Migrant smuggling has evidently evolved into an industry and an organised crime. Authorities should therefore step-up efforts to combat migrant smuggling including taking actions for ending the culture of impunity as well as carrying out effective and swift investigations and prosecutions into this crime. An increased emphasis on the “organised” nature of this offense, which is legally recognized as an aggravating circumstance, would certainly act as a deterrent to other perpetrators.

5- Turkey should immediately lift the “geographical limitation” to the 1951 Convention Relating to the Status of Refugees. Given that Turkey has become the largest refugee and migrant hosting country across the globe, this reservation is no longer meaningful and arguments advocating for maintaining this limitation have long lost their validity. Moreover, the “geographical limitation” has not only rendered the protection space highly ambiguous, but also it has become an element posing a significant obstacle for stranded refugees and asylum seekers. Thus, as stated above, Turkey’s asylum system which is primarily predicated upon removals and securitisation of migration should cease and the asylum system should be more transparent and accessible.
6- Police checkpoints established on the off-ramp lanes in Van should be designated as places where migrants can file their asylum applications and asylum seekers should enjoy the right to apply and benefit from international protection without fear of detention or deportation.

7- In order to prevent corruption among public officials stationed along border areas, a regular asset declaration system should be introduced for officials and their immediate relatives both before and after taking office. Regular training on human rights and refugee law should also be provided to public officials assigned to border points and checkpoints.

8- Considering that Lake Van is a landlocked sea, authorities should step up monitoring and patrolling operations to prevent repetition of similar incidents, but yet in a manner that would fully observe fundamental rights and freedoms of asylum seekers/migrants. Fully equipped vessels should be introduced to perform search and rescue operations in the event of similar fatal incidents.

9- Instead of remaining silent about these incidents, expert international organisations working in the field of migration and asylum should take an active role in line with their missions and mandates and cooperate with competent authorities to prevent more migrant/asylum seeker deaths.

MIGRATION AND ASYLUM
COMMISSION OF THE VAN BAR ASSOCIATION
05.08.2020