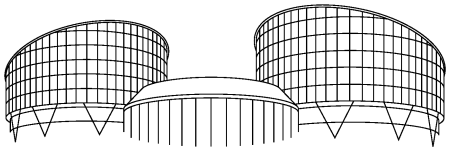

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ALIEV v. TURKEY

(Application no. 30518/11)

JUDGMENT

STRASBOURG

21 October 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aliev v. Turkey,

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

Guido Raimondi, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 30 September 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30518/11) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Ramiz Aliev ("the applicant") on 26 March 2011. The only proof of identity submitted by the applicant was an asylum seeker card issued by the Government of Turkey.

2. The applicant, who had been granted legal aid, was represented by Ms S. N. Yılmaz and Mr A. Yılmaz, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 21 May 2012 the application was communicated to the Government. The Georgian Government were also informed of their right to intervene under Article 36 of the Convention in view of the applicant's declared nationality.

4. The Government and the applicant each filed observations on the admissibility and merits of the application. The Government claimed, as a preliminary matter, that whereas the applicant had introduced himself as an Azerbaijani citizen at the time of his initial arrest in Turkey, he had later claimed that he was of Georgian nationality. However, subsequent contact with the Azerbaijani and Georgian authorities had revealed that the applicant was a national of neither Azerbaijan nor Georgia. The applicant did not comment on the Government's submissions regarding his nationality.

5. The Georgian Government, for their part, neither exercised their right to intervene nor commented on the applicant's claim to be a Georgian national.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974. According to the latest information available to the Court, he lives in Istanbul.

7. The applicant arrived in Turkey in 2006. The parties are in dispute as to whether he entered the country legally at the time.

A. The applicant's first period of detention

8. On 4 or 6 November 2009 the applicant was apprehended in Edirne while trying to flee to Greece illegally. Following brief periods of detention at İpsala Gendarmerie Command and Tunca Foreigners' Admission and Accommodation Centre ("Tunca Accommodation Centre"), he was transferred to Gaziosmanpaşa Foreigners' Admission and Accommodation Centre ("Gaziosmanpaşa Accommodation Centre") in Kırklareli, with a view to being deported. The exact date of his transfer is unknown to the Court; while the applicant claimed that he had been transferred on 9 November 2009, the Government maintained that the transfer had taken place on 11 November 2009 without, however, presenting any documents in support of their submission.

9. It appears that throughout his stay at Gaziosmanpaşa Accommodation Centre, the applicant made numerous attempts to seek asylum, all of which were allegedly ignored by the national authorities, until he was able to get in touch with a lawyer. On 27 July 2010 he lodged a new asylum request through his lawyer, which was admitted by the domestic authorities for processing.

10. On 1 September 2010 the lawyer requested the applicant's immediate release from Gaziosmanpaşa Accommodation Centre in two separate letters sent to the Kırklareli Governor's Office and the Ministry of the Interior, claiming thqsat his detention in prison-like conditions had no basis in domestic law and also contravened Article 5 of the Convention.

11. On 24 September 2010 the applicant was granted asylum seeker status by the Ministry of the Interior, along with a temporary residence permit in Kırklareli, valid until the completion of the asylum procedure.

12. On 27 September 2010 he was released from Gaziosmanpaşa Accommodation Centre.

B. The applicant's second period of detention

13. Following his release, on 30 September 2010 the applicant went to Istanbul instead of staying in Kırklareli as ordered. On 1 October 2010 he

was arrested on suspicion of attempted burglary and placed in police custody at Şehit Tevfik Fikret Erciyes district police station in Fatih, Istanbul ("Fatih police station"). On the same day, he was interrogated by the Fatih public prosecutor and the Fatih Magistrates' Court, which ordered his release. The relevant decision was not made available to the Court.

14. Despite the court order for his release, the applicant was taken back to Fatih police station, where he was placed in a holding cell in the basement.

15. On 4 October 2010 the applicant's lawyer visited him at the station and requested his release. He was, however, informed that this would not be possible as there was an order for his deportation.

16. On 7 October 2010 his lawyer went to Fatih police station once again, to visit the applicant and to inspect the conditions of his detention. According to the lawyer's notes, there were two cells with iron bars in the basement of the station where the applicant was being held, both of which measured approximately 2 x 4 m. On the day of his visit, the applicant was sharing a cell with approximately ten other foreigners, all of whom were sitting on the floor with their backs against the wall and sharing three blankets between them. There were similarly ten to twelve people in the other cell. There was a small vent in the wall measuring approximately 30 x 50 cm, which let in very little light. There was also a pile of rubbish outside it. During their meeting, the applicant also gave a detailed account of his detention conditions, which the lawyer noted as follows. The number of detainees in the cell varied between seven and fifteen. There were no beds, and there was no room for more than three people to lie down at the same time. They were only provided with three blankets and four small pillows to share, and there was no heating. The cell, which also lacked natural light and sufficient ventilation, was always cold and there was no provision for outdoor exercise. The food provided was also insufficient; they had to pay to receive more. It appears that the lawyer brought the applicant and some of the other detainees sandwiches after the meeting, as they had complained of being hungry.

17. On 9 October 2010 the applicant was transferred to Kumkapı Removal Centre pending his deportation, apparently because the basement of Fatih police station was flooded.

18. On 12 October 2010 Fatih police station was inspected by the Fatih public prosecutor, who found the detention facility to be in compliance with the standards set out in the relevant regulations without, however, going into any details about the specific conditions in his brief report.

19. On 19 October 2010 the applicant was conditionally released from Kumkapı Removal Centre and instructed to go to Kırklareli, after it became apparent that he had already been granted a temporary permit to reside there in September 2010.

C. The applicant's third period of detention and alleged ill-treatment

20. It appears that following his release from Kumkapı Removal Centre, the applicant went to Edirne instead of going to Kırklareli as instructed. On 12 November 2010 he was apprehended in Edirne close to the Greek border while attempting to flee to Greece once again. He was placed back in Gaziosmanpaşa Accommodation Centre.

21. During a headcount conducted on 1 December 2010, officers at Gaziosmanpaşa Accommodation Centre noticed that the applicant was intoxicated and behaving rowdily. He was therefore separated from the other detainees and escorted to the management office. According to the Government, as one of the officers was unlocking the door to the management office, the applicant collapsed unexpectedly in the corridor and hit his face on a radiator. The impact caused heavy bleeding in his left eye, and he started throwing up, in a semi-conscious state. According to the applicant, however, he did not fall but was forcefully pushed by one of the officers against the radiator and was severely beaten up once he landed on the floor.

22. The applicant was then taken to the Kırklareli State Hospital, where it appears he was diagnosed with alcohol poisoning. Following some initial medical treatment, on 3 December 2010 he was admitted to the ophthalmology department of the Trakya University Hospital, where he underwent an operation on his left eye, as well as various related treatments. He was discharged on 23 December 2010. The medical report drawn up on the day of his discharge indicated that he had been admitted to the ophthalmology department with symptoms of pain, reduced vision and exophthalmos in the left eye, which he had stated had been caused by a blow to his eye. He was diagnosed with widespread corneal erosion and a retrobulbar haemorrhage. He was also found to have an orbital floor fracture caused by the blunt trauma to his eye, for which he underwent an operation.

23. In the meantime, the Kırklareli public prosecutor had initiated an investigation into the incident of 1 December 2010 of his own motion. According to the documents in the case file, on 2 December 2010 he took a statement from a caretaker working at Gaziosmanpaşa Accommodation Centre, who had witnessed the applicant suddenly collapse while the two officers escorting him had been unlocking the door.

24. Moreover, on an unspecified date, the police took a statement from the applicant in hospital, who at the time alleged that he had lost his balance because he had been pushed by an officer.

25. Following his discharge from hospital, the applicant was taken to Şehit Hayrettin Yeşin police station in Kırklareli on 23 December 2010 to give a statement, in the presence of his lawyer, regarding the injury he had sustained on 1 December 2010. The applicant stated that he had no complaints of ill-treatment and that he had lost his balance and fallen over

because he had been intoxicated at the time. He was subsequently told he was free to leave, but was ordered to stay in Kırklareli in accordance with his residence permit.

26. On 21 January 2011 the Kırklareli public prosecutor decided not to bring any charges in relation to the applicant's injury in the light of his statement of 23 December 2010.

27. In the meantime, the applicant went to Istanbul after being released from detention on 23 December 2010, despite being specifically ordered to remain in Kırklareli. On 28 December 2010 he lodged a criminal complaint with the Fatih public prosecutor against the police officers who had allegedly ill-treated him at Gaziosmanpaşa Accommodation Centre. He argued, in particular, that following the headcount on the evening of 1 December 2010 he had been taken to the management office, where one of the officers had grabbed him by the collar and tossed him against the wall, as a result of which he had hit his eye on the radiator and passed out. He claimed that he had not told the truth at Şehit Hayrettin Yeşin police station, as he had been warned by an officer that his detention would be prolonged if he pressed charges.

28. When the public prosecutor subsequently summoned him to make a statement, the applicant stated that he had previously misrepresented the facts as he had been scared, without giving any more details as to why. He added that he had also been severely beaten up by the officers after he had collapsed onto the floor, and admitted that he had been drinking *kolonya* (citrus cologne), mixed with a soft drink, prior to the incident.

29. On 31 January 2011 the Fatih public prosecutor issued a decision to the effect that he had no jurisdiction (*görevsizlik kararı*) in respect of the applicant's complaints, and referred the matter to the Kırklareli public prosecutor.

30. On 8 April 2011 the Kırklareli public prosecutor took statements from two of the suspected police officers and three witnesses, also police officers. The two suspects denied the applicant's allegation that they had attacked him. All of the witnesses corroborated that the applicant had been very drunk on the relevant day, and one of them, who had been at the scene of the incident, stated that the applicant had fallen over without anyone having pushed him.

31. On 9 September 2011 the Kırklareli public prosecutor issued a decision not to prosecute because of insufficient evidence. Referring to the inconsistency between the applicant's statements, the public prosecutor stressed that although the applicant had stated that he had been scared to tell the truth at Şehit Hayrettin Yeşin police station on 23 December 2010, there had been no reason for him to be scared, particularly because he had made his statement in the presence of his lawyer.

32. The applicant did not object to the decision of the Kırklareli public prosecutor, despite being entitled to do so before the Edirne Assize Court.

D. Subsequent developments

33. On 18 May 2011 the applicant's request for asylum was rejected by the Ministry of the Interior, as he had failed to comply with the requirements to be granted asylum seeker status as set out in the 1951 Convention relating to the Status of Refugees ("the Geneva Convention") and the Turkish Asylum Regulation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law and practice

34. The relevant provisions of the Turkish Constitution provide as follows:

Article 36

"Everyone has the right to a fair trial ..., as a claimant or defendant, before courts of law ..."

Article 125

"All actions or decision taken by the authorities are amenable to judicial review ...

If the implementation of an administrative measure would result in damage which is difficult or impossible to compensate and the measure is also clearly unlawful, a stay of execution may be granted, stating reasons ..."

The administration shall be liable to make compensation for damage resulting from its actions or decisions."

35. The relevant parts of section 28 of the Administrative Procedure Act (Law no. 2577), in force at the relevant time, provided as follows:

"(1) The authorities shall be obliged to adopt decisions without delay or to take action in accordance with the decisions on the merits or any request for a stay of execution issued by the Supreme Administrative Court, the ordinary or regional administrative courts, or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following service of the decision on the authorities.

...

(3) Where the authorities do not adopt a decision or do not act in accordance with a decision by the Supreme Administrative Court, the ordinary or regional administrative courts, or the tax courts, a claim for compensation in respect of pecuniary or non-pecuniary damage may be lodged against the authorities with the Supreme Administrative Court and the other relevant courts.

(4) In the event of the deliberate failure on the part of a civil servant to enforce a judicial decision within the thirty days [following the decision], compensation proceedings may be instigated against both the authorities and the civil servant who has refused to enforce the decision in question."

36. Article 41 of the Code of Obligations (Law no. 818), in force at the material time, provided as follows:

> "Any person who causes damage to another in an unjust manner, be it wilfully, negligently or imprudently, shall afford redress for that damage."

37. Article 141 of the Code of Criminal Procedure (Law no. 5271) sets out the circumstances in which a person detained during criminal investigation or prosecution may claim compensation from the State.

38. A description of the relevant domestic law and practice that governed foreigners and asylum seekers at the material time can be found in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-45, 22 September 2009).

B. International material

39. The standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") for the conditions of detention of foreign nationals (see the CPT standards, document no. CPT/Inf/E (2002) 1- Rev. 2013, page 65) provide, in so far as relevant, as follows:

> "27. In certain countries, CPT delegations have found immigration detainees held in police stations for prolonged periods (for weeks and, in certain cases, months), subject to mediocre material conditions of detention, deprived of any form of activity and on occasion obliged to share cells with criminal suspects. Such a situation is indefensible.
>
> The CPT recognises that, in the very nature of things, immigration detainees may have to spend some time in an ordinary police detention facility. However, conditions in police stations will frequently - if not invariably - be inadequate for prolonged periods of detention. Consequently, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum."

40. In June 2009 the CPT visited a number of detention facilities in different parts of Turkey, including Fatih police station in Istanbul where the applicant was detained between 1 and 9 October 2010. It published a report of its findings on 16 December 2009. While there were no particular remarks in the report regarding the material conditions at the detention facility in question, it highlighted the unsuitability of such short-term custody cells for longer-term detention in the following terms:

> "37. ... the CPT recommends that the Turkish authorities review the conditions of detention in all law enforcement establishments where persons may be held for 24 hours or more, in order to ensure that the detention facilities have adequate access to natural light.
>
> Finally, the Committee reiterates its recommendation that the Turkish authorities explore the possibility of offering outdoor exercise on a daily basis to persons held for 24 hours or more by law enforcement agencies; the need for outdoor exercise facilities for detainees should also be taken into account in the design of new premises."

41. In the same visit report, the CPT also made the following pertinent remarks on the inspection of law enforcement establishments by public prosecutors in Turkey:

> "35. In previous visit reports, the CPT called for "more robust on-the-spot checks" of law enforcement establishments by public prosecutors.
>
> The information gathered during the 2009 visit would suggest that there is all too often a striking discrepancy between theory and practice. Although all law enforcement establishments received inspection visits by the competent public prosecutor on a more or less regular basis, the quality and thoroughness of such inspections frequently left much to be desired. By way of example, in a number of establishments, visiting prosecutors had certified by signature the accuracy of custody registers, without apparently having detected flagrant omissions and errors present in them. Further, it would seem that visiting prosecutors only rarely interviewed detained persons in private. To sum up, inspections by public prosecutors often appeared to be an empty gesture [footnote: The explanation given by the head of one of the Anti-Terror Departments visited about the role of visiting prosecutors ("*We work closely together and he is our superior in investigations. He does not record his visits. He uses the place like his office*"), is symptomatic of the situation observed by the delegation]."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

42. The applicant complained under Article 5 § 1 of the Convention that he had been detained on three different occasions between 4 November 2009 and 23 December 2010, none of which had had a basis in domestic law. He maintained under Articles 5 § 4 and 13 of the Convention that there had been no effective domestic remedies at his disposal to challenge the lawfulness of his detention, and further complained under Article 5 §§ 2 and 3 that he had not been duly informed of the reasons for the deprivation of his liberty or brought before a judge promptly. He lastly argued, under Article 5 § 5 of the Convention, that he had had no right to compensation under the domestic law in respect of these complaints.

Article 5 of the Convention provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

43. The Court considers at the outset that the complaint under Article 13 falls to be examined solely under Article 5 § 4 of the Convention, which provides a *lex specialis* in relation to the more general requirements of Article 13 (see *Amie and Others v. Bulgaria*, no. 58149/08, § 63, 12 February 2013).

A. Admissibility

1. The parties' submissions

44. The Government argued that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention in relation to his complaints under Article 5 of the Convention. They maintained in this connection that he could have sought compensation under Article 141 of the Code of Criminal Procedure (Law no. 5271) for his allegedly unlawful detention. They further stated that it had been open to him to object to the decision rejecting his asylum request.

45. The applicant argued that no effective remedy existed in relation to his complaints under Article 5 of the Convention and that the Government had not provided any examples where resorting to the indicated remedies had provided redress to people in a similar position.

2. The Court's assessment

46. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's specific complaints and offered reasonable prospects of success.

47. The Court notes in this connection that Article 141 of Law no. 5271 referred to by the Government concerns solely detention during criminal investigation or prosecution. While the Court observes that the applicant was taken into police custody on 1 October 2010 on suspicion of having committed a criminal offence, the Fatih Magistrates' Court ordered his release from detention the same day, and it appears that the criminal investigation against him was not pursued afterwards. Nevertheless, the Court notes from the documents in the case file that he continued to be kept in detention until 19 October 2010 for deportation purposes, rather than in connection with a criminal investigation or prosecution as indicated in Article 141 of Law no. 5271. The applicant's remaining periods of deprivation of liberty (from 4 or 6 November 2009 to 27 September 2010 and from 12 November 2010 to 23 December 2010) similarly concerned detention in the context of immigration controls within for the purposes of Article 5 § 1 (f) of the Convention, as also indicated by the Government in their observations (see paragraph 52 below), and did not relate to any criminal charges.

48. In these circumstances, even assuming that Article 141 of Law no. 5271 could provide effective redress for the applicant's brief detention on 1 October 2010 pending his appearance before the magistrates' court on suspicion of attempted burglary, the Court considers that the provision was inappropriate and ineffective *vis-à-vis* the remaining periods of his detention, which lasted approximately a year in total (see, *mutatis mutandis*, *Keshmiri v. Turkey (no. 2)*, no. 22426/10, § 27, 17 January 2012). The Court therefore rejects the Government's preliminary objection under this head.

49. As to the Government's argument that the applicant failed to object to the rejection of his asylum request, the Court observes, without going into a discussion as to whether such an objection was capable of providing effective redress within the meaning of Article 5, that he was no longer in

detention at the time his asylum request was rejected on 18 May 2011. Nor is there any evidence to suggest that he was taken into detention after the rejection of that request. The Court therefore considers the remedy referred to by the Government to be wholly irrelevant for the purposes of the present complaints and accordingly rejects their objection under this head as well.

50. As regards the complaint under Article 5 § 3, the Court notes that the only time the applicant appeared to be taken into custody for a reason falling within the ambit of Article 5 (1) (c) (see paragraph 13 above), he was brought before the Fatih Magistrates' Court the same day, which was sufficiently prompt in the circumstances. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

51. The Court notes that the remaining complaints under Article 5 §§ 1, 2, 4 and 5 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 5 § 1 of the Convention

52. Referring mainly to Section 9 (B) of Circular No. 2006/12, which concerns the deportation of foreigners who have entered or attempted to leave Turkey illegally, the Government stated that the applicant had been detained for the purposes of maintaining public order and preventing crime. In this connection, the Government also referred to Section 23 of the now repealed Act on the Residence and Travel of Foreigners in Turkey (Law no. 5683), which concerned the "residence" of foreigners in places indicated by the Ministry of the Interior pending their deportation, and maintained that the applicant's detention had complied with the requirements of Article 5 § 1 (f) of the Convention.

53. The applicant maintained that his detention had no basis in domestic law.

54. The Court observes that there are three separate periods of detention to be taken into consideration in the instant case. It notes in this connection that the first period of detention started on 4 or 6 November 2009 and came to an end with the applicant's release on 27 September 2010; the second period started on 1 October 2010 and ended on 19 October 2010; and the final period started on 12 November 2010 and ended on 23 December 2010, although the applicant was undergoing medical treatment in hospital for the last twenty-three days of that period. The Court notes that overall, the applicant's detention lasted approximately a year, even excluding the period he spent in hospital.

55. The Court considers in the light of the content of the case file, as well as the Government's submissions noted above, that the applicant was deprived of his liberty in the context of immigration controls with a view to his removal within the meaning of Article 5 § 1 (f) of the Convention, except for the brief period on 1 October 2010 when he was initially detained on suspicion of having committed a crime.

56. The Court has already examined a similar grievance in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 125-135, 22 September 2009), in which it found that in the absence of clear legal provisions in Turkish law establishing the procedure for ordering detention with a view to deportation, the applicants' detention was not "lawful" for the purposes of Article 5 of the Convention. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment. The Court notes, in particular, that while Section 23 of Law no. 5683 referred to by the Government envisaged the "residence" of foreigners pending their deportation, it did not mention anything about their "forceful detention", as in the applicant's case.

57. There has accordingly been a violation of Article 5 § 1 of the Convention in the instant case.

2. Alleged violation of Article 5 § 2 of the Convention

58. The Government argued that the applicant had been informed of the reasons for the deprivation of his liberty when he was arrested in Istanbul on 1 October 2010 and subsequently in Edirne on 12 November 2010.

59. The applicant maintained that he had not been informed of the reasons for the deprivation of his liberty.

60. The general principles governing the elementary safeguard embodied in Article 5 § 2 of the Convention were set out in the case of *Abdolkhani and Karimnia* (cited above, § 136). The Court reiterates in this connection that by virtue of Article 5 § 2, anyone who is arrested must be told, in simple, non-technical language that can be easily understood, the essential legal and factual grounds for the arrest, so as to be able, if he or she sees fit, to apply to a court to challenge its lawfulness in accordance with Article 5 § 4.

61. The Court notes that the applicant was first taken into detention on 4 or 6 November 2009, while trying to flee to Greece illegally, and was subsequently placed in Gaziosmanpaşa Accommodation Centre, where he stayed until 27 September 2010. However, there is nothing in the case file to suggest that he was notified of the reasons for his detention at any time during the course of that detention, and the Government did not claim the contrary in their observations.

62. The Court further observes that when the applicant was arrested for a second time on 1 October 2010 on suspicion of attempted burglary, he

signed a document according to which he had been informed of the reason for his arrest. Yet, as the Court has already established, after the Fatih Magistrates' Court's decision to release him on 1 October 2010, the applicant continued to be detained not on account of a criminal charge, but in the context of immigration controls (see paragraph 55 above). In this connection, the Court notes that there is no other document in the case file demonstrating that he was formally notified of the grounds for his continuing detention at Fatih police station or subsequently at Kumkapı Removal Centre. In the absence of such documents, the Court is led to the conclusion that the reasons for the applicant's detention following the Fatih Magistrates' Court's decision to release him were never communicated to him by the national authorities.

63. The Court lastly notes that on 12 November 2010 the applicant was once again detained after being caught while attempting to leave Turkey illegally. On the relevant date, he was asked to sign a document which indicated that he had been detained by virtue of Law no. 5683 on the Residence and Travel of Foreigners in Turkey, without referring to any specific provisions. However, bearing in mind that that Law neither dealt with attempts at illegal departures from Turkey nor the detention of foreigners caught while attempting to leave illegally, the Court cannot but hold that the applicant had not been duly notified of the reasons for his ensuing detention at Gaziosmanpaşa Accommodation Centre within the meaning of Article 5 § 2 of the Convention.

64. There has accordingly been a violation of Article 5 § 2 of the Convention.

3. Alleged violation of Article 5 §§ 4 and 5 of the Convention

65. The Government submitted that the applicant could have applied to the administrative courts under Article 125 of the Constitution in order to challenge the lawfulness of his detention, or could have sought compensation under section 28 of the Administrative Procedure Act (Law no. 2577) or Article 41 of the former Code of Obligations (Law no. 818).

66. The applicant claimed that the remedies suggested by the Government were not effective in practice.

67. The Court notes that it has found a violation of Article 5 §§ 4 and 5 of the Convention in the past in a number of similar cases, where it concluded that the Turkish legal system did not provide people in the applicant's position with a remedy whereby they could obtain judicial review of the lawfulness of their detention, within the meaning of Article 5 § 4, and be awarded compensation for their unlawful detention as required under Article 5 § 5 of the Convention (see *Abdolkhani and Karimnia*, cited above, § 142; *Tehrani and Others v. Turkey*, nos. 32940/08, 41626/08 and 43616/08, § 79, 13 April 2010; and *Dbouba v. Turkey*,

no. 15916/09, §§ 53-54, 13 July 2010). In the absence of any submission by the Government of examples in which the administrative or civil courts speedily examined requests and ordered the release of an asylum seeker on grounds of the unlawfulness of his or her detention and awarded him or her compensation, the Court sees no reason to depart from its findings in the aforementioned judgments.

68. Moreover, the Court has already found that the applicant was not duly informed of the reasons for any of the deprivations of his liberty (see paragraph 64 above). It considers that this fact in itself had the effect that the applicant's right of appeal against his detention under Article 5 § 4 was deprived of all substance (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 432, ECHR 2005-III; *Abdolkhani and Karimnia*, cited above, § 141; and *Dbouba v. Turkey*, cited above, § 54).

69. In the light of the foregoing, the Court concludes that there has been a violation of Article 5 §§ 4 and 5 of the Convention on the facts of the instant case.

II. ALLEGED VIOLATION OF ARTICLE 3 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION IN CONNECTION WITH THE CONDITIONS OF THE APPLICANT'S DETENTION

70. Relying on Article 3 of the Convention, the applicant complained about the material conditions of his detention at Tunca Accommodation Centre and Fatih police station respectively. He further claimed under Article 13, in conjunction with Article 3, that there had been no effective domestic remedies available to him to complain about his detention conditions.

Articles 3 and 13 of the Convention provide as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

71. The Court notes that the Government did not raise any preliminary objections on the admissibility of these complaints. The Court reiterates, however, that it cannot set aside the application of the six-month rule solely because a government has not made a preliminary objection to that effect

(see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I, and *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

72. The Court reiterates in this connection that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter "within a period of six months from the date on which the final decision was taken". If no remedies are available, or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 72, 10 January 2012).

73. The applicant in the present case complained about the material conditions in two different detention facilities, namely Tunca Accommodation Centre, from which he was released on 11 November 2009 at the latest, and Fatih police station, where he was kept between 1 and 9 October 2010. Bearing in mind his allegations concerning the absence of an effective remedy in relation to the present complaint, and without prejudice to the Court's findings on this issue under Article 13 below, the applicant was accordingly expected to lodge his application with the Court within six months from the respective dates of his release from the relevant facilities.

74. The Court notes that the application having been lodged on 26 March 2011, the applicant's complaints relating to his detention at Tunca Accommodation Centre were lodged outside the six-month time-limit. It follows that his complaints under Articles 3 and 13 in respect of the conditions of his detention at Tunca Accommodation Centre are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

75. The Court notes, on the other hand, that the complaints under Articles 3 and 13 relating to the applicant's subsequent detention at Fatih police station raise serious issues of fact and law under the Convention, the determination of which requires an examination on the merits. They are, therefore, not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 3 of the Convention

(a) The parties' submissions

76. The Government stated at the outset that the applicant had been held at Fatih police station between 1 and 9 October 2010 pending the completion of certain administrative measures prior to his transfer to Kumkapı Removal Centre, with a view to his deportation. The period he

had spent at the station could not, therefore, be considered as an instance of "arrest" or "custody".

77. The Government further stated that the applicant's allegations regarding the material conditions at Fatih police station were ill-founded. They claimed in this regard that there were two detention rooms at the station, both of which measured 2.25 x 4.55 m. One of the rooms was allocated to men and the other to women; however, both were used to accommodate men in the absence of women. The rooms were ventilated and had lighting. An official inspection carried out on 12 October 2010 by a public prosecutor had verified that the detention facility complied with the standards set out in the relevant domestic legislation. The Government further indicated that on 1 October 2010, the day the applicant was placed in custody at Fatih police station, the total number of people detained at the station was seven, including the applicant.

78. The applicant submitted that the holding cell located below ground level at Fatih police station where he was kept for nine days had been overcrowded; the number of occupants had varied between seven and fifteen during the course of his detention, whereas the cell had only measured approximately 2 x 4 m. The cell had lacked some very basic amenities, such as beds and mattresses, bedding, furniture and proper ventilation, and the conditions had been inappropriate for sleeping: he and the other detainees had only been provided with three blankets and four small pillows to share, and the size of the room had only allowed three people to lie on the floor at any one time. Moreover, there had been no heating in the cell, so he had been constantly cold; there had also been no access to natural light and no provision for outdoor exercise. The food provided had also been insufficient, and more food could only be ordered at the detainees' own personal expense. He contended that while the detention facility could function as a temporary holding place for suspects waiting to be brought before a court following their initial apprehension, it was highly unsuitable for longer-term detention.

(b) The Court's assessment

79. The Court firstly notes the Government's submission that the applicant was not under arrest or in custody at Fatih police station, but was only kept there pending certain administrative procedures. The Court notes that it has examined and dismissed similar arguments by the respondent Government in the past, and finds no reason to depart from that conclusion in the present case (see, for instance, *Abdolkhani and Karimnia*, cited above, §127). The Court accordingly holds that given that the applicant was held at a facility under State supervision and against his own will, the physical conditions in that centre had to comply with the requirements of Article 3 of the Convention, regardless of the classification of the nature of

the detention under the national law (see *Tehrani and Others v. Turkey*, cited above).

80. The Court further refers to the principles established in its case-law regarding conditions of detention (see, in particular, *Yarashonen v. Turkey*, no. 72710/11, §§ 70-73, 24 June 2014, and the cases cited therein). It has previously found violations of Article 3 on account of inadequate conditions of detention, even for short periods of time, notably ten and four days of detention in an overcrowded and dirty cell in the case of *Koktysh v. Ukraine* (no. 43707/07, §§ 22 and 91-95, 10 December 2009) and five days in *Gavrilovici v. Moldova* (no. 25464/05, §§ 25 and 42-44, 15 December 2009), and *Căşuneanu v. Romania* (no. 22018/10, § 60-62, 16 April 2013).

81. In the present case, the Court observes that the applicant was detained in the basement of Fatih police station for nine days between 1 and 9 October 2010, before being transferred to Kumkapı Removal Centre pending his deportation. The Court notes that the parties appear to agree on the approximate size of the cell in which the applicant was detained, but contest other aspects of his detention conditions at the relevant police detention facility.

82. While it cannot verify the veracity of all the allegations made by the applicant, the Court notes that he provided a very detailed account of the material conditions at Fatih police station. Moreover, the applicant's account was largely supported by his lawyer, who had the chance to observe the conditions first-hand. The Court notes in this connection the applicant's lawyer's statements that on the day of his visit (7 October 2010), the applicant was sharing a poorly lit and poorly ventilated cell below ground level with approximately ten other people (see paragraph 16 above). Bearing in mind the dimensions of the cell, this constituted severe overcrowding, which in itself poses a problem under Article 3 of the Convention, even if it lasted for only a day (see *Abdolkhani and Karimnia v. Turkey (no. 2)*, no. 50213/08, § 30, 27 July 2010).

83. The Court further observes that the applicant's detailed descriptions of the conditions of his detention at Fatih police station were only partly challenged by the Government. Moreover, the limited submissions of the Government lacked sufficient substantiation. The Court reiterates at this juncture that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. Failure on the part of a Government to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations, especially when they are backed by reliable evidence (see *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, § 77, 3 November 2011).

84. Accordingly, as regards the applicant's claim about overcrowding, the Government indicated that there were seven detainees in total at Fatih police station on the first day of his detention. They did not, however, submit a copy of the custody register indicating the names or number of detainees on the relevant day or clarify how those seven detainees were distributed between the two holding cells, information which was essential for determining the personal space available to the applicant. What is more, they failed to give any indication as to the number of detainees during the subsequent eight days of the applicant's detention.

85. As to the applicant's remaining allegations regarding inadequate sleeping facilities, lack of heating, natural light and access to outdoor exercise, as well as the insufficiency of the food provided, the Court notes that the Government left them completely unanswered. They confined themselves to stating that Fatih police station had been inspected by a public prosecutor a couple of days after the applicant's transfer to another detention centre, an inspection which had confirmed that the material conditions at Fatih police station complied with the domestic guidelines.

86. The Court firstly notes that since the relevant domestic guidelines were not made available by the Government, it cannot review the adequacy and appropriateness of the standards against which the detention facility was inspected. Secondly, the Court cannot but note that all detainees, including the applicant, were moved out of the facility in question on 9 October 2010 on account of the apparent flooding of the basement. In the absence of further information as to the state of the facility after the flooding, including the number of detainees, the Court cannot give much weight to the findings of the public prosecutor. Thirdly, while the detention conditions in question could in theory be suitable to short-term detention in police custody, the length of the applicant's detention is a decisive factor in the Court's examination; it is, however, unclear whether the suitability of the police custody facilities for longer-term detention, such as in the applicant's case, figured in the public prosecutor's assessment. The Court therefore considers the public prosecutor's findings to be unreliable for the purposes of the present case. The Court's misgivings as to the merits of this inspection also find support from the CPT, which indicated in its 2009 report that the quality and thoroughness of such inspections frequently left much to be desired and gave the impression that they were often conducted as an "empty gesture" (see paragraph 41 above for more details).

87. In the absence of sufficient arguments by the Government to refute the applicant's detailed allegations, and bearing in mind the CPT's well-established position regarding the unsuitability of short-term custody cells for longer-term detention (see paragraphs 39-40 above), the foregoing considerations are sufficient to enable the Court to conclude that the conditions of the applicant's nine-day detention in the basement of Fatih police station amounted to degrading treatment contrary to Article 3

(see, *mutatis mutandis*, *Charahili v. Turkey*, no. 46605/07, § 77, 13 April 2010).

88. Accordingly, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at Fatih police station.

2. Article 13 of the Convention

89. The Government submitted that the applicant had had effective remedies at his disposal in respect of his grievances about the conditions of his detention. It had accordingly been open to the applicant to bring an action before the administrative courts in accordance with Articles 36 and 125 of the Constitution.

90. The applicant reiterated his complaints. He maintained that the domestic remedies referred to by the Government were only available in theory and not effective in practice, which was the reason why the Government had not submitted any examples of administrative or judicial decisions reviewing conditions of detention at places where foreign nationals were held.

91. The Court points out at the outset that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention as in the present case (see above paragraphs 79-88) and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

92. The Court notes that it has already examined and rejected similar submissions by the Government in comparable cases and found a violation of Article 13 of the Convention (see *Yarashonen*, cited above, §§ 56-66). Given the particular facts of the instant case, and in the absence of any examples submitted by the Government where recourse to an administrative or judicial authority led to the improvement of detention conditions and/or to an award of compensation for the anguish suffered on account of the adverse material conditions, the Court finds no reason to depart from its findings in the above-mentioned cases.

93. The Court therefore concludes that there has been a violation of Article 13, in conjunction with Article 3 of the Convention, on account of the absence of an effective remedy to complain about the inadequate conditions of the applicant's detention at Fatih police station.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ILL-TREATMENT BY THE POLICE

94. The applicant complained, without referring to any specific provisions of the Convention, that he had been beaten by several police officers at Gaziosmanpaşa Accommodation Centre on 1 December 2010, which had left him severely injured.

95. The Court considers that this complaint should be examined from the standpoint of Article 3 of the Convention alone.

A. The parties' submissions

96. The Government contested the applicant's allegations that he had been beaten by police officers at Gaziosmanpaşa Accommodation Centre. While they acknowledged that he had sustained a serious injury to his left eye while in detention at the facility, they stated that the injury had been caused when he had lost his balance and hit his face on a radiator, after drinking three glasses of *kolonya* (citrus cologne). The applicant had admitted in his statement of 23 December 2000, taken at Şehit Hayrettin Yeşin police station in the presence of his lawyer, that he had fallen over because he had been heavily intoxicated. There were also witnesses who had confirmed this version of events.

97. The Government added that whereas the applicant subsequently retracted his statement of 23 December 2000, which he claimed he had made under intimidation by police officers, and lodged a criminal complaint against the officers who had allegedly beaten him, the Kırklareli public prosecutor found his allegations of intimidation to be groundless, particularly bearing in mind that he had made the relevant statement in the presence of his lawyer.

98. The applicant, for his part, claimed that when his statement had first been taken at the Trakya University Hospital, he had described the incident as it had occurred, stating that he had hit his head on the radiator as a result of being pushed by a police officer. However, he had subsequently changed his statement to avoid the prolongation of his detention, following warnings he had received from the officers at Gaziosmanpaşa Accommodation Centre. Once he had been released from the facility and had left Kırklareli, however, he had found the chance to give an accurate account of the events and to lodge a criminal complaint against the officers who had ill-treated him. However, the investigation carried out into his complaints had not been effective.

B. The Court's assessment

99. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

100. In the instant case, the ill-treatment complained of by the applicant consisted of being shoved against a radiator, as a result of which he sustained a serious injury to his left eye, and being beaten after he fell to the floor. The applicant did not provide any details as regards the manner in which the beatings were inflicted upon him.

101. The Court notes at the outset that the injury sustained by the applicant to his eye, which was sufficiently serious to bring it within the scope of Article 3, is well documented in medical reports (see paragraph 22 above). However, it remains to be considered whether the applicant has laid the basis of a *prima facie* case of misconduct on the part of the police officers in relation to the injury in question.

102. The Court firstly observes in this connection that the applicant was not consistent in his allegations before the domestic authorities; whereas he stated at Şehit Hayrettin Yeşin police station on 23 December 2010 that he had fallen against the radiator after losing his balance in an intoxicated state, he subsequently argued before the Fatih public prosecutor that he had been thrown against the radiator by a police officer. Although he later claimed that he had been prevented from telling the truth at the police station as a result of intimidation, the Court, like the Kırklareli public prosecutor, finds this claim unconvincing, considering that the applicant had benefited from the assistance of a lawyer at the relevant time. Moreover, the Court notes from the documents in the case file that at the time of being admitted to hospital, the applicant had stated that he had received a blow to his eye, which is completely at odds with all his other statements.

103. The Court secondly notes that despite the apparent inconsistencies in the applicant's version of events, the Kırklareli public prosecutor promptly initiated an investigation into the matter, initially of his own motion and subsequently upon the complaint lodged by the applicant, and took statements from the suspects as well as a number of witnesses, including two eyewitnesses. All of the witnesses heard confirmed that the applicant had been very drunk at the relevant time, and a couple of them attested to having seen him collapse, without any aggression on the part of the police officers. The Kırklareli public prosecutor accordingly decided not to prosecute the accused officers of ill-treatment in the absence of any relevant evidence. The applicant did not object to that decision.

104. The Court further notes that although the applicant claimed to have been beaten after collapsing on the floor, he did not submit any medical or other evidence to corroborate this allegation. Moreover, he did not even mention these beatings when he initially lodged his criminal complaint with the Fatih public prosecutor on 28 December 2010, and similarly confined his observations before the Court mainly to the injury sustained to his eye, with only a passing reference to his alleged beating.

105. In view of the foregoing, the Court concludes that the applicant has not laid the basis of an arguable claim that he was subjected to ill-treatment within the meaning of Article 3 during his detention at Gaziosmanpaşa Accommodation Centre. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

107. The applicant did not submit a claim for compensation for pecuniary damage. As regards non-pecuniary damage, he claimed 50,000 euros (EUR) in view of the breach of his Convention rights.

108. The Government contested that claim as excessive.

109. The Court considers that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations. Having regard to the seriousness of the violations in question and to equitable considerations, it awards the applicant EUR 10,000 under this head.

B. Costs and expenses

110. The applicant also claimed EUR 3,880 for lawyer's fees and EUR 763 for other costs and expenses incurred before the Court, such as travel expenses, stationery, photocopying, translation and postage. In that connection, he submitted a time sheet showing that his legal representatives had carried out forty-four hours' legal work, a legal services agreement concluded with his representatives, and invoices for the remaining costs and expenses.

111. The Government contested those claims, deeming them unsubstantiated.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum requested in full (EUR 4,643) covering costs under all heads. From this should be deducted EUR 850, granted by way of legal aid under the Council of Europe's legal aid scheme.

C. Default interest

113. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 1, 2, 4 and 5 of the Convention (regarding the applicant's right to liberty), and the complaints under Articles 3 and 13 of the Convention (regarding the material conditions of his detention at Fatih police station as well as the lack of effective remedies to raise his allegations concerning those conditions) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 §§ 1, 2, 4 and 5 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the material conditions of the applicant's detention at Fatih police station;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 on account of the absence of effective remedies to complain about the material conditions of detention at Fatih police station;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,643 (four thousand six hundred and forty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President