

# EUROPEAN COURT OF HUMAN RIGHTS

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## JUDGMENT IN THE CASE OF JABARI v. TURKEY

In a judgment<sup>11</sup> delivered at Strasbourg on 11 July 2000 in the case of Jabari v. Turkey, the European Court of Human Rights held unanimously that, in the event of the decision of the authorities of the respondent State to deport the applicant to Iran being implemented, **there would be a violation of Article 3** (prohibition of torture) of the European Convention on Human Rights; that there has been **a violation of Article 13** (right to an effective remedy) of the Convention. Under Article 41 (just satisfaction), the Court held unanimously that the finding of a potential breach of Article 3 and an actual breach of Article 13 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

### 1. Principal facts

The applicant, Hoda Jabari, an Iranian national, was born in 1973 and is currently living in Istanbul (Turkey).

She fled to Turkey from Iran in November 1997 fearing that she would be convicted of having committed adultery, an offence under Islamic law, and sentenced to be stoned to death or flogged. The applicant, who had entered Turkey illegally, tried to fly from Istanbul to Canada via France using a forged passport. When she landed at Paris airport the French police sent her back to Istanbul. The applicant was arrested at Istanbul airport on the ground that she had entered Turkey using a forged passport. No charges were brought against her on account of the forged passport but she was ordered to be deported. The applicant subsequently lodged an asylum request, which was rejected by the authorities on the ground that the request had not been submitted within five days of her arrival in her Turkey. On 16 February 1998 the applicant was granted refugee status by the UNHCR branch office in Ankara. On 16 April 1998 the Ankara Administrative Court dismissed the applicant's petition against the implementation of her deportation on the grounds that there was no need to suspend it since it was not tainted with any obvious illegality and its implementation would not cause irreparable harm to the applicant.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

## 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 26 February 1998. The application was allocated to the Fourth Section of the Court and was declared partly admissible on 28 October 1999.

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

Georg **Ress** (German), *President*,  
Antonio **Pastor Ridruejo** (Spanish),  
Lucius **Caflich**<sup>1</sup> (Swiss),  
Volodymyr **Butkevych** (Ukrainian),  
John **Hedigan** (Irish),  
Matti **Pellonpää** (Finnish), *Judges*,  
Feyyaz **Gölcüklu** (Turkish), *ad hoc Judge*,

and also Vincent **Berger**, *Section Registrar*.

## 3. Summary of the judgment<sup>2</sup>

### Complaints

The applicant complained that her right not to be subjected to ill-treatment guaranteed under Article 3 of the European Convention on Human Rights would be breached if she were to be deported to Iran. She further complained that she had no effective remedy in the domestic law of the respondent State to challenge her deportation, in breach of Article 13.

### Decision of the Court

#### Article 3

The Court observed that having regard to the fact that Article 3 enshrines one of the most fundamental values of a democratic society and prohibits in absolute terms torture or inhuman or degrading treatment or punishment, a rigorous scrutiny must necessarily be conducted of an individual's claim that his or her deportation to a third country will expose that individual to treatment prohibited by Article 3.

The Court was not persuaded that the authorities of the respondent State conducted any meaningful assessment of the applicant's claim, including its arguability. It appeared to the Court that the applicant's failure to comply with the five-day registration denied her any scrutiny of the factual basis of her fears about being removed to Iran. In the Court's opinion, the automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention. Furthermore, the Ankara Administrative Court on her application for judicial review limited itself to the issue of the formal legality of the applicant's deportation rather than the more compelling question of the substance of her fears.

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<sup>1</sup> Judge elected in respect of Liechtenstein.

<sup>2</sup> This summary by the Registry does not bind the Court.

The Court attached weight to the fact that the UNHCR, having interviewed the applicant, concluded that her fears were credible. The Court was not persuaded either that the situation in the applicant's country of origin has evolved to the extent that adulterous behaviour is no longer considered a reprehensible affront to Islamic law. In this connection, it took judicial notice of recent surveys of the current situation in Iran and noted that punishment of adultery by stoning still remains on the statute book and may be resorted to by the authorities.

Having regard to these considerations, the Court found it substantiated that there is a real risk of the applicant being subjected to treatment contrary to Article 3 if returned to Iran and accordingly her deportation, if executed, would give rise to a violation of Article 3.

#### Article 13

The Court held that there had been a breach of Article 13. In the Court's opinion, given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned. Since the Ankara Administrative Court failed in the circumstances to provide any of these safeguards, the Court was led to conclude that the judicial review proceedings did not satisfy the requirements of Article 13.

#### Article 41

The Court held that the finding of a potential breach of Article 3 and an actual breach of Article 13 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and dismissed the remainder of the applicant's claims for just satisfaction.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*