



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ABDOLKHANI AND KARIMNIA v. TURKEY (no. 2)

(Application no. 50213/08)

JUDGMENT

*This judgment was rectified on 5 October 2010
under Rule 81 of the Rules of the Court.*

STRASBOURG

27 July 2010

FINAL

27/10/2010

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Abdolkhani and Karimnia v. Turkey (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 6 July 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 50213/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Iranian nationals, Mr Mohsen Abdolkhani and Mr Hamid Karimnia (“the applicants”), on 21 October 2008.

2. The applicants, who had been granted legal aid, were represented by Mrs D. Abadi, the director of Iranian Refugees Alliance Inc., a non-governmental organisation in New York, United States of America. Mrs Abadi was approved by the President of the Chamber to represent the applicants in the proceedings before the Court pursuant to Rule 36 § 4 (a) of the Rules of Court. The Turkish Government (“the Government”) were represented by their Agent.

3. On 25 November 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1973 and 1978 respectively. The first applicant resides in Turkey whereas the second applicant lives in Sweden.¹

5. The applicants, refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR), arrived in Turkey on an unspecified date. They were arrested by security forces and, as they had entered Turkish territory illegally, were deported back to Iraq on 17 June 2008.

6. The applicants immediately re-entered Turkey.

7. On 21 June 2008 they were arrested by road checkpoint gendarmerie officers from the Gökyazı gendarme station, in Muş, as their passports were found to be false.

8. The applicants were subsequently placed in the police headquarters in the Hasköy district of Muş.

9. On 30 June 2008 the applicants lodged an application with the Court and requested not to be deported to Iran or Iraq (application no. 30471/08). On the same day the President of the Chamber to which the case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicants should not be deported to Iran or Iraq until 4 August 2008. On 22 July 2008 the President of the Chamber decided to extend until further notice the interim measure indicated under Rule 39 of the Rules of Court.

10. Between 21 June and 26 September 2008 the applicants were detained at the Hasköy police headquarters. On the latter date the applicants were transferred to the Kırklareli Foreigners' Admission and Accommodation Centre, where they were held until 26 October 2009.

1. As to the conditions of detention at the Hasköy police headquarters

a. The applicants' account

11. The applicants submitted that the detention facility where they were held was in the basement of the building. Therefore, it was damp and received insufficient natural light. The facility measured 70 square metres in total and consisted of three open rooms. The rooms measured 12-16 square metres. There was one bathroom and a hallway, where there were two beds.

1. Rectified on 5 October 2010: the text was "The applicants were born in 1973 and 1978 respectively and live in Sweden."

There were eight and four bunk beds in the first and the second rooms respectively. The third room was empty.

12. For the first five weeks of the detention the applicants were held with eighty-three other detainees. From the sixth to the tenth week of their detention the number of detainees dropped to thirty-one. During the final two weeks those remaining were also deported. At the end of their detention in Hasköy the applicants were alone in the facility.

13. The mattresses and blankets were dirty and infested with lice. No pillows or bedding were provided. During the first weeks of their detention, the applicants had to sleep on the floor without mattresses, with blankets only, due to the overcrowding. The facility did not have showers or hot water. The applicants were taken to a public bathhouse only twice during the three months that they spent in that facility. Nor were they provided with towels, toilet paper, toothbrush, toothpaste, shaving items or shampoo. The toilets were very dirty and were never cleaned. Nor did the administration provide proper cleaning material to the detainees for them to do the cleaning. The facility was infected with cockroaches and mosquitoes. As a result of the poor detention conditions, the applicants suffered from dermatological diseases and infections. They were taken to a doctor for the skin problems, but they were never given the prescribed medication. They were ill as a result of water contamination at the beginning of their detention in Hasköy. Furthermore, the first applicant suffered from arthritis and the second applicant had back problems. They did not receive any medical check-ups for their health problems. The applicants were provided with meals twice a day. The meals consisted of soup and an insufficient amount of bread. They were not given any drinkable water. They were also not provided with clothing. Therefore, they had to wear the same clothes for three months.

14. The detention facility did not have any provision for indoor or outdoor activities. The applicants were taken out only when they were forced to do work, such as collecting rubbish, watering the lawn, sweeping the floors and the stairs, or loading and unloading, for which they were never paid.

15. Finally, throughout their detention in the Hasköy police headquarters, the applicants were not allowed to make or receive telephone calls. Nor could they have visits, except for one visit from a UNHCR officer. At the request of the UNHCR Ankara office, a lawyer went to the Hasköy police headquarters to visit the applicants. He was however not allowed to meet the applicants.

16. The applicants submitted several written complaints regarding the conditions of their detention. However, the authorities refused to accept the letters containing their complaints.

b. The Government's account

17. The Government submitted that the applicants were held in the Hasköy police headquarters building between 21 June and 26 September 2008 on a temporary basis while awaiting transfer to a foreigners' admission and accommodation centre. The Government noted that during the period in question a total of ninety-six foreigners stayed in the facility. However, no more than forty-two persons were detained at any given time. Besides, between 2 August and 26 September 2008 the applicants were held alone.

18. The Government further submitted that a foreigners' guesthouse had been constructed in Hasköy subsequent to the applicants' transfer to Kırklareli foreigners' admission and accommodation centre. According to the Government's submissions, in this new facility the food is provided three times a day by the centre administration. Although there is no health clinic within the facility, the detainees are provided with adequate medical assistance in the nearby clinics and State hospitals. They are allowed to go into the open air and can exercise in the garden of the facility, where they are served their meals and play football with the staff working at the centre. The Government contended that lavatories, toilets and bathrooms were provided in the centre and the immigrants were sent to the Turkish bath periodically. They finally noted that the applicants could contact the outside world by telephone and internet.

2. As to the conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre

a. The applicants' account

19. In their submissions dated 12 October 2009 the applicants complained about the conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre. They complained in particular about the quality of food and water, insufficient medical support, unsatisfactory sanitary facilities, their inability to take exercise and the increase in the number of detainees held in the Kırklareli Foreigners' Admission and Accommodation Centre. In support of their allegations the applicants submitted a number of photos, including four photos which were taken on 11 October 2009 and which allegedly showed the back and legs of the first applicant who claimed to be suffering from a skin rash.

b. The Government's account

20. The Government submitted that the application concerned the conditions of detention at the Hasköy police headquarters and not those in the Kırklareli Foreigners' Admission and Accommodation Centre. They therefore requested the Court not to examine the application in so far as it

concerned complaints regarding the detention conditions at the Kırklareli Centre.

II. RELEVANT LAW AND PRACTICE

21. A description of the relevant law can be found in the judgments of *Z.N.S. v. Turkey* (no. 21896/08, §§ 34-35, 19 January 2010) and *Charahili v. Turkey* (no. 46605/07, § 48, 13 April 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicants complained under Article 3 of the Convention that the conditions of their detention in the Hasköy police headquarters constituted inhuman and degrading treatment. They further complained about the material conditions in the Kırklareli Foreigners' Admission and Accommodation Centre and alleged that medical assistance was not provided there.

A. Conditions of detention at the Hasköy police headquarters

1. Admissibility

23. The Government submitted that the applicants had failed to exhaust the domestic remedies available to them within the meaning of Article 35 § 1 of the Convention. They maintained in this connection that the applicants should have applied to the administrative courts in accordance with Article 125 of the Constitution before lodging their application with the Court.

24. The applicants submitted that they had been denied access to a lawyer when they were in the Hasköy police headquarters, and were thus deprived of their right to have the conditions of their detention subjected to judicial review. They further maintained that proceedings before administrative courts were also excessively lengthy and that Turkish law did not provide a right to compensation for the damage suffered as a result of detention conditions.

25. The Court observes at the outset that while it is true that the applicants did not lodge a complaint with the national authorities, the Government have not demonstrated which remedies existed and what kind of redress could have been afforded to the applicants. Nor did they point to

examples of cases where conditions of detention were improved following a complaint or an application to domestic courts. It is therefore not established with sufficient certainty that there existed domestic remedies capable of affording redress to the applicants in relation to their complaint concerning the conditions of detention.

26. In any event, the Court notes that it has already found, in its judgment of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, ECHR 2009-... (extracts)), that the applicants had not been given access to legal assistance during the period that they spent in the Hasköy police headquarters (see *Abdolkhani and Karimnia*, cited above, § 114). Moreover, the Government did not contest the applicants' allegations that an advocate attempted to visit the applicants but was refused authorisation by the police to meet them on 30 June 2008. In these circumstances, the Court concludes that in any case the applicants could not raise their complaint before the administrative and judicial authorities. It accordingly dismisses the Government's objection.

2. Merits

27. The Government submitted that while the material conditions in Hasköy police headquarters could not be defined as excellent, they could not be considered to constitute inhuman or degrading treatment either.

28. The applicants submitted that the conditions of detention at the Hasköy police headquarters that they had described constituted degrading treatment in violation of Article 3 of the Convention.

29. The Court observes at the outset that the applicants were detained at the Hasköy police headquarters between 21 June 2008 and 26 September 2008, that is for more than three months, before being transferred to Kırklareli Foreigners' Admission and Accommodation Centre. The Court further observes that the Government did not challenge the applicants' submissions that they had been held in the basement of the building, which measured 70 square metres. Nor did they submit any documentary evidence, photos or video footage indicating the conditions at the Hasköy police headquarters, the capacity of the rooms and the number of occupants during the period in question, despite the fact that they were explicitly requested to do so by the Court. The photographs that the Government submitted concern the new foreigners' guesthouse that had been built subsequent to the applicants' transfer to Kırklareli and are therefore not relevant to the circumstances of the present case.

30. As regards the detention of the applicants at the Hasköy police headquarters, the Government merely submitted that a maximum of forty-two persons were detained at any given time during the period in question. Even assuming that the Government's account regarding the number of persons held in the facility was accurate, in the Court's view holding forty-two people in an area of 70 square metres, even for a duration as short as

one day, constituted severe overcrowding. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI).

31. The Court further observes that it is not disputed by the parties that the applicants were detained in an ordinary police detention facility. In this connection the Court notes that the European Committee for the Prevention of Torture (CPT) has emphasised that, although immigration detainees may have to spend some time in ordinary police detention facilities, given that the conditions in such places may generally be inadequate for prolonged periods of detention, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum (see CPT standards, document no. CPT/Inf/E (2002) 1- Rev. 2006, § 40). It is true that the Court cannot check the veracity of all the applicants' allegations regarding the conditions of detention at the Hasköy police headquarters, as a result of the failure of the Government to submit documentary evidence. Nevertheless, having regard to the inordinate length of time for which the applicants were detained at the Hasköy police headquarters and to the overcrowding therein, the Court concludes, without exploring other aspects of the applicants' allegations, that the conditions of detention at the Hasköy police headquarters amounted to degrading treatment contrary to Article 3.

B. Conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre

32. By their submissions dated 12 October 2009 the applicants alleged that the material conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre and the lack of medical assistance therein constituted a breach of Article 3 of the Convention.

33. The Government maintained that the present application concerned the detention conditions at the Hasköy police headquarters and therefore requested the Court not to examine this part of the application.

34. The Court considers that it is not required to make a decision regarding the Government's request as this part of the application is inadmissible for the following reasons.

35. As regards the alleged lack of medical assistance in the Kırklareli Centre, the Court notes that it cannot be unequivocally concluded that the person in the photos showing a skin rash was the first applicant as alleged. Furthermore, even assuming that the first applicant was suffering from skin problems, the photos in question were taken on 11 October 2009, that is to say only one day before the submissions made by the applicants to the Court and there is nothing in the case file demonstrating that the first applicant had requested to be examined by a doctor. Therefore, it cannot be concluded that the Centre administration failed to provide the first applicant with the medical assistance he required for his alleged skin disease. This part of the

complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

36. In so far as the applicants' allegations concern the material conditions in the Kırklareli Foreigners' Admission and Accommodation Centre, the Court notes that it has already examined almost identical allegations and found that the material conditions in that centre were not so severe as to bring them within the scope of Article 3 of the Convention (see *Z.N.S.*, cited above, §§ 79-87, and *Tehrani and Others v. Turkey*, nos. 32940/08, 41626/08 and 43616/08, §§ 95-97, 13 April 2010). The Court considers that the applicants have not put forward any new argument capable of persuading it to reach a different conclusion in the present case. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

38. The applicants claimed 100 euros (EUR) for each day the applicants spent at the Hasköy police headquarters and EUR 25 for each day that they were held in the Kırklareli Foreigners' Admission and Accommodation Centre, in respect of non-pecuniary damage. They further requested the Government to waive any residence fees or late fines which they might be required to pay.

39. The Government contested these claims.

40. As regards the applicants' request concerning the waiver of fees or fines, the Court considers that this matter does not fall within the scope of Article 41 of the Convention; it therefore rejects the claim (see *Tehrani and Others*, cited above, § 105). However, the Court considers that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. It therefore awards the applicants EUR 9,000 each for non-pecuniary damage.

B. Costs and expenses

41. The applicants also claimed EUR 1,950 for the costs and expenses incurred before the Court. In support of their claim, they submitted a time sheet indicating twenty-six hours' legal work carried out by their legal representative.

42. The Government contested this claim, noting that only costs actually incurred could be reimbursed.

43. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the applicants jointly the sum of EUR 1,950 for their costs before it.¹

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicants' complaint concerning the conditions of detention at the Hasköy police headquarters admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicants' conditions of detention at the Hasköy police headquarters;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

1. Rectified on 5 October 2010: "From this sum should be deducted the EUR 850 granted by way of legal aid under the Council of Europe's legal aid scheme." has been deleted from the end of § 43.

- (i) EUR 9,000 (nine thousand euros) each in respect of non-pecuniary damage, plus any tax that may be chargeable;
- (ii) EUR 1,950 (one thousand nine hundred and fifty euros) jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President