



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

SECOND SECTION

CASE OF KESHMIRI v. TURKEY

(Application no. 36370/08)

JUDGMENT

STRASBOURG

13 April 2010

FINAL

13/07/2010

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

In the case of Keshmiri v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Işıl Karakaş,

Nona Tsotsoria, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 36370/08) 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 an Iranian national, Mr Mansour Keshmiri (“the applicant”), on 1 August 2008.

2. The applicant was represented by Mr A. Baba, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 1 August 2008 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 applicant should not be deported to Iran until further notice.

4. On 6 October 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) and that the case would be given priority (Rule 41).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and is currently being held in the Kırklareli Foreigners' Admission and Accommodation Centre.

6. In 1985 the applicant joined the People's Mojahedin Organisation in Iran ("the PMOI", also known as the "Mojahedin-e-Khalq Organization").

7. In 1986 he arrived in Iraq. He lived in Al-Ashraf camp, where PMOI members were accommodated in Iraq, until he left the organisation in 2003, because he disagreed with the PMOI's goals and methods. After leaving the PMOI, he went to the Temporary Interview and Protection Facility ("TIPF"), a camp created by the United States forces in Iraq. This facility was subsequently named the Ashraf Refugee Camp ("ARC").

8. On 5 May 2006, after being interviewed, the applicant was recognised as a refugee by the UNHCR Headquarters in Geneva during his stay in Iraq.

9. On an unspecified date the applicant arrived in Turkey with a false passport.

10. On 1 June 2008 the applicant was arrested by the Turkish security forces while attempting to leave for the island of Kos, in Greece, from the port of Bodrum, with a false passport.

11. In his statements to the Turkish police, the applicant stated that he had fled from the regime in Iran and arrived in Iraq, where he was recognised as a refugee by the UNHCR. He did not mention that he was a former member of the PMOI. He then described the circumstances in which he had arrived in Turkey and had attempted to leave for Greece. The applicant noted that he had contacted the UNHCR branch office in Ankara and that he had been told that he had to wait. He did not feel able to wait and attempted to leave Turkey illegally.

12. On 2 June 2008 the UNHCR branch office sent a letter to the Ministry of the Interior informing the latter that the applicant had been recognised as a refugee under their mandate.

13. On an unspecified date the UNHCR branch office asked the national authorities to grant the applicant access to the asylum procedure in Turkey. This request was rejected in view of the fact that the applicant's presence in Turkey constituted a threat to national security given his membership of the PMOI.

14. Following his detention in police custody, a detention order was made in respect of the applicant and he was transferred to Muğla prison as charges were brought against him for illegal entry into Turkey and falsifying identity documents.

15. On 1 August 2008 the applicant was transferred to the city of Van in eastern Turkey, apparently with a view to deporting him to Iran.

16. On invocation of the interim measure under Rule 39 of the Rules of Court, the applicant was transferred to the Kırklareli Foreigners' Admission and Accommodation Centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIAL

17. A description of the relevant domestic law and practice as well as the international material can be found in *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-50, ECHR2009-... (extracts)).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS AND ADMISSIBILITY

18. The Government submitted that the applicant did not have victim status within the meaning of Article 34 of the Convention, as no deportation order had been issued. The Government further contended that, had there been a deportation order, the applicant could and should have applied to the administrative courts in accordance with Article 125 of the Constitution.

19. The Court reiterates that it has already examined and dismissed identical objections by the respondent Government in the case of *Abdolkhani and Karimnia* (cited above, §§ 55 and 59). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence (see paragraph 25 below). The Court accordingly rejects the Government's objections.

20. The Court observes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATIONS OF ARTICLES 2, 3 AND 13 OF THE CONVENTION

21. The applicant complained under Articles 2 and 3 of the Convention that he had been threatened with deportation to Iran or Iraq, alleging that he would be exposed to a clear risk of death or ill-treatment if deported. He maintained that removal to Iran would expose him to a real risk of death or ill-treatment. In particular, as a former member of the PMOI, he runs the risk of being subjected to the death penalty in Iran. The applicant further submitted that, in Iraq, he would be subjected to ill-treatment as in that country he is considered by the authorities to be an ally of the former Saddam Hussein regime. The applicant finally submitted under Article 13 of the Convention that he did not have an effective domestic remedy at his

disposal in respect of his complaints under Articles 2 and 3 of the Convention. In this connection, the applicant maintained that he had not been served with a deportation order and that he had been denied access to the asylum procedure in Turkey.

22. The Court finds it is more appropriate to examine the applicant's complaints under Articles 2 and 3 from the standpoint of Article 3 of the Convention (see *NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008; and *Said v. the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI).

23. The Government maintained that the applicant was a member of the PMOI, an organisation which had been designated as a terrorist organisation by the United States of America. Therefore, allowing members of this organisation, including the applicant, to stay in Turkey would create a risk to national security, public safety and order. They contended that the applicant would be deported back to Iraq, where he had come from, in accordance with the national legislation. However, the Government were currently complying with the interim measure indicated to them under Rule 39 of the Rules of Court. In that connection, they maintained that the applicant's deportation to Iraq would not expose him to any risk.

24. The Government further contended that the applicant had failed to lodge an application for asylum and temporary asylum in accordance with the 1994 Regulation when he had first arrived in Turkey. They noted that foreigners arriving in Turkey illegally were required to apply to the national authorities within a reasonable time and ask for asylum or temporary asylum, failing which they would be deemed illegal immigrants in Turkey. The Government therefore considered the applicant an illegal immigrant who could be deported from Turkey under the national legislation. The Government further submitted that the applicant could have had access to legal assistance while in detention had he asked for it.

25. The Court observes at the outset that the Government did not challenge the veracity of the applicant's allegation that he had been taken to Van with a view to deporting him when the President of the Second Section decided to indicate the interim measure under Rule 39 of the Rules of Court, despite the fact that an explicit question was put to them. Moreover, while the Government submitted that there had been no deportation order in respect of the applicant, they also noted that the applicant was an illegal immigrant whose deportation would be in accordance with the national law and whose presence in Turkey created a risk to national security. The Court further notes that the Government failed to submit the documents concerning the dismissal of the applicant's asylum request, his threatened deportation and his detention, despite the fact that they had been explicitly requested to do so. In these circumstances, the Court finds the applicant's version of the circumstances surrounding his attempted deportation accurate.

26. The Court points out in this connection that the circumstances of the present case are almost identical to those in the aforementioned case of *Abdolkhani and Karimnia v. Turkey*, where it held that there was a real risk that the applicants, who were also former members of the PMOI, would be subjected to treatment contrary to Article 3 of the Convention if they were returned to Iran or Iraq (see *Abdolkhani and Karimnia*, cited above, §§ 77-92). The Court also held in the aforementioned judgment that the applicants had not been afforded an effective and accessible remedy in relation to their allegations of the risk of ill-treatment and death in Iran and Iraq since their allegations concerning the risks they might face in Iran and Iraq were never examined by the national authorities. In that respect, the Court took into consideration the fact that those applicants had not been served with deportation orders. The Court also noted that an application to administrative courts seeking the annulment of a deportation order did not have automatic suspensive effect under Turkish law (*ibid.*, §§ 107-117).

27. Given that the facts of the instant case are almost identical to those in the *Abdolkhani and Karimnia* case, the Court finds no particular reasons which would require it to depart from its previous conclusion.

28. The Court accordingly finds that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Iran or to Iraq. It further concludes that there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that the applicant's deportation to Iran or Iraq would be in violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention, in relation to the applicant's complaints under Article 3.

Done in English, and notified in writing on 13 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President