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

SECOND SECTION

DECISION

Application no. 52902/15
SAKKAL and FARES
against Turkey

The European Court of Human Rights (Second Section), sitting on 7 June 2016 as a Chamber composed of:

Julia Laffranque, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 26 October 2015,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Mr Abdalsalam Sakkal, is a Syrian national who was born in 1992 and lives in Germany. The second and third applicants, Mr Ali Fares and Mr Mohammed Fares, are stateless Palestinians who were born in 1985 and 1988 and live in France. All three applicants are represented by Ms S. Uludağ Gök, a lawyer attached to Refugee Rights Turkey, a non-governmental organisation based in Istanbul.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. In September 2015 several hundred Syrian refugees gathered in Esenler bus terminal in Istanbul with a view to taking buses to Edirne. Their aim was to protest about migrant deaths in the Aegean Sea and reach Europe by land. As they were refused permission to board buses, they started marching down the motorway between Istanbul and Edirne. On 21 September 2015 the applicants, who were among them, were arrested along with two other individuals by four police officers on suspicion of breaching the Meetings and Demonstration Marches Act (Law no. 2911). They were taken to the Esenyurt district police headquarters where, on the same day, they were questioned by the police in the presence of a lawyer with regard to the offence attributable to them.

4. On 22 September 2015 the applicants were transferred to the Kumkapı Foreigners' Removal Centre. On the same day their representative, Ms Uludağ Gök, visited them and attempted to obtain information about the reasons for their detention. She was told that they would be transferred to one of the refugee camps set up for Syrian refugees in southern Turkey.

5. On 23 September 2015 two other lawyers working for Refugee Rights Turkey visited the centre and were told by the officials that no decision had been taken in respect of the applicants.

6. On 24 September 2015 a fourth lawyer attempted to meet with the applicants but was denied access to them.

7. On 2 October 2015 Ms Uludağ Gök was informed by an official at the centre that on the strict verbal instructions of the Istanbul governor's office, the applicants were not allowed to meet with a lawyer. During her visit she saw that deportation and detention orders had been issued in respect of the applicants on 22 September 2015. Neither they nor she were served with the orders. However, she took a photograph of the deportation and detention order issued in respect of the first applicant, which was later submitted to the Court.

8. On 3 October 2015 the applicants were sent to the Erzurum Foreigners' Removal Centre. On 16 October 2015 a lawyer practising in Erzurum and the head of the Erzurum branch of the Human Rights Association, a non-governmental organisation, attempted to meet with the applicants. They were also denied access to them.

9. On 21 October 2015 the applicants telephoned Ms Uludağ Gök and informed her that they had been transferred to the Ankara Foreigners' Removal Centre. They said that they feared being deported to Syria.

10. On 22 October 2015 the applicants telephoned their representative again and informed her that the deportation and detention orders dated 22 September 2015 had been renewed.

11. Between 24 September 2015 and 23 October 2015 the applicants were detained incommunicado without access to legal assistance.

12. On 23 October 2015 another lawyer attached to Refugee Rights Turkey, Ms D. Berberoğlu, went to Ankara to meet the applicants and to obtain notarised powers of attorney to take legal steps at the domestic level and authority forms to apply to the Court. She was told by staff of the centre that the applicants were being detained pending their removal to Syria. The applicants signed the authority forms provided by the lawyer. However, an official who had monitored their meeting tore them up, stating that the lawyer did not have the right to make the applicants sign any documents since she did not have a notarised power of attorney. The officials also refused to give her the applicants' identity documents for the purposes of obtaining notarised powers of attorney. Ms Berberoğlu then left the centre, but returned later the same day with a notary and an Arabic translator associated with a notary's office to have certified translations of the applicants' identity documents and obtain notarised powers of attorney. She was once again told by the staff of the centre that she would not be given the applicants' identity documents. She had to leave the centre at the end of the working day. The applicant submitted a document to the Court drafted at 5.10 p.m. on that day and signed by Ms Berberoğlu and the translator. According to this document, Ms Berberoğlu and the translator could not meet the applicants and obtain their identity documents from the authorities for the purposes of obtaining notarised powers of attorney.

B. Procedure before the Court

13. On 26 October 2015, the date the application was lodged, the applicants' representative requested that the Court adopt an interim measure, under Rule 39 of the Rules of Court, to stay the applicants' deportation to Syria.

14. On 26 October 2015 the Acting President of the Section to which the case had been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government, under Rule 39 of the Rules of Court, that the applicants should not be deported before 17 November 2015. The Government were further requested to inform the Court as to whether the applicants were being detained pending their expulsion to Syria, whether there were deportation orders issued in respect of each of them and whether they were prevented from having access to legal assistance and appointing a legal representative as alleged.

15. On 10 November 2015 the Government made submissions to the Court and sent a number of documents related to the application. They stated that the applicants had been arrested on 21 September 2015 on suspicion of breaching the Meetings and Demonstration Marches Act (Law no. 2911) during a march from Istanbul to Edirne by Syrian refugees. They submitted that the applicants had directed the refugees and encouraged them to topple the police barricades set up by the riot police. The first applicant had also attacked police officers while chanting slogans. After the applicants had been arrested, the police could communicate with the refugees, who had cooperated with the security forces. The Government noted that the applicants were questioned at the Esenyurt district police headquarters in the presence of a lawyer. The applicants had then been placed in administrative detention pending their deportation since the administrative authorities had considered that they posed a threat to public order and safety and would abscond or disappear if released. The Government submitted copies of the orders for the applicants' deportation and detention dated 22 September 2015 issued pursuant to sections 64 (1)(d) *[sic]* and 57(2) of the Foreigners and International Protection Act (Law no. 6458). The Government noted in this connection that the detention orders had been renewed every month pursuant to section 57(4) of the same Act.

16. The Government contended that Abdalsalam Sakkal and Muhammed Fares were staying in Turkey under "temporary protection", the protection granted to Syrian nationals and those arriving from Syria. Ali Fares was in an irregular situation since he had not applied to the national authorities when he had arrived in Turkey. The Government also submitted that the procedure for their deportation had been initiated given that section 91 of Law no. 6458, sections 8(1)(e) and 12(2) of the Regulation on Temporary Protection (Council of Ministers Decision No. 2014/6883) and Article 2 of the 1951 Geneva Convention Relating to the Status of Refugees allowed the State authorities to deport persons who were under "temporary protection" and who posed a threat to national security, public order or public safety.

17. The Government further submitted that the applicants had been allowed to meet a lawyer on 23 October 2015. They submitted a document according to which the applicants and Ms D. Berberoğlu declared that they had met between 11 a.m. and 12 noon on that date. The document was signed by the applicants, Ms D. Berberoğlu and two police officers. The Government further contended that the administrative authorities had attempted to notify the applicants of the detention orders. In this connection, they submitted a document, issued at 2.45 p.m. on 26 October 2015, according to which the applicants had been informed that the deportation orders issued in their respect had been suspended until 17 November 2015 on account of the Court's decision to stay their deportation to Syria but they

would continue to be detained. The applicants had refused to sign that document. The Government also submitted three other documents, issued at 4 p.m. on 26 October 2015, according to which the applicants had been notified that they were being detained on the basis of a decision by the governor's office to renew the detention order issued on 22 October 2015. The applicants had refused to sign them.

18. The Government further claimed that before applying to the Court the applicants should have applied to the administrative courts with a view to challenging the deportation orders issued in their respect. They further submitted that the applicants should have brought their Convention grievances before the Constitutional Court. Lastly, they noted that on 6 November 2015 the Ministry of the Interior had ordered that the applicants be released from detention and be notified that they were requested to leave Turkish territory.

19. On 16 November 2015 the duty Judge decided to prolong the interim measure indicated under Rule 39 of the Rules of Court until further notice.

20. On the same day the applicants' representative informed the Court that the applicants had been released on 9 November 2015 and instructed to leave Turkey as soon as possible. The applicants were also warned that they would risk being subject to administrative detention if they did not leave Turkey or breached domestic law. The applicants' representative lastly noted that she could obtain powers of attorney from the applicants only after their release from detention.

21. According to submissions made by the applicants' representative on 15 and 25 January 2016, on 8 December 2015 the second and third applicants lodged cases with the Ankara Administrative Court challenging the order to leave Turkish territory served on them on 9 November 2015. The first applicant left Turkey on 1 December 2015 and currently resides in Germany, where he applied for asylum, on the basis of a temporary residence permit. As a result, the applicants' lawyer did not lodge a case with the administrative court on his behalf. At the time, the second and third applicants were still in Turkey, despite the fact that they obtained visas from the Consulate General of France on humanitarian grounds. The applicants' lawyer submitted that they were waiting for the Turkish authorities to issue the documents required for their departure from Turkey and that the proceedings before the Ankara Administrative Court were pending.

22. On 22 March 2016 the applicants' representative informed the Court that on 27 January 2016 the second and the third applicants had left Turkey and applied for asylum in France, where they currently live.

C. Relevant domestic law and practice

1. Relevant domestic law

23. The relevant domestic law regarding the individual application to the Constitutional Court can be found in *Hasan Uzun v. Turkey* ((dec.), no. 10755/13, §§ 7-27, 30 April 2013).

24. On 11 April 2014 the Foreigners and International Protection Act (Law no. 6458) entered into force. Sections 52-60 of the Act concern the procedure for the removal of foreign nationals from Turkey, the judicial review of removal orders and detention pending removal. The provisions relevant to the present case are as follows:

Deportation

Section 52

"(1) Foreigners may be deported to their country of origin or a transit country or a third country by a deportation decision.

Deportation decision

Section 53

"(1) A deportation decision shall be issued on the instructions of the Directorate General or *ex officio* by governors' offices.

(2) The decision and the reasons for it shall be notified to the foreigner or his or her legal representative or lawyer. If the person in respect of whom a deportation order has been issued is not represented by a lawyer, he or she or his or her legal representative shall be notified of the consequences of the decision as well as the procedures and time limits for appeal.

(3) A foreigner or his or her legal representative or lawyer may appeal to the administrative court against the deportation decision within fifteen days of the date of notification. The person appealing against the decision shall also inform the authority that has issued [it] about the appeal lodged with the court. Applications to court shall be decided within fifteen days. The court's decision on the issue shall be final. Without prejudice to his or her consent, the foreigner shall not be deported within the time-limit for bringing a case against the deportation decision or in case of an appeal, until finalisation of the judgment.

Those in respect of whom deportation decisions shall be issued

Section 54

(1) A deportation decision may be issued in respect of foreigners:

...

(d) who constitute a threat to public order and security or public health,

…

Administrative detention and the duration of detention for deportation purposes

Section 57

(1) Where foreigners who fall into one of the categories listed in section 54 of the present Act are apprehended by law-enforcement units, the governors' offices shall be notified immediately for a decision to be taken in their respect. Deportation decisions shall be issued by the governors' offices in respect of foreigners for whom such a decision is deemed necessary. The assessment and decision-making period shall not exceed forty-eight hours.

(2) A foreigner in respect of whom a deportation decision has been issued shall be placed in administrative detention by a decision of the governor's office if [he or she] poses a risk of absconding or disappearing, has violated the rules for entry into and exit from Turkey, has used false or fabricated documents, has not left Turkey within the period granted without an acceptable excuse, or constitutes a threat to public order and security or public health. Those in respect of whom an administrative detention order has been issued shall be transferred to a removal centre within forty-eight hours by the same law-enforcement unit that apprehended them.

(3) The period of administrative detention in removal centres shall not exceed six months. However, if the deportation process cannot be completed owing to the failure of the foreigner to co-operate or provide correct information or documents regarding his or her country [of origin], this period may be extended for a maximum of six months.

(4) The need to continue administrative detention shall be reviewed monthly by the governor's office. Where necessary, reviews may be conducted earlier. If a foreigner's administrative detention is no longer deemed necessary, it shall be terminated immediately. Foreigners who have been released may be required to comply with such obligations as residing at a designated address and reporting to authorities in the manner and period requested.

(5) The administrative detention decision, the extension of the period of administrative detention and the results of the monthly reviews with the reasons on which they are based shall be notified to the foreigner or his or her legal representative or lawyer. If the person in respect of whom a deportation order has been issued is not represented by a lawyer, he or she or his or her legal representative shall be notified of the consequences of the decision as well as the procedures and time limits for appeal.

(6) A person who has been placed in administrative detention or his or her legal representative or lawyer may appeal against the administrative detention decision to the Magistrates' Courts. The appeal shall not stay the execution of the administrative detention. In the event that the [appeal] is submitted to the administration, it shall be sent to the competent Magistrates' Court without delay. The Magistrates' Court shall conclude the review within five days. [Its] decision shall be final. A person who has been placed in administrative detention or his or her legal representative or lawyer may lodge a further appeal with the Magistrates' Courts should the conditions for administrative detention have ceased to exist or changed.

(7) A foreigner who appeals against a detention order and does not have the means to pay for a lawyer shall be provided with legal aid on request, in accordance with the relevant provisions of the Attorneys Act (Law no. 1136) of 19 March 1969.

Services provided in removal centres

Section 59

(1) In removal centres:

...

(b) foreigners shall be allowed access to and given the opportunity to meet with their relatives, notary public, legal representative and lawyer, as well as access to telephone services;

..."

2. Constitutional Court decision dated 11 November 2015

25. On 11 November 2015 the Constitutional Court rendered a decision on an individual application brought before it by a Syrian national who complained of his threatened deportation to Syria, the poor conditions of his detention at the Kumkapı Foreigners' Removal Centre, the absence of an effective remedy whereby he could raise his allegations concerning the conditions of his detention, the unlawfulness of his detention, the failure to provide him with information on the reasons for his detention, and the absence of an effective remedy to challenge the lawfulness of his detention (application by Mr K.A., no. 2014/13044).

26. Mr K.A. had been placed in administrative detention at the Kumkapı Foreigners' Removal Centre on 25 April 2014. A detention order was issued on 28 April 2014 for a period of six months pending his deportation. The cases that he brought before the Istanbul Magistrate's Court and the Istanbul Administrative Court with a view to challenging the detention and deportation orders and to complaining about the conditions of his detention were dismissed by those courts. On 5 December 2014, when he applied to the Constitutional Court, he requested that the implementation of the deportation order be suspended. On 10 December 2014 the Constitutional Court allowed Mr K.A.'s request and suspended the implementation of the deportation order. Subsequent to the Constitutional Court's decision, the Istanbul Magistrate's Court ordered the applicant's release, noting that he could not be deported in the light of the interim measure issued by the Constitutional Court. Mr K.A. was released on 6 January 2015.

27. In its decision, the Constitutional Court first declared the applicant's complaint that he was at risk of death or ill-treatment in the event of his removal to Syria inadmissible. It held that as a Syrian national, the applicant did not face a risk of expulsion since he was under "temporary protection" pursuant to the Regulation of 22 October 2014 and, as a result, could not be deported.

28. The Constitutional Court further examined the applicant's complaint regarding the conditions of his detention and the alleged absence of an effective remedy whereby he could raise his allegations concerning the

conditions of detention. Referring to the Court's case-law, in particular, the judgment in the case of *Yarashonen v. Turkey* (no. 72710/11, 24 June 2014), it held that the conditions at the Kumkapı centre had constituted treatment incompatible with human dignity and that the applicant had not had an effective remedy at his disposal to raise his grievance concerning those conditions.

29. The court further found that Article 19 §§ 2, 4 and 8 of the Constitution had been breached. It held that the applicant's detention had been unlawful, that he had not been informed of the reasons for his detention and that he had not had an effective remedy whereby he could challenge the unlawfulness of his detention.

30. As regards the complaint concerning the unlawfulness of Mr K.A.'s detention, the Constitutional Court first noted that he had been placed in administrative detention on 25 April 2014, whereas the detention order had not been issued until 28 April 2014. The court therefore found that his detention between 25 and 28 April 2014 had lacked a legal basis. The court further noted that by not reviewing the detention order on a monthly basis, the governor's office had failed to comply with section 57 of Law no. 6458. It lastly observed that Mr K.A. had been detained for eight months and ten days, despite the fact that the detention order had been valid for only six months. The court thus concluded that the authorities had failed to act with diligence and that the applicant's detention had not been lawful.

31. As to Mr K.A.'s complaint that he had not been informed of the reasons for his detention, the Constitutional Court observed that he had not been served with a deportation order at the beginning of his administrative detention. Nor had he been informed of the reasons for his continued detention. The court therefore found that the administrative authorities had failed to comply with section 57 of Law no. 6458.

32. As to Mr K.A.'s allegation that he had not had access to an effective remedy to challenge his detention, the Constitutional Court held that the magistrate's court had failed to carry out an adequate examination of his application, even though Law no. 6458 provided for the protection of detainees against arbitrariness. Referring to this Court's judgment in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, 22 September 2009), the court also held that in the absence of information on the reasons for his detention, Mr K.A.'s right to appeal against his detention had in any case been deprived of all effective substance. As a result, the court found that Mr K.A. had not had an effective remedy whereby he could obtain judicial review of the lawfulness of his detention.

33. Lastly, the Constitutional Court awarded Mr K.A. 10,000 Turkish liras (TRY) (approximately 3,200 euros (EUR)) for the non-pecuniary damage he had suffered as a result of the violations of his aforementioned rights.

D. Relevant international material

34. On 9 October 2015 Amnesty International released a call for urgent action against the applicants' possible deportation from Turkey to Syria:

> "Two Palestinian refugees coming from Syria, Ali Fares and Mohammed Fares, and Syrian refugee Abdalsalam Sakal, have been detained in Turkey since 22 September and are facing deportation. If deported they are at risk of serious human rights violations.
>
> Palestinian refugees coming from Syria Ali Fares and Mohammed Fares and Syrian refugee Abdalsalam Sakal were detained during a demonstration by Syrian refugees at the main bus station in Istanbul. The demonstrators were demanding to be allowed to go to the Turkish border city of Edirne, in order to attempt to cross to Greece. Ali Fares and Mohammed Fares (who are not related) are Palestinian refugees formerly resident in Iraq but who fled to Syria 10 years ago following the 2003 war in Iraq. They are both registered with the United Nations Relief and Works Agency for Palestine Refugees.
>
> The three refugees were detained on 22 September together with two activists from France and Germany, who have since been deported back to their countries for violating the Law on Meetings and Demonstration Marches. The deportation and administrative detention order of the three refugees was issued on 22 September citing Art. 54 of the Law on Foreigners and International Protection. The order does not state which country they would be deported to, but does authorize for them to be held in administrative detention for one month. Ali Fares and Mohammed Fares and Abdalsalam Sakal were taken to Kumkapı Deportation Centre, in Istanbul.
>
> Ali Fares and Mohammed Fares only had access to a lawyer on the first day of their detention. On 2 October a lawyer from the NGO Refugee Rights Centre visited the Deportation Centre but was refused access to the three refugees. On 3 October the lawyer received a phone call from the three refugees informing her that they were being flown to Erzurum province in eastern Turkey. They are currently detained in the Aşkale Deportation Centre in Erzurum and since their arrival they have not been able to exercise their right to legal representation.
>
> Due to the ongoing conflicts in both Syria and Iraq, and in line with the principle of *non-refoulement* (a principle of the international refugee protection system which prohibits the transfer of anyone to a place where they would be at real risk of serious human rights violations), no one should be forcibly returned to either country, since they would be at real risk of serious human rights violations or abuses."

35. On 21 October 2015 Amnesty International issued a second urgent action regarding the applicants' alleged inability to have access to the outside world:

> "Palestinian refugees Ali Fares and Mohammed Fares and Syrian refugee Abdulsalam Sakal have been detained since 22 September and were again prevented from seeing a lawyer on 16 October. On 20 October, the authorities prevented Mohammed Fares' mother from seeing him and denied that he was even being held in the deportation centre in Erzurum.
>
> On 16 October the Head of the Erzurum branch of the NGO Human Rights Association (İHD) and a lawyer went to the Erzurum Deportation Centre in Aşkale, eastern Turkey, to see Ali Fares, Mohammed Fares and Abdulsalam Sakal who are facing deportation. Officials at the centre acknowledged that the men were there, but

did not allow the lawyer to meet them on grounds that such a meeting required the permission of the General Directorate for Migration Management. On 20 October officials at the centre denied Mohammed Fares' mother access to her son and would not acknowledge that he was being held there. The conditions the men are being held in amount to incommunicado detention, in violation of Turkish law and international human rights law.

This is the second time the three refugees' rights to consult a lawyer have been denied since their detention on 22 September. On 2 October a lawyer from the NGO Refugee Rights Centre attempted to visit them while they were being held at the Kumkapı Deportation Centre in Istanbul, but she was denied access to them. The next morning the lawyer received a call from the three refugees, informing her that they were being taken to Erzurum Deportation Centre.

Refugees' and asylum-seekers' right to consult a lawyer and meet their relatives is enshrined in the Law on Foreigners and International Protection. Article 59/1-b states that: 'the foreigner shall be allowed access to and given the opportunity to meet with their relatives, notary public, his/her legal representative and the lawyer, as well as access to telephone services'. Furthermore, Article 68/8 states: 'The person subject to administrative detention shall be granted access to legal representative, lawyer, notary public and United Nations High Commissioner for Refugees officials.'"

COMPLAINTS

36. The applicants complained under Articles 2 and 3 of the Convention that they would be exposed to a clear risk of death or ill-treatment if deported to Syria.

37. The applicants contended under Article 5 § 2 of the Convention that neither they nor their lawyer had been served with the detention orders.

38. The applicants alleged under Article 5 § 4 of the Convention that they had been detained incommunicado between 24 September and 23 October 2015 and denied access to legal assistance, as a result of which they had been unable to challenge the lawfulness of their detention.

39. Relying on Article 13 of the Convention the applicants complained that they had not been served with the deportation orders, had been denied legal assistance and had been prevented from authorising a lawyer to challenge the deportation orders before the national courts when they had been detained.

40. Lastly, the applicants alleged a breach of Article 34 of the Convention because they had not been allowed to meet with a lawyer and sign authority forms so that an application could be lodged with the Court.

THE LAW

A. The applicants' complaints under Articles 2 and 3 of the Convention

41. The applicants complained that they would be exposed to a real risk of death or ill-treatment contrary to Articles 2 and 3 of the Convention if they were returned to Syria.

42. The Court observes that the applicants left Turkey on 1 December 2015 and 27 January 2016. The first applicant now resides in Germany and the second and the third applicants live in France. Hence, they no longer face a risk of expulsion from Turkey, to Syria or elsewhere. In such circumstances, the Court considers that the applicants can no longer claim to be victims within the meaning of Article 34 of the Convention in relation to their complaints under Articles 2 and 3 of the Convention (see *A.D. and Others v. Turkey*, no. 22681/09, §§ 81-84, 22 July 2014).

43. Accordingly, these complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

44. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

B. The applicants' complaints under Article 5 §§ 2 and 4 and Article 13 of the Convention

45. The applicants complained under Article 5 §§ 2 and 4 and Article 13 of the Convention that neither they nor their lawyer had been served with detention and deportation orders, and that they had been denied access to legal assistance. As a result, they had been unable to challenge the lawfulness of their detention and the deportation orders before the national courts when they had been detained. They submitted that they did not apply to the Constitutional Court because the remedy before that court did not have an "automatic suspensive effect" in cases concerning expulsion of foreign nationals.

46. In their submissions dated 10 November 2015, the Government contended that the applicants should have used the remedy of individual application to the Constitutional Court.

47. The Court notes at the outset that Article 5 § 4 is *lex specialis* in respect of Article 13 (*A. and Others v. the United Kingdom* ([GC], no. 3455/05, § 202, ECHR 2009). It will therefore limit its examination under Article 13 to the alleged inability to challenge the deportation orders. It will, however, address firstly the applicants' complaints under Article 5 §§ 2 and 4 concerning the alleged inability to challenge their detention.

48. In this connection, the Court reiterates the principles developed in its case-law regarding the rule of exhaustion of domestic remedies (see *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 69-71, 25 March 2014, and *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 220, 222 and 223, ECHR 2014 (extracts)).

49. The Court also reiterates that where the person concerned is still in custody, the only remedy which may be considered sufficient and adequate is one which is capable of leading to a binding decision for his or her release (*Garvil Yosifov v. Bulgaria*, no. 74012/01, § 40, 6 November 2008), but that if the impugned detention has come to an end, an action for damages, which is capable of leading to a declaration that this detention was unlawful or in breach of Article 5 § 1 and to a consequent award of compensation, may be an effective remedy in respect of complaints under this provision (ibid., § 41, and the references therein; see also, in respect of the length of detention, *Şefik Demir v. Turkey* (dec.), no. 5177/07, 16 October 2012, and *Gürceğiz v. Turkey*, no. 11045/07, §§ 21-22, 15 November 2012). Moreover, while an assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001, and in the context of an application to the Turkish Constitutional Court concerning a complaint about the length of detention, *Koçintar v. Turkey* (dec.), no. 77429/12, 1 July 2014).

50. The Court further notes that subsequent to the constitutional amendments which entered into force on 23 September 2012, an individual application system was put in place in Turkey. The new Article 148 § 3 of the Constitution gives the Constitutional Court jurisdiction to examine individual applications concerning the fundamental freedoms and rights protected by the Constitution and by the European Convention on Human Rights and the Protocols thereto, after ordinary remedies have been exhausted.

51. The Court has already examined this new remedy in its aforementioned decision in the case of *Hasan Uzun v. Turkey* ((dec.), no. 10755/13, 30 April 2013). In that decision, the Court first examined practical aspects of the remedy before the Constitutional Court, such as its accessibility and the modalities of the individual application. It then examined the scope of the Constitutional Court's jurisdiction, the legislature's intent and the powers entrusted to it and noted the binding nature of the Constitutional Court's decisions. As a result of its examination of the principal aspects of the individual application to the Constitutional Court, the Court considered that there was no element which would allow it to conclude that the remedy in question was not accessible or capable of redressing alleged violations of the rights guaranteed under the Convention

(ibid., §§ 52-70). The Court accordingly held that it was for the individual claiming to be a victim to test the limits of the protection provided by the remedy before the Constitutional Court. As that had not been the case, that application was declared inadmissible. The Court reserved the right to examine the consistency of the Constitutional Court's case-law with its own and noted that it would be for the respondent Government to prove that the remedy was effective, both in theory and in practice. It finally held that it retained its ultimate power of review in respect of any complaints submitted by applicants who, in accordance with the subsidiarity principle, had exhausted the available domestic remedies (ibid., § 71).

52. Subsequent to the adoption of its decision in the case of *Hasan Uzun*, the Court declared a number of other cases raising various issues under the Convention inadmissible for non-exhaustion of domestic remedies on account of the applicants' failure to apply to the Constitutional Court (see, for example, *Özkan v. Turkey* (dec.), no. 28745/11, 1 October 2013; *Koçintar* (dec.), cited above; *Schmick v. Turkey* (dec.), no. 25963/14, 7 April 2015; *X. v. Turkey* (dec.), no. 61042/14, 19 May 2015; *Duran v. Turkey* (dec.), no. 79599/13, 19 May 2015; and *Berker and Others v. Turkey* (dec.), no. 54769/13, 20 October 2015).

53. Turning to the circumstances of the present case, the Court first notes that between 22 September and 9 November 2015 the applicants were detained at the Kumkapı, Erzurum and Ankara Foreigners' Removal Centres. The Court further observes that there is nothing in the case file showing that they were notified of the detention orders issued in respect of them until 26 October 2015. Moreover, although the applicants' statements regarding the offence attributable to them were taken by the police in the presence of a lawyer on 21 September 2015, and the applicants' representative visited them when they were at the Kumkapı Foreigners' Removal Centre on 22 September 2015, there is no document in the case file showing that the applicants were allowed to meet a lawyer between 23 September and 23 October 2015 while they were in administrative detention under the terms of Law no. 6458. Furthermore, the applicants claimed that they had been unable to authorise their lawyer to institute judicial proceedings on their behalf until their release.

54. Following the Court's decision of 26 October 2015 indicating to the Government, pursuant to Rule 39 of the Rules of Court, that they should desist from deporting the applicants – a decision which was respected by the Government – the national authorities attempted to serve deportation and detention orders on the applicants and the applicants were released from detention (see paragraphs 17 and 20 above).

55. In these circumstances, the Court must examine whether the remedy before the Constitutional Court was capable of acknowledging and affording redress for the alleged violations of the applicants' rights under Article 5 §§ 2 and 4 of the Convention and thus whether, after they were

released, the applicants were required to exhaust that remedy before continuing their application before this Court.

56. In this connection, the Court observes that following their release on 9 November 2015, the applicants authorised their lawyer with notarised powers of attorney to take legal steps at the domestic level and signed authority forms to be submitted to the Court. According to the submissions of the applicants' lawyer dated 15 January 2016, on 8 December 2015 she applied to the Ankara Administrative Court, on behalf of the second and the third applicants, challenging the order to leave Turkish territory, which had been served on the applicants when they had been released. Having regard to these facts, the Court finds that after their release from the Ankara Foreigners' Removal Centre on 9 November 2015, the applicants had access to the Constitutional Court – either themselves or through their lawyer – and could have complained before that court that they had been prevented from benefiting from the safeguards provided in Law no. 6458 and that, as a result, they had been unable to exercise their rights under the Convention.

57. As to the effectiveness of the remedy of individual application to the Constitutional Court, the Court first reiterates that the Constitutional Court was entrusted with specific jurisdiction to establish a breach of Convention provisions and the appropriate powers to secure redress for violations, by granting compensation and/or by indicating the means of redress (see *Hasan Uzun* (dec.), cited above, §§ 63-64). The Constitutional Court's decisions are binding on the defaulting authorities and enforceable against them (see *Aden Ahmed v. Malta*, no. 55352/12, § 61, 23 July 2013, and *Koçintar* (dec.), cited above, § 43).

58. The Court further observes that in its aforementioned decision regarding the application brought by Mr K.A. (see paragraphs 25-33 above), the Constitutional Court held that that applicant had been unable to benefit from the safeguards against arbitrary detention provided in Law no. 6458 and Article 19 §§ 2, 4 and 8 of the Constitution. In this connection, the Court notes that in assessing Mr K.A.'s complaints concerning the alleged breaches of Article 19 of the Constitution, which guarantee the right to liberty and security, the Constitutional Court made extensive reference to the relevant case-law of the Court, in particular the judgment of *Abdolkhani and Karimnia v. Turkey*, followed the principles established by the Court and awarded Mr K.A. compensation for non-pecuniary damage which cannot be deemed to be manifestly insufficient (see *Hebat Aslan and Firas Aslan v. Turkey*, no. 15048/09, § 50, 28 October 2014, and *Simanovičs v. Latvia* (dec.), no. 55047/12, 18 November 2014).

59. Having regard to the above, the Court finds that there is no indication that the Constitutional Court would not have reviewed an application lodged by the applicants, had they lodged such an application following their release from the Ankara Foreigners' Removal Centre on 9 November 2015, complaining that they had been denied the opportunity to

challenge their detention. There is no element which would allow the Court to conclude that the Constitutional Court would not have taken into account the applicants' Convention rights and this Court's relevant case-law. Nor is there any indication that if the Constitutional Court had found a violation of the applicants' rights, it would not have awarded appropriate redress (see *Miler v. The Czech Republic* (dec.), no. 56347/10, § 28, 25 September 2012).

60. The Court lastly notes that in response to the Government's submission that the applicants should have applied to the Constitutional Court, the applicants did not point to any circumstances absolving them from the requirement to raise their complaints under Article 5 §§ 2 and 4 of the Convention before that court after they were released from detention.

61. Accordingly, these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

62. Turning to the applicants' complaint under Article 13 in conjunction with Articles 2 and 3, the Court considers that in the present case it must examine whether the applicants had an effective domestic remedy at their disposal which was capable of affording redress for the alleged violation of their right under Articles 2 and 3 of the Convention, namely the allegation that they were unable to access judicial remedies while in detention, and, if so, whether they exhausted that remedy.

63. In that respect, it notes that the applicants' complaints under Articles 2 and 3 of the Convention have been declared inadmissible since the applicants no longer face a risk of deportation from Turkey to Syria, or elsewhere. However, the fact that a substantive claim is declared inadmissible does not necessarily exclude the operation of Article 13 (see *A.D. and Others*, cited above, § 86). For instance, in the case of *Gebremedhin [Gaberamadhien] v. France* (no. 25389/05, § 56, ECHR 2007-II) the Court found a complaint under Article 13 in conjunction with Article 3 of the Convention concerning an expulsion admissible, even though it had declared the Article 3 complaint inadmissible because the applicant had lost his victim status owing to a subsequent granting of asylum. It noted that the alleged violation of Article 13 had already occurred at the time the threat of the applicant's removal was lifted, and that the State had not acknowledged, either expressly or in substance, and then afforded redress for, the alleged breach of the Convention.

64. In the present case, although the applicants claim that they were held incommunicado between 24 September and 23 October 2015 and it appears that they were indeed unable to meet with their lawyers during that period, a lawyer was present when they were first questioned on 21 September and it is clear that they maintained contact with their representative, Ms Uludağ Gök, whom they telephoned on 21 and 22 October (see paragraphs 3, 9 and 10 above). Moreover, the Government submitted a document signed by the applicants and Ms D. Berberoğlu, a lawyer attached to Refugee Rights

Turkey, according to which they met with her on 23 October (see paragraph 17 above). In the Court's view, notwithstanding the difficulties in obtaining powers of attorney, these contacts with their representatives were sufficient for the applicants to able to exercise the right to lodge an application with the administrative court to stay the enforcement of their deportation and also to lodge an individual application with the Constitutional Court. Moreover, it is clear from the legal provisions and from the Constitutional Court's judgment in the case of Mr K.A. that the Constitutional Court could have examined such an application (see paragraph 26 above). The Court therefore concludes that the remedies available before the administrative courts and the Constitutional Court were effective for the purposes of Article 13 of the Convention. It follows that this complaint is inadmissible as manifestly ill-founded under Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

C. Article 34 of the Convention

65. The applicants complained under Article 34 of the Convention that they had not been allowed to meet with a lawyer and sign authority forms so that an application could be lodged with the Court.

66. The Court observes that according to the documents in the case file, on 21 and 22 October 2015 the applicants telephoned their representative and provided information about their whereabouts and the state of the procedure against them insofar as they had been informed about it. On 22 September and 23 October 2015 two lawyers had meetings with the applicants while they were detained in the Kumkapı and Ankara Foreigners' Removal Centres respectively. The Court notes that it has not been alleged that the applicants were prevented from signing authority forms on 22 September 2015. As regards the allegation that an officer tore up the authority forms signed by the applicants on 23 October 2015 at the Ankara Centre, the Court observes that there is no mention of this incident in the document dated 23 October 2015, according to which the applicants and the lawyer who visited them declared that they had met between 11 a.m. and 12 noon on that date (see paragraph 17 above). The applicants and the lawyer signed that document without noting that the applicants had been prevented from giving the authority forms. In addition, the document drafted at 5.10 p.m. on the same day and signed by the lawyer and a translator does not refer to any allegation that the applicants were prevented from giving authority forms to the lawyer (see paragraph 12 above).

67. The Court considers that there is an insufficient factual basis on which to conclude that there has been any unjustified interference by the State authorities with the applicants' exercise of the right of petition in the proceedings before the Court in relation to the present application.

For these reasons, the Court by a majority

Declares the application inadmissible.

Done in English and notified in writing on 30 June 2016.

Stanley Naismith
Registrar

Julia Laffranque
President