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

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The forced return to Syria of a Syrian national with a valid residence permit was in breach of Turkish law and of the Convention

The case of Akkad v. Türkiye (application no. 1557/19) concerned the applicant's allegation that he had been subjected to forced and unlawful expulsion to Syria by the Turkish authorities under the guise of a "voluntary return". In 2018 the applicant, who had a valid residence permit in Türkiye and had been granted "temporary protection" status, was arrested near the Meriç river while attempting to enter Greece. He was removed to Syria two days later.

In today's **Chamber** judgment[1] in this case the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights: (1) on account of the applicant's removal to Syria, and (2) on account of the handcuffing of the applicant during his transfer from Edirne to Hatay.

The Court found that substantial grounds had been shown for believing that the applicant faced a real risk of treatment contrary to Article 3 in Syria and that the Turkish authorities had exposed him, in full knowledge of the facts, to the risk of treatment in breach of the Convention. It also held that the handcuffing of the applicant – in pairs with other single Syrian men during a bus journey lasting around 20 hours – amounted to degrading treatment.

a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 3, on account of the applicant's inability to challenge his removal to Syria. The Court noted that the Turkish authorities had denied the applicant the opportunity to make use of the remedies provided for by Turkish law in order to challenge his forced return to Syria.

a violation of Article 5 §§ 1, 2, 4 and 5 (right to liberty and security).

The Court found that the applicant had been deprived of his liberty from the time of his arrest close to the Greek border at Meriç until his removal to Syria. It noted that the legal safeguards provided for by domestic law in relation to the detention of persons facing expulsion had not been complied with.

Principal facts

The applicant, Muhammad Fawzi Akkad, is a Syrian national who was born in 1997. He arrived in Türkiye with his family in 2014, having left Syria on account of the civil war. He spent one year in the Gaziantep refugee camp before moving to Istanbul and being granted "temporary protection" status and being issued with an alien's identity card.

On 15 August 2015 the applicant's father travelled to Germany, where he was granted refugee status. In 2017 the members of his family joined him there under a family reunification visa. The applicant was not authorised to follow them, having reached full age by then.

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 five 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 that day.
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.

On 19 June 2018, while attempting to enter Greece, the applicant was arrested by Turkish gendarmes one kilometre from the Meriç river, which marks the border between Türkiye and Greece. On 21 June 2018 he was removed to Syria by the Turkish authorities through the Reyhanlı/Bab'ul Hawa border crossing. The applicant alleged that as soon as he had crossed the border into Syria he had been apprehended by two armed militants of the organisation Al-Nusra (Nusra Front/Jabhatun Nusra) and had been taken to a building, probably in Aleppo, where he had been interrogated. He stated that he had been beaten and had feared for his life. He was subsequently released on condition that he did not leave the city of Aleppo.

Subsequently, on 15 July 2018, the applicant again entered Türkiye. From there he travelled to Germany, where he lodged an application for asylum.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment), taken alone and in conjunction with Article 13 (right to an effective remedy), and on Article 1 of Protocol No. 7 to the Convention (procedural safeguards relating to expulsion of aliens), the applicant complained about his expulsion to Syria and alleged that he had had no effective domestic remedy in that regard. The Court decided to examine these complaints under Article 3, taken alone and in conjunction with Article 13.

Under Article 3, the applicant also complained of being handcuffed during his transfer by bus from Edirne to Hatay.

Relying on Article 5 (right to liberty and security), he alleged that he had not been informed of the true reasons for his detention from the time of his arrest and that he had been unable to challenge the lawfulness of his detention. He also maintained that he had had no effective and enforceable right to compensation in respect of his detention which, in his view, had been contrary to Article 5 of the Convention.

The application was lodged with the European Court of Human Rights on 21 December 2018.

Amnesty International was given leave to intervene as a third party in the written procedure.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Gilberto **Felici** (San Marino),
Saadet **Yüksel** (Türkiye),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Establishment of the facts by the Court

The parties' versions of the facts differed. The applicant alleged that he had been subjected to forced and unlawful expulsion to Syria under the guise of a "voluntary return". The Government maintained that no expulsion order had been made against the applicant and that his return to his country of origin had taken place in accordance with his wish to take advantage of the voluntary return scheme. They maintained that the applicant had not been forcibly expelled.

Having regard to the evidence in the case file, the Court found it established that following his arrest by gendarmes close to the Turkish-Greek border the applicant had been transferred, on the instructions of the Edirne regional immigration department, to the province of Hatay, under the supervision of officials from the Edirne regional immigration department and subsequently of their counterparts in Hatay. After signing a document in Hatay of whose content he had been unaware but which had subsequently turned out to be a form for voluntary return to his country of origin, the applicant had been removed to Syria against his will and in the absence of an expulsion order. When signing the document the applicant had not been assisted by a lawyer or by a representative of any of the organisations mentioned in the legislation, and it was unclear whether he had actually had the assistance of an interpreter. In that connection the Court held that it was not established that the applicant had waived unequivocally – that is, knowingly and intelligently – the protection afforded by Article 3 of the Convention. Furthermore, from the time of his arrest on 19 June 2018 close to the Greek border at Meriç until his removal to Syria through the Hatay/Cilvegözü border crossing, the applicant had been deprived of his liberty and had been unable to move around and travel freely. The Court also noted that during his transfer by bus from Edirne to Hatay/Reyhanlı, the applicant and the other single Syrian men had been handcuffed in pairs except during meal and toilet breaks.

Article 3 (prohibition of inhuman or degrading treatment)

The applicant's removal to Syria

In the Court's view, the Turkish authorities had granted the applicant temporary protection status because they considered at that time that if he and his family were removed to Syria they might face certain risks that contravened the provisions of the Convention. The fact that the official authorities in Syria did not have control of the northern part of the country, to which the applicant was removed, would not have affected the risks he faced. It was common knowledge that, at the relevant time, this was a war zone which was not controlled either by the Syrian government or by its opponents. There was therefore evidence of a real risk that the applicant would be subjected to treatment contrary to Article 3 if he was returned to Syria. The onus was thus on the Government to dispel any doubts raised in that regard. However, the national authorities which removed the applicant to Syria had not properly examined the risks he was liable to face in that country.

It was true that the pre-printed form signed by the applicant contained wording to the effect that he had "been informed in detail by the authorities of the overall situation and the security situation in [his] country of origin". However, that wording – of which the applicant said he had not been aware – did not contain any specific details regarding his individual situation in Syria, nor did it explain why the potential risk that had justified granting him temporary protection no longer applied. The authorities appeared simply to have obtained the applicant's signature on a pre-printed form for his voluntary return to Syria and removed him to that country straight away without showing any further concern for his fate. Even assuming that the rights guaranteed by Article 3 of the Convention could be the subject of a waiver, the applicant had not in any event, when leaving Türkiye, waived unequivocally – that is, knowingly and intelligently – the protection afforded by that Article.

Furthermore, under the Turkish legislation an alien who had been granted temporary protection could be expelled only in exceptional circumstances, which had not been invoked in relation to the applicant and thus did not appear to apply in the present case.

The Court therefore held that substantial grounds had been shown for believing that the applicant had faced a real risk of treatment contrary to Article 3 in Syria and that the Turkish authorities had not dispelled the doubts that might arise in that regard. In transferring the applicant to Syria the national authorities had exposed him, in full knowledge of the facts, to the risk of treatment in breach of the Convention. There had therefore been a violation of Article 3 of the Convention.

Handcuffing of the applicant during his transfer

The Court pointed out that the applicant's detention from the time of completion of the formalities by the Edirne regional immigration department until his removal to Syria had been incompatible with the provisions of the applicable legislation. It could not therefore be said that the applicant had been handcuffed in the context of a lawful detention. Furthermore, the journey from Edirne to Hatay – according to the applicant's statements – had lasted for about 20 hours. Consequently, the Court considered that the applicant had been subjected to degrading treatment in the present case. There had therefore been a violation of Article 3 of the Convention on account of the handcuffing of the applicant during his transfer from Edirne to Hatay on 20-21 June 2018.

Article 13 (right to an effective remedy) taken in conjunction with Article 3

The Court inferred from the administrative and judicial decisions taken by the national authorities and from the Government's observations that the applicant's removal to Syria had not complied with the expulsion procedure laid down in national law.

The voluntary return form had not been signed by a representative of the United Nations High Commissioner for Refugees (UNHCR) or by one of the non-governmental organisations mentioned in the Turkish legislation. However, that signature, which constituted evidence that a person not attached to the administrative authorities had testified to the veracity of the applicant's wish to return to his or her country, was a formal and legal safeguard against any attempted misuse of power by State agents. Moreover, after signing the documents the applicant had not been provided with copies. He had been removed to Syria without the Turkish authorities having presented him with any documentary record of the procedure followed, although under the procedure laid down in Turkish law persons against whom a removal order had been made had to be informed of the possibility of appealing against their removal and of the time-limits for lodging an appeal. Furthermore, the immigration authorities had removed the applicant to Syria two days after his arrest, even though almost half of that time had been taken up by the journey. The haste with which they had acted had prevented the applicant from making use of the available suspensive remedies before his removal to Syria, and there was no convincing evidence in the case file that the applicant had waived unequivocally his right of access to such remedies. Consequently, the exercise by the applicant of the remedies available in Turkish law had been hampered by the hasty and misleading actions of the authorities prior to his removal. In particular, the authorities' failure to apply all the legal safeguards had undermined the Convention compliance of the procedure followed in the present case.

In addition, the two judicial authorities to which the applicant applied had not ruled on the core of his complaints concerning the administrative authorities' failure to observe the legal safeguards against unlawful removal.

Accordingly, the Turkish authorities, by not allowing the applicant to challenge his forced return to Syria before his removal to that country, had deprived him of the remedy he was entitled to exercise under Turkish law, in breach of Article 13 taken in conjunction with Article 3 of the Convention. There had therefore been a violation of those provisions of the Convention.

Article 5 (right to liberty and security)

Was the applicant's deprivation of liberty compatible with Article 5 § 1 of the Convention?

The Court considered that the applicant had been deprived of his liberty from the time of his arrest on 19 June 2018, close to the Greek border at Meriç, until his removal to Syria. During that time he had been under the supervision of State agents and had been unable to move around and travel freely. Under the Turkish legislation, the expulsion of a person in possession of a temporary residence permit could only be ordered on particularly weighty grounds, which had to be set out in a reasoned decision by the authorities concerned and be approved by the relevant judicial authority. However, the applicant's administrative detention with a view to his expulsion had not been recorded as such and had not been officially notified as such to the applicant. Moreover, the authorities had not informed the applicant of the true nature of his detention until his removal to Syria. As a result of these failings, the legal safeguards afforded by the national legislation – designed to provide protection against arbitrariness to persons in detention pending their expulsion – had not taken effect in the applicant's case. There had therefore been a violation of Article 5 § 1 of the Convention.

Was the applicant informed promptly of the accusations against him?

The Court noted that the applicant had not been informed of the true reasons for his detention. He had been told that he was being transferred to a refugee camp in Gaziantep like the other refugees travelling with him in the bus, alone or with their families, but was instead taken to a border crossing with Syria. The fact that the administrative authorities had knowingly hidden from the applicant the true nature and purpose of his detention, so as to make it easier to move him to a province on the border with Syria, could not be considered compatible with the provisions of Article 5. There had therefore been a violation of Article 5 § 2 of the Convention.

Was the applicant able to exercise his right to obtain a speedy decision on the lawfulness of his detention?

The Court observed that under domestic law persons placed in detention pending expulsion had to be informed of the decision to that effect and of the possibility of challenging the lawfulness of the detention order and, where relevant, requesting their release. However, these safeguards had not been applied in the present case. From the time of his arrest until his removal to Syria, the applicant had been unable to challenge the lawfulness of his detention and had not had access to a lawyer or to any outside person. As the procedure had been classified by the immigration authorities as the "voluntary return" of the applicant to his country of origin, he should at least have been contacted by an interpreter and by a representative of UNHCR or of a non-governmental organisation. This had not happened. Since he had not been served with any detention order or been informed of the available remedies, the applicant had likewise been denied the opportunity to lodge an appeal himself. Consequently, he had not had any remedy by which to obtain judicial review of the lawfulness of his detention. There had therefore been a violation of Article 5 § 4 of the Convention.

Was the applicant able to assert a right to compensation?

The Court noted, with regard to the applicant's detention from 19 to 21 June 2018 with a view to his expulsion to Syria, that he had been unable to assert a right to compensation in the domestic courts in respect of the above-mentioned violations. His applications to the Administrative Court and the Constitutional Court had been rejected on the grounds that no expulsion proceedings had been brought against him and thus, by implication, no proceedings for his detention pending expulsion. Without being able to assert the core of his complaints before the courts to which he applied, the applicant had been deprived of any prospect of obtaining a ruling to the effect that his detention had been unlawful and of being compensated accordingly. There had therefore been a violation of Article 5 § 5 of the Convention.

Just satisfaction (Article 41)

The Court held that Türkiye was to pay the applicant 9,750 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

The judgment is available only in French.

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