



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

SECOND SECTION

CASE OF AHMADPOUR v. TURKEY

(Application no. 12717/08)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

22/11/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ahmadpour v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 12717/08) 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 an Iranian national, Ms Latife Ahmadpour (Derya Neverdi) (“the applicant”), on 14 March 2008.

2. The applicant was represented by Mr A. Baba, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 March 2008 the President of the Chamber to which the case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicant should not be deported to Iran until the Court comes to a conclusion regarding the application.

4. On 18 April 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided that the admissibility and merits of the application would be examined together (Article 29 § 3) and that the case would be given priority (Rule 41).

5. The applicant and the Government each submitted written observations on the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Kırklareli.

A. The applicant's arrival in Turkey and the deportation proceedings

7. On an unspecified date the applicant was divorced from her husband in Iran. The applicant's ex-husband was appointed the legal guardian of the couple's children.

8. On 2 October 2005 the applicant arrived in Turkey with her children, whom she had brought without the consent of her ex-husband. According to her submissions, the applicant had escaped from the violence of her ex-husband. The applicant applied to the national authorities and the Office of the United Nations High Commissioner for Refugees ("the UNHCR") requesting temporary and permanent asylum soon after her arrival in Turkey.

9. On 28 September 2006 the applicant married an Iranian national who had converted to Christianity. In October 2006 the applicant also converted to Christianity.

10. On an unspecified date the UNHCR dismissed the applicant's asylum request.

11. On 22 December 2006 the applicant and her husband were served with the decisions of the Ministry of Interior rejecting their temporary asylum requests. The Ministry of the Interior considered that the applicant and her husband wished to use the temporary asylum system in Turkey in order to go to a European country where they could improve their financial situation. The applicants were also informed that they had the right to object to the decisions concerned.

12. On 7 November 2007 the applicant was informed that she would be deported. On the same day she was granted a residence permit for fifteen days in order to facilitate her departure from Turkey.

13. On 15 November 2007 the applicant lodged a case with the Ankara Administrative Court requesting the latter to annul the decision to deport her and to order a stay of execution of that decision pending the proceedings. The applicant also requested legal aid.

14. On 30 November 2007 the applicant's request for legal aid was rejected as she was not considered to be in need of it.

15. On 2 January 2008 the Sixteenth Chamber of the Ankara Administrative Court issued a decision according to which the applicant was required to pay the court fees within thirty days.

16. On 18 February 2008 the applicant was placed in the Kumkapı Foreigners' Admission and Accommodation Centre attached to the Istanbul police headquarters.

17. The decision of 2 January 2008 could not be served on the applicant as she could not be found at her place of residence. On 29 February 2008 the administrative court decided to discontinue the proceedings until the applicant informed the court of her new address.

18. On 13 March 2008 the UNHCR reopened the applicant's file.

19. On 10 April 2008, after being interviewed, the applicant was recognised as a refugee under the mandate of the UNHCR. The UNHCR found credible the applicant's claims that her children had been sexually and physically abused by their father; that she had been subjected to conjugal violence and that she had escaped from Iran in order to save her children and herself. The report of the UNHCR further notes that the applicant's act was punishable under Iranian law. The UNHCR also found that the applicant had married a converted Christian; that she had converted to Christianity and had given birth to a daughter who had been baptised and had a Christian name. Moreover, the applicant was known to be an asylum seeker in Turkey. The UNHCR concluded that the applicant had a well-founded fear of persecution on account of her faith, gender and political opinion, and recognised her as a refugee on the grounds of her political opinion, her membership of a particular social group and her religion.

20. On 23 January 2009 the applicant's representative lodged a request with the Sixteenth Chamber of the Ankara Administrative Court that the proceedings be resumed and a stay of execution of the deportation decision be ordered.

21. On 12 March 2009 the first-instance court decided that there was no need to make a decision regarding the applicant's request for a stay of execution in the light of the Court's indication of an interim measure under Rule 39 of the Rules of Court.

22. According to the information in the case file, the proceedings before the Sixteenth Chamber of the Ankara Administrative Court are still pending.

B. The applicant's placement in the Kumkapı Foreigners' Admission and Accommodation Centre and the related proceedings

23. On 18 February 2008 the applicant was placed in the Kumkapı Foreigners' Admission and Accommodation Centre in Istanbul.

24. Following the indication of the interim measure under Rule 39 of the Rules of Court, the applicant was transferred to the Kırklareli Foreigners' Admission and Accommodation Centre.

25. On 29 August 2008 the applicant's representative lodged a request with the Ministry of the Interior for his client and her children to be released and granted residence permits. She received no reply.

26. On an unspecified date the applicant's representative lodged a case with the Ankara Administrative Court. He requested the court to order the release of his client and the children. The lawyer also asked the court to order a stay of execution of the applicant's detention.

27. On 15 April 2009 the Sixth Chamber of the Ankara Administrative Court dismissed the request for suspension of the administrative decision to hold the applicant and her children in the Kırklareli Foreigners' Admission and Accommodation Centre.

28. On 17 June 2009 the Ankara Regional Administrative Court dismissed the applicant's objection to the decision of 15 April 2009.

29. According to the information in the case file, the proceedings before the Sixth Chamber Ankara Administrative Court are still pending.

30. On 7 October 2009 the Ministry of the Interior granted residence permits for the applicant and her children for a period of six months in order to allow the applicant's children to continue their education. The applicant and her children were subsequently released from detention. Their residence permits were valid until 7 April 2010. According to the applicant's submissions dated 25 May 2010, she applied to the national authorities and requested that her and her children's residence permits be renewed and the examination of this request is pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. A description of the relevant domestic law and practice may be found in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-44, ECHR 2009-... (extracts)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

32. The applicant complained under Articles 2 and 3 of the Convention that her removal to Iran would expose her to a real risk of death or ill-treatment.

33. The Court finds it is more appropriate to examine the applicant's complaint from the standpoint of Article 3 of the Convention alone (see *Abdolkhani and Karimnia*, cited above, § 62; *NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008, and *Said v. the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI).

A. Admissibility

34. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Government maintained that the applicant's temporary asylum request had been examined by the national authorities and rejected as she had been found not to have a well-founded fear of persecution. They contended that the applicant was not at risk of ill-treatment in Iran.

36. The applicant contended that, if removed to Iran, she would be exposed to a clear risk of death or ill-treatment, given that she had married a Christian convert, a marriage that was not recognised by the Iranian authorities, thus constituting adultery, that she had taken her children out of Iran, an offence punishable under Iranian law, and that she had become a Christian. In this connection, she stressed that she had been recognised as a refugee by the UNHCR.

37. The Court observes at the outset that the applicant and her children were granted residence permits, valid until 7 April 2010, in October 2009 with a view to allowing the applicant's children to continue their education and that the authorities currently examine her request for the renewal of their residence permits. The Court reiterates in this connection that it decided to strike a number of applications out of its list of cases where, in deportation and extradition contexts, the applicants were granted residence permits for the purpose of asylum or pending their resettlement in a third country (see, for example, *Carmen Emilia Rojas Arenas v. the Netherlands* (dec.), no. 1989/07, 6 September 2007, and *N.M. v. Turkey*, (dec.), no. 42175/05, 17 March 2008). The Court considered in those cases that at the relevant time there was no imminent risk of the applicants being deported and the alleged risk of treatment contrary to Article 3 materialising, since the applicants were not subject to deportation. In the present case, however, the residence permits were not granted following or pending an examination of the applicant's claims regarding the alleged risks that she would face in Iran, and were valid for a short period of time. Besides, the Government did not submit that these residence permits were renewable. Finally, the applicant's request for the renewal of her residence permit is being examined by the authorities. In these circumstances, the Court considers that the applicant is still at risk of being removed to Iran despite the fact that she was legally resident in Turkey until 7 April 2010. Therefore, the Court must examine whether the applicant would be exposed

to a risk of treatment in breach of Article 3 if she were now to be deported to Iran, her country of origin.

38. The Court observes in this connection that the applicant's initial request for temporary asylum was rejected by the Ministry of the Interior. However, there is nothing in the case file which shows that the applicant was actually interviewed and that the national authorities indeed examined her request, taking into account the requirements of Article 3 of the Convention. Even assuming that the decision to reject the applicant's petition was given in line with the UNHCR's first decision also to reject her asylum request, the Court observes that the UNHCR reopened the applicant's file and re-interviewed the applicant about the background to her asylum request, whereas the national authorities planned the applicant's deportation to Iran while the case which she had lodged for the annulment of the deportation decision was pending before the Ankara Administrative Court. Therefore, the Court is not persuaded by the Government's argument that the national authorities conducted a meaningful assessment of the applicant's claim.

39. The Court must give due weight to the UNHCR's conclusion on the applicant's claim regarding the risk which she would face if she were to be removed to Iran (see *Jabari v. Turkey*, no. 40035/98, § 41, ECHR 2000-VIII; *NA. v. the United Kingdom*, cited above, § 122; and *Abdolkhani and Karimnia*, cited above, § 82) since, when the UNHCR interviewed the applicant, it had the opportunity to test the credibility of her fears and the veracity of her account of the circumstances in her home country. Following this interview, it found that the applicant risked being subjected to persecution in her country of origin.

40. In the light of the UNHCR's assessment, the Court finds that there are substantial grounds for accepting that the applicant risks a violation of her right under Article 3 if returned to Iran.

41. Consequently, the Court concludes that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Iran.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

42. The applicant complained under Article 5 of the Convention that she had been unlawfully detained.

43. The Court considers that this complaint should be examined from the standpoint of Article 5 § 1 of the Convention.

A. Admissibility

44. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The Government maintained that the applicant was not detained, but accommodated, in the Kırklareli Foreigners' Admission and Accommodation Centre. The reason for the applicant's placement in this centre, which could not be defined as detention or custody, had been the authorities' need for the surveillance of aliens pending deportation proceedings. The Government contended that this practice was based on section 23 of Law no. 5683.

46. The applicant maintained that her detention in the Kumkapı and Kırklareli Foreigners' Admission and Accommodation Centres between 18 February 2008 and 7 October 2009 had been unlawful since it did not have any legal basis in domestic law.

47. The Court observes at the outset that, at the communication stage, the respondent Government were not called upon to reply to a specific question in relation to the applicant's complaint under Article 5 § 1 of the Convention. However, the Court considers that, as the Government have responded to the applicant's submissions under this head, they cannot claim that their capacity to prepare their reply was adversely affected or that the requirements of the proper administration of justice were impaired, in breach of their interests (see *Müslim v. Turkey*, no. 53566/99, § 57, 26 April 2005). Thus, the Court has jurisdiction to consider the case under Article 5 of the Convention in the light of the applicant's submissions and those of the Government.

48. The Court reiterates that it has already examined the same grievance in the case of *Abdolkhani and Karimnia* (cited above, §§ 125-135). It found that the placement of the applicants in the Kırklareli Foreigners' Admission and Accommodation Centre in that case constituted a deprivation of liberty and concluded that, 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 deprivation of liberty to which the applicants were subjected was not "lawful" for the purposes of Article 5 of the Convention.

49. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Abdolkhani and Karimnia* judgment. There has therefore been a violation of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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.”

51. The applicant requested that her removal to Iran be prevented, and also asked for access to the temporary asylum procedure in Turkey, to be granted a residence permit pending the determination of her temporary asylum claim and to be authorised to leave Turkey under the UNHCR's resettlement scheme as well to be released from detention.

52. The Government asked the Court not to award any sum under this head since the applicant had failed to request any compensation.

53. As regards the applicant's request to be released from detention, the Court observes that she has already been released. It therefore considers that there is no need to make a ruling regarding this claim. As to the remainder of the applicant's claims under Article 41 of the Convention, the Court notes that it has found a potential violation of Article 3 of the Convention. It considers that prevention of the applicant's removal to Iran would be the natural consequence of the present judgment. The Court therefore does not deem it necessary to make a ruling concerning these claims and concludes that its finding of a potential violation constitutes sufficient just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that the applicant's deportation to Iran would be in violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that the finding of a potential violation of Article 3 of the Convention constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President