

588
27.07.2010

Press release issued by the Registrar

Chamber judgment
Not final¹

Abdolkhani and Karimnia v. Turkey (No. 2)
(Application no. 50213/08)

**HOLDING REFUGEES FOR THREE MONTHS IN POLICE HEADQUARTERS'
BASEMENT BREACHED THE CONVENTION**

Unanimously

*Violation of Article 3 (prohibition of inhuman or degrading treatment)
– with regard to the detention at Hasköy police headquarters –
of the European Convention on Human Rights*

Principal facts

The applicants, Mohsen Abdolkhani and Hamid Karimnia, are two Iranian nationals who were born in 1973 and 1978 respectively and currently live in Sweden. Refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR), they entered Turkey in June 2008 and, arrested at a gendarmerie road checkpoint as their passports were found to be false, were placed in detention at Hasköy police headquarters. They were subsequently transferred in September 2008 to Kırklareli Foreigners' Admissions and Accommodation Centre.

The applicants were held in the basement of Hasköy Police Headquarters. According to them, it was damp, with insufficient natural light. They also submitted that because of overcrowding – 83 co-detainees in 70 m² during the first five weeks – they had to sleep on the floor. They further reported, among other things, dirty blankets infected with lice, dermatological diseases and infections with no medical assistance, as well as insufficient food. According to them, they also had to wear the same clothes for three months and communications were not allowed except for one visit from a UNHCR officer. The authorities refused the written complaints regarding those conditions sent by the applicants. The Turkish Government submitted that the new facility built in Hasköy provided adequate medical assistance, a garden, bathrooms, and food three times a day.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on the day the request is rejected.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Following their request to the European Court of Human Rights, the applicants were granted interim measures (under Rule 39 of the Rules of Court) whereby the Court indicated to the Turkish Government that the applicants should not be deported to Iran or Iraq in the interests of the parties and the proper conduct of the proceedings.

Complaints, procedure and composition of the Court

Relying on Article 3, the applicants complained about the conditions of their detention in both the police headquarters and the Foreigners' Admissions and Accommodation Centre.

The application was lodged with the European Court of Human Rights on 21 October 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Dragoljub **Popović** (Serbia),
Nona **Tsotsoria** (Georgia),
İşıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy), **judges**,

and also Stanley **Naismith**, **Section Registrar**.

Decision of the Court

Notwithstanding the fact that the existence of domestic remedies capable of affording redress to the applicants in relation to their complaint concerning the conditions of detention was not established with certainty, legal assistance was denied to the applicants when at the police headquarters, thus preventing them from raising their complaint before the administrative and judicial authorities.

The Court accordingly dismissed the Turkish Government's objection concerning the alleged non-exhaustion of domestic remedies and declared that complaint admissible.

Article 3, Conditions of detention at Hasköy Police Headquarters

The applicants had been held in the basement of the police headquarters for three months. The Court noted that no relevant photographs indicating the conditions of detention there had been provided by the Turkish Government – the pictures submitted showed the new foreigners' guesthouse, built subsequent to the applicants' transfer.

Even assuming that the Turkish Government's estimate of 42 detainees in the facility was accurate, holding that many people in 70 m², even for a duration as short as one day, constituted severe overcrowding.

The European Committee for the Prevention of Torture (CPT) had emphasised that, the period of time spent by immigration detainees in ordinary police detention facilities should be kept to the absolute minimum because the conditions there might generally be inadequate for prolonged periods².

² See CPT Standards: www.cpt.coe.int/en/docsstandards.htm

While the Court could not check the veracity of all the applicants' allegations – as a result of the failure of the government to submit documentary evidence – the length of detention and the overcrowding were sufficient to conclude that the conditions of detention at Hasköy Police Headquarters amounted to degrading treatment contrary to Article 3.

Article 3, Conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre

It could not be unequivocally concluded that the person in the photos submitted by the applicants in support of their allegations, and showing a skin rash, was Mr Abdolkhani. The Court further observed that these pictures had been taken just the day before the submission to the Court and that there had been no mention in the case file of Mr Abdolkhani requesting a medical examination. That part of the complaint was therefore rejected as manifestly ill-founded.

The Court noted that it had already examined allegations almost identical to the applicants' concerning the material conditions in Kırklareli Foreigners' Admission and Accommodation Centre and had found that they had not been so severe as to bring them within the scope of Article 3³. The Court considered that the applicants had not put forward any new argument capable of persuading it to reach a different conclusion. It followed that that part of the application was also rejected as manifestly ill-founded.

Just satisfaction

Under Article 41, the Court held that Turkey was to pay 9 000 euros (EUR) to each applicant for non-pecuniary damage, and EUR 1 950 to them jointly for costs and expenses, less the EUR 850 granted by way of legal aid.

The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, you can subscribe to the [Court's RSS feeds](#).

Press contacts

echrp@echr.coe.int / +33 3 90 21 42 08

Céline Menu-Lange (telephone: + 33 3 90 21 58 77)

Emma Hellyer (téléphone : +33 3 90 21 42 15)

Tracey Turner-Tretz (telephone: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (telephone: + 33 3 88 41 35 70)

Frédéric Dolt (telephone : + 33 3 90 21 53 39)

Nina Salomon (telephone : + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

³ [Z.N.S. v. Turkey](#) (no. 21896/08, 19 January 2010) and *Tehrani and Others v. Turkey* (nos. 32940/08, 41626/08 and 43616/08 13 April 2010. Judgment not yet final.)