

Press release issued by the Registrar

Chamber judgment¹

Abdolkhani and Karimnia v. Turkey (application no. 30471/08)

FORMER MEMBERS OF THE PEOPLE'S MOJAHEDIN ORGANISATION WOULD BE AT RISK OF ILL-TREATMENT IF DEPORTED TO IRAN OR IRAQ

Applicants' deportation would be in violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights
Violation of Article 13 (right to an effective remedy)
Violation of Article 5 §§ 1, 2 and 4 (right to liberty and security)

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 20,000 euros (EUR) each in respect of non-pecuniary damage. (The judgment is available only in [English](#).)

Principal facts

The applicants, Mohsen Abdolkhani and Hamid Karimnia, are Iranian nationals who were born in 1973 and 1978 respectively and are currently being held in Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli (Turkey).

As members of the People's Mojahedin Organisation ("the PMOI"), they left Iran and went to Iraq to live in a PMOI camp. Discontent with the organisation's goals and methods, they left and entered a refugee camp set up by the United States forces in Iraq.

In 2006 and 2007, they were both recognised as refugees by the United Nations High Commissioner for Refugees ("UNHCR"). The UNHCR, who interviewed the applicants, considered that their links to the PMOI and their political opinions, as well as the treatment of PMOI members and sympathisers in Iran, put them at risk of being subjected to arbitrary deprivation of life or detention and ill-treatment in that country.

In April 2008 the refugee camp in which the applicants were staying closed down. They then went to Turkey where they were arrested and deported back to Iraq on 17 June 2008.

¹ Under Article 43 of the Convention, 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.

They immediately re-entered Turkey. On 21 June 2008 they were arrested again and detained in police custody. On being arrested and charged with illegal entry they asked for a lawyer; they were not, however, given access to legal assistance. The applicants made oral and written submissions to the police concerning their background and past political affiliations and the fact that they were refugees under the UNHCR's mandate.

On 23 June 2008, the applicants were convicted of illegal entry into Turkey; their sentence was deferred for a period of five years. Before the courts they claimed that they had left their country of origin for fear that their lives were in danger. The courts noted that the applicants would be deported; the applicants were not notified either of the decision to deport them or the reasons for that decision.

The Turkish authorities attempted to deport them to Iran on 28 June 2008. It was unsuccessful as the Iranian authorities refused their admission.

On 30 June 2008 under Rule 39 of the Rules of Court (interim measures), the Court asked the Turkish Government to stay the applicants' deportation until 4 August 2008. That deadline was subsequently extended until further notice.

The applicants have also made numerous petitions to the police and the Turkish authorities in which they have requested temporary asylum. Hamid Karimnia has also filed a petition with the Ministry of the Interior challenging his detention. The applicants have not received any reply to their various petitions.

Initially detained in police custody in Muş, the applicants were transferred on 26 September 2008 to Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli, where they remain to date.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 June 2008. The UNHCR was granted leave to intervene in the proceedings as a third party.

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

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Vladimiro **Zagrebelky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey), judges,

and also Sally **Dollé**, **Section Registrar**.

Complaints

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that, if deported to Iran or Iraq, they were at real risk of death or ill-treatment. They also complained that they had been prevented from lodging an asylum claim and from challenging their deportation, in breach of Article 13 (right to an effective remedy). Finally, they alleged that their detention with a view to removal was unlawful, in breach of Article 5 § 1, that they were not informed of the reasons for their detention from 23 June onwards, in breach of Article 5 § 2, and that they were not able to challenge the lawfulness of that detention, in breach of Article 5 § 4.

Decision of the Court

Article 3

As regards the risks of ill-treatment if the applicants were to be deported to Iran, the Court noted reports from Amnesty International, Human Rights Watch and the UNHCR Resettlement Service about PMOI members in Iran either being executed or found dead in suspicious circumstances in prison. Information about what had happened to certain PMOI members who had voluntarily returned to Iran was on the whole contradictory and unreliable. Moreover, unlike the Turkish authorities, UNHCR had interviewed the applicants and concluded that their fears with regard to their return to their country of origin had been credible.

As concerned the alleged risks in Iraq, the Court observed that the removal of Iranian nationals to that country was carried out in the absence of a proper legal procedure, former PMOI refugees being systematically refused at the Iraqi border. Furthermore, there were reports that those PMOI refugees who had been admitted had gone missing, quite possibly removed to Iran.

Concerning the Government's argument that allowing PMOI members, such as the applicants, to stay in Turkey would create a risk to national security, public safety and order, the Court reiterated that however undesirable or dangerous the conduct of a person, Article 3 was absolute in nature. In any case, the applicants had left the PMOI and were now UNHCR recognised refugees.

Therefore, the evidence submitted by the applicants and the third party, set against the Turkish Government's lack of argument or documents capable of dispelling doubts about the applicants' allegations, was sufficient for the Court to conclude that there was a real risk of the applicants being subjected to treatment contrary to Article 3 if they were returned to Iran or Iraq.

Article 13

The Court was struck by the fact that both the administrative and judicial authorities had remained totally passive regarding the applicants' serious allegations of a risk of ill-treatment if returned to Iraq or Iran. Moreover, by failing to consider the applicants' requests for temporary asylum, to notify them of the reasons for not taking their asylum requests into consideration and to authorise them to have access to legal assistance (despite their explicit request for a lawyer) while in police detention in Muş, the national authorities had prevented the applicants from raising their allegations under Article 3 within the relevant legislative framework. What was more, the applicants could not even apply to the authorities for annulment of the decision to deport them as they had never been served with the deportation orders. Nor had they been notified of the reasons for their threatened removal from Turkey. In effect the applicants' allegation that their removal to Iran or Iraq would have consequences contrary to Article 3 had never actually been examined by the national authorities. The applicants had not therefore been provided with an effective and accessible remedy in relation to their complaints under Article 3, in violation of Article 13.

Article 5 §§ 1, 2 and 4

In the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the national system had failed to protect the applicants from arbitrary detention and, consequently, their detention could not be considered "lawful", in violation of Article 5 § 1.

The Court observed that the applicants had been arrested on 21 June 2008 and subsequently detained in police custody. On 23 June 2008 they had been convicted of illegal entry. Yet they had not been released and from then on have not been detained on any

criminal charge, but in the context of immigration control. In the absence of a reply from the Government or any document in the case file to show that the applicants had been informed of the grounds for their continued detention after 23 June 2008, the Court concluded that the national authorities had never actually communicated the reasons to them, in violation of Article 5 § 2.

Given the findings that the applicants had been denied legal assistance and had not been informed of the reasons for their detention, the applicants' right to appeal against their detention had been deprived of all effective substance. Nor had the Government submitted that the applicants had at their disposal any procedure through which the lawfulness of their detention could have been examined by a court. The Court therefore concluded that the Turkish legal system had not provided the applicants with a remedy whereby they could obtain judicial review of their detention, in violation of Article 5 § 4.

This press release is a document produced by the Registry; the summary it contains does not bind the Court. The judgments, with the composition of the Court, are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Tracey Turner-Tretz (tel : + 33 (0)3 88 41 35 30) or
Stefano Piedimonte (tel : + 33 (0)3 90 21 42 04)
Kristina Pencheva-Malinowski (tel : + 33 (0)3 88 41 35 70)
Céline Menu-Lange (tel : + 33 (0)3 90 21 58 77)
Frédéric Dolt (tel : + 33 (0)3 90 21 53 39)

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.