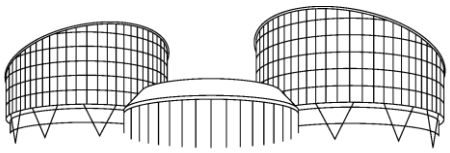

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ASALYA v. TURKEY

(Application no. 43875/09)

JUDGMENT

STRASBOURG

15 April 2014

FINAL

15/07/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Asalya v. Turkey,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 18 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 43875/09) 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 İslam H.M. Asalya ("the applicant"), on 14 August 2009. The applicant is stateless and holds a passport issued by the Palestinian Authority.

2. The applicant was represented by Ms L. Demir, Mr A. Yılmaz and Ms Ü. Sırımsı Candemir, lawyers practising in Tekirdağ and Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 4 January 2010 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 Israel and/or the Gaza Strip until the outcome of the procedure before the Office of the United Nations High Commissioner for Refugees ("the UNHCR") in his regard was known. It was also decided on the same date to give the case priority under Rule 41 of the Rules of Court.

4. On 31 August 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and lives in Istanbul.

A. Background to the case

6. The applicant is a Palestinian who lived in the Gaza Strip until March 2008. He claims to have lost approximately twenty-five relatives to Israeli attacks over the years, and to have personally suffered three missile attacks between 2000 and 2007. According to his allegations before the Court, he was directly and personally targeted in the most recent attack, in 2007, as the missile that struck near him on that day immediately followed an anonymous call on his mobile phone asking him to confirm his name, a ruse by the Israeli forces to identify his location. That attack left him severely injured and rendered him paraplegic.

7. On 25 March 2008 the applicant was taken to Turkey by a humanitarian organisation, the Foundation for Human Rights and Freedoms and Humanitarian Relief (*İnsani Yardım Vakfı*, "İHH"), along with fortynine other injured civilians from the Palestinian territories, to have access to better medical care.

8. In June 2008 the Ministry of the Interior ("the Ministry") issued the group of Palestinians with short-term residence permits in view of their continuing medical treatment in Turkey.

9. On 30 April 2009 the applicant married a Turkish national, who was also his physiotherapist. Because he was married to a Turkish national, he was granted a long-term temporary residence permit valid until 17 May 2010.

B. The applicant's arrest and detention

10. On 12 August 2009, at approximately 11 a.m., two police officers from the Istanbul Police Headquarters arrived at the applicant's house. They informed the applicant and his wife that his presence was required at the police headquarters for an interview and that he would be brought back afterwards. Once he was at the police headquarters, however, he was verbally informed that his temporary residence permit had been cancelled in accordance with orders received from the Ministry and that he would soon be deported from Turkey. Without being given any further information as to the reasons for the deportation order, when it would be carried out and where he would be deported to, the applicant was placed in the Kumkapı

Foreigners' Admission and Accommodation Centre attached to the Istanbul Police Headquarters.

11. According to the police record drawn up on the same day at 3.30 p.m., the Ministry had decided on 27 July 2009 to deport the applicant. This decision had been taken at the request of the National Intelligence Agency of Turkey, which had received intelligence regarding the applicant's possible involvement in acts of international terrorism. Neither the Ministry's deportation order nor the police record in question was served on the applicant.

12. Upon learning of the applicant's detention, on 12 August 2009 his wife got in touch with a local human rights organisation, *Mazlumder*, which in turn contacted the UNHCR to seek assistance in securing the applicant's release and halting his deportation. *Mazlumder* also informed the UNHCR of the poor conditions in which the applicant was being detained, including the fact that he had spent the night sleeping on a table, that he was not able to use the squat toilets at the detention centre, and that his medical treatment had been stopped on account of his detention.

13. On 14 August 2009 the applicant brought an action against the Ministry before the Ankara Administrative Court seeking the quashing of the deportation order, and also requested a stay of its execution until the matter had been examined by the administrative court. He maintained before the administrative court that the deportation order was unlawful, in view of his marriage to a Turkish citizen and possession of a residence permit valid until May 2010. The unlawful deportation order had moreover not been communicated to him at any point, nor had the Ministry sought his response prior to its delivery. The State authorities had similarly not put forward any concrete evidence to demonstrate why his continued presence in Turkey was perceived as a threat to national security. The applicant claimed that in the event of his deportation to Israel or elsewhere, his right to life and right to liberty and security would be put at risk, that he would face torture or even death at the hands of Israeli forces or their collaborators, and that the unity of his family would be destroyed. Furthermore, his medical treatment would be stopped, causing irreversible harm to his health. The applicant lastly complained that his detention was unlawful, and also maintained that the conditions of his detention at the Kumkapı Foreigners' Admission and Accommodation Centre were highly degrading, in view of the lack of basic infrastructure to accommodate people with disabilities in his situation. As he was not able to use the squat toilet available at the place of detention, he had to be taken to a hotel nearby by police officers each time he had to relieve himself. It appears that his wife was occasionally able to accompany them to the hotel. His medical treatment was also stopped during his detention there, which was likely to result in the worsening of his condition.

14. In a decision delivered on the very same day, the Ankara Administrative Court asked the Ministry for a copy of its deportation order of 27 July 2009, as well as all the information and documents which formed the basis of that decision. Moreover, noting the irreversible nature of the harm that might be caused in the event of the applicant's deportation, it ordered a stay of its execution until a further decision.

15. On the same date, the applicant's lawyer applied for release from the Kumkapı Foreigners' Admission and Accommodation Centre on the basis of the Ankara Administrative Court decision granting a stay of execution.

16. Following a decision of the Ministry on 18 August 2009, the applicant was released from the Kumkapı Foreigners' Admission and Accommodation Centre.

17. On 9 September 2009 the Ministry submitted its replies to the Ankara Administrative Court in relation to the applicant's request for the quashing of the deportation order. It stated that the decision to deport had been taken on the basis of a National Intelligence Agency report dated 16 July 2009. The report indicated that within the context of ongoing investigations in connection with international terrorism the applicant had been identified as having had contact with some telephone numbers registered in Israel on issues such as "procurement of arms, new recruits to the group, and measures to be taken to ensure the confidentiality of activities". His presence in Turkey was therefore perceived as a risk to national security within the meaning of section 8 (5) of the Passport Act (Law no. 5682) and section 19 of the Act on the Residence and Travel of Foreigners in Turkey (Law no. 5683). It also submitted a number of supporting documents as an annex. These documents were not made available to the applicant, nor were they later submitted to the Court.

18. On 16 September 2009 the Ankara Administrative Court decided that there were no elements warranting the suspension of the applicant's deportation. It thus reversed its previous decision of 14 August 2009.

19. On 30 September 2009 the applicant appealed against the decision of the Ankara Administrative Court lifting the stay of execution of his deportation. He submitted that the Ministry had not put forward any tangible evidence in support of its allegation that he posed a threat to national security such as to necessitate his deportation from Turkey. If the Ministry went through with its decision, his physical integrity would be irreparably damaged on account of the termination of the medical treatment he was undergoing in Istanbul. Furthermore, his deportation would disrupt the family life he had since established in Turkey, and would deprive him of the vital assistance and care undertaken by his wife. In addition, if deported he would most certainly be subjected to torture by Israeli forces and his life would be put at risk. Lastly, the applicant drew the administrative court's attention to his pending application to the UNHCR for refugee status, and also complained of the conditions in which he had been detained between

12 and 18 August 2009 at the Kumkapı Foreigners' Admission and Accommodation Centre, which had lacked basic amenities to accommodate people with disabilities, such as a non-squat toilet and a lift.

20. On 14 October 2009 the Ankara Regional Administrative Court rejected the applicant's appeal against the Ankara Administrative Court's decision of 16 September 2009, which had effectively lifted the stay of execution of his deportation, without providing any reasons.

21. In the meantime, on 25 September 2009 the applicant had applied to the UNHCR for refugee status. On 22 October 2009 he was interviewed by the Ankara office of the UNHCR as part of the refugee status determination process.

22. On 22 December 2009 the applicant's lawyer was informed by the State authorities that, pursuant to the latest decision of the Ankara Regional Administrative Court, the applicant was requested to leave Turkey within fifteen days, and that if he refused to comply with that request he would be deported forcibly.

23. On 24 December 2009 the applicant claimed asylum in Turkey. He stated that he had been forced to leave Gaza because of the persecution he had faced there. Following an Israeli attack on his house in Gaza, which had left him severely injured, he had come to Turkey to seek medical treatment. This treatment was still ongoing, and in the meantime he had married a Turkish citizen. He claimed that although he had never been involved in any acts of violence, he was wanted by Israel as a terrorist. Returning to his country would entail a great risk to his life, if not from Israeli attacks then because of the termination of his treatment. He would also face torture if captured by the Israelis.

24. On the same date, the applicant's lawyer also sent a letter to the Foreigners' Department of the Istanbul Police Headquarters, reiterating the grounds of appeal against the applicant's deportation. The lawyer emphasised in the letter that the Ministry's deportation order had not been served on the applicant, and that the administrative proceedings for the annulment of the deportation order were still pending before the Ankara Administrative Court, which had not yet delivered a judgment on the merits. She referred in this regard to the National Action Plan on Asylum and Immigration, adopted by the Government of Turkey on 25 March 2005, which held that the execution of deportation decisions was to be suspended once administrative proceedings seeking to overturn them had been instituted.

C. Proceedings before the Court

25. On 28 December 2009 the applicant's representative asked the Court, under Rule 39 of its Rules of Court, to adopt an interim measure to halt the applicant's imminent deportation from Turkey.

26. On 4 January 2010 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 Israel or the Gaza Strip until the delivery of a decision by the UNHCR in his regard.

D. Developments following the application of the interim measure

27. In the light of the interim measure applied by the Court, on 6 January 2010 the Foreigners' Department of the Istanbul Police Headquarters ordered that the applicant be granted a three-month temporary residence permit, renewable until further notice.

28. On 22 April 2010 the Ankara Administrative Court quashed the deportation decision of 27 July 2009, as the applicant's deportation had become unfeasible in view of the interim measure applied by the Court, which was binding on the Turkish authorities. The Ministry appealed against this judgment.

29. On 31 December 2010 the Supreme Administrative Court upheld the judgment of the Ankara Administrative Court, and on 6 July 2012 it refused the Ministry's rectification request.

30. In the meantime, following a number of interviews, on 27 October 2010 the General Security Directorate of the Ministry granted the applicant a temporary residence permit for six months, apparently renewable, in view of his status as an asylum seeker.

31. On 1 June 2011 the applicant informed the Turkish authorities that he wanted to withdraw his asylum claim, for reasons unknown to the Court.

32. On 18 March 2013 the General Security Directorate of the Ministry decided to grant the applicant a long-term residence permit, valid for one year, on the basis of evidence that he had established a genuine family life in Turkey. The decision also indicated that this permit would be extended in due course if further inquiries in respect of his marriage demonstrated that he was continuing to maintain a family life in Turkey.

33. In June 2013 the applicant withdrew his application to the UNHCR for refugee status in order to avoid being resettled to a safe third country as a result of the refugee status determination process, which might have entailed separation from his wife.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

III. RELEVANT INTERNATIONAL MATERIAL

A. Relevant international law material on the rights of persons with disabilities

1. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)

35. The Convention entered into force on 3 May 2008, was signed by Turkey on 30 March 2007, and was ratified on 28 September 2009. The relevant parts provide:

Article 2 - Definitions

"For the purposes of the present Convention:

... 'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms ..."

Article 14 - Liberty and security of the person

"2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation."

36. In his Interim Report of 28 July 2008 (A/63/175), the then United Nations ("UN") Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Manfred Nowak, noted as follows:

"50. ... Persons with disabilities often find themselves in [situations of powerlessness], for instance when they are deprived of their liberty in prisons or other places ... In a given context, the particular disability of an individual may render him or her more likely to be in a dependent situation and make him or her an easier target of abuse ...

53. States have the further obligation to ensure that treatment or conditions in detention do not directly or indirectly discriminate against persons with disabilities. If such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment ...

54. The Special Rapporteur notes that under article 14, paragraph 2, of the CRPD, States have the obligation to ensure that persons deprived of their liberty are entitled to 'provision of reasonable accommodation'. This implies an obligation to make appropriate modifications in the procedures and physical facilities of detention centres ... to ensure that persons with disabilities enjoy the same rights and fundamental freedoms as others, when such adjustments do not impose disproportionate or undue burden. The denial or lack of reasonable accommodation for persons with disabilities may create detention ... conditions that amount to ill-treatment and torture."

2. Council of Europe material

37. Recommendation no. R (98) 7 of the Committee of Ministers of 8 April 1998 concerning the ethical and organisational aspects of health care in prison, provides, in so far as relevant:

> "50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment ..."

B. Relevant country information

38. The Court notes that the Israel Defence Forces have been widely reported to carry out military operations targeting specific persons, usually suspected terrorists. In a decision it rendered in December 2006 ("the Targeted Killings case"), the Israeli Supreme Court ruled that targeted killings were not *per se* illegal[1]. The UN Human Rights Committee noted its concerns on this practice in its Concluding Observations on Israel on 3 September 2010 (CCPR/C/ISR/CO/3):

> "10. The Committee notes the State party's affirmation that utmost consideration is given to the principles of necessity and proportionality during its conduct of military operations and in response to terrorist threats and attacks. Nevertheless, the Committee reiterates its concern, previously expressed in paragraph 15 of its concluding observations (CCPR/CO/78/ISR), that, since 2003, the State party's armed forces have targeted and extrajudicially executed 184 individuals in the Gaza Strip, resulting in the collateral unintended death of 155 additional individuals, this despite the State party's Supreme Court decision of 2006, according to which a stringent proportionality test must be applied and other safeguards respected when targeting individuals for their participation in terrorist activity (art. 6).
>
> The State party should end its practice of extrajudicial executions of individuals suspected of involvement in terrorist activities ... The State party should exhaust all measures for the arrest and detention of a person suspected of involvement in terrorist activities before resorting to the use of deadly force. The State party should also establish an independent body to promptly and thoroughly investigate complaints about disproportionate use of force."

In the same report, the Human Rights Committee also made the following observations:

> "11. The Committee notes with concern that the crime of torture, as defined in article 1 of the Convention against Torture and in conformity with article 7 of the Covenant, still has not been incorporated into the State party's legislation. The Committee notes the Supreme Court decision on the exclusion of unlawfully obtained

1. The Public Committee against Torture in Israel et al v. The Government of Israel et al, Supreme Court of Israel sitting as the High Court of Justice, Judgment, 11 December 2006, HCJ 769/02, paragraph 40, available at http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.HTM

> evidence, but is nevertheless concerned at consistent allegations of the use of torture and cruel, inhuman or degrading treatment, in particular against Palestinian detainees suspected of security-related offences. .... The Committee also expresses its concern at information that all complaints of torture are either denied factually, or justified under the "defence of necessity" as "ticking time bomb" cases."

39. In its report of 23 June 2009 on Israel (CAT/C/ISR/CO/4) the UN Committee against Torture made similar remarks on the problem of torture and ill-treatment of Palestinian detainees:

> "19. The Committee is concerned that there are numerous, ongoing and consistent allegations of the use of methods by Israeli security officials that were prohibited by the September 1999 ruling of the Israeli Supreme Court, and that are alleged to take place before, during and after interrogations."

40. According to the 2009 and 2010 Human Rights Reports of the United States Department of State on Israel and the Occupied Territories, Israeli law, as interpreted by a 1999 High Court decision, prohibits torture and several interrogation techniques but allows "moderate physical pressure" against detainees considered to possess information about an imminent terrorist attack. The decision also indicates that interrogators who abuse detainees suspected of possessing such information may be immune from prosecution. Various human rights organisations have reported that "moderate physical pressure" has been used in practice to include beatings, requiring an individual to hold a stress position for long periods, and painful pressure from shackles and restraints applied to the forearms.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RELATION TO THE APPLICANT'S CONDITIONS OF DETENTION

41. The applicant complained under Article 3 of the Convention that the conditions of his detention at the Kumkapı Foreigners' Admission and Accommodation Centre violated Article 3 of the Convention, mainly on account of the absence of special arrangements to accommodate the needs of people with disabilities who use wheelchairs, such as himself.

42. In his observations dated 1 August 2012, the applicant submitted a number of new complaints regarding the material conditions of his detention at the Kumkapı Foreigners' Admission and Accommodation Centre, including poor hygiene, insufficient food, damp, and limited access to fresh air as well as to hot water.

A. Admissibility

43. The Court notes that the complaints submitted on 1 August 2012, which were not raised when the application was initially lodged, concern certain adverse conditions of the applicant's detention, which ended on 18 August 2009. In these circumstances, the Court rejects them pursuant to Article 35 §§ 1 and 4 of the Convention as lodged outside the six-month time-limit (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 99, 15 June 2010).

44. The Court notes on the other hand that the applicant's remaining complaint under this head regarding the unsuitability of the detention facilities for a person with his disability is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is, moreover, not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant claimed that there were no provisions at the Kumkapı Foreigners' Admission and Accommodation Centre catering for the needs of detainees using wheelchairs, such as lifts or suitable lavatory facilities. In particular, the applicant was not able to use the squat toilets available at the place of detention. For this reason, each time he needed to relieve himself during his seven-day detention the applicant had to wait for at least two police officers to carry him to a hotel located 50 metres from the Kumkapı Foreigners' Admission and Accommodation Centre and to assist him in the toilet, which he found utterly degrading. Similarly, no special sleeping arrangements were envisaged for people in his condition: on account of the overcrowded conditions and the unavailability of a lift, he was made to sleep on a table in an office on the ground floor. He was also deprived of his daily physiotherapy during his detention, as well as of the constant care his wife provided him with.

46. The Government contested the applicant's arguments, and stated that all foreigners' admission and accommodation centres in Turkey, including the one in Kumkapı, were subject to regular inspections by national and international institutions. Without providing any supporting evidence, the Government claimed that the applicant's special physical condition was duly taken into consideration and he was not subjected to inhuman or degrading treatment in any way during his detention. Medical assistance was also available upon request at foreigners' admission and accommodation centres; the applicant had indeed been taken to the emergency service at the Haseki Training and Research Hospital on 14 August 2009 when he complained of a problem in the inguinal (groin) area.

2. The Court's assessment

47. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many other authorities, *Stoyan Mitev v. Bulgaria*, no. 60922/00, § 63, 7 January 2010). Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch, and caused either actual bodily injury or intense physical and mental suffering. Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX).

48. With reference to persons deprived of their liberty, Article 3 imposes a positive obligation on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; *Melnītis v. Latvia*, no. 30779/05, § 69, 28 February 2012; and *Savičs v. Latvia*, no. 17892/03, § 130, 27 November 2012).

49. It is undisputed between the parties that while detained at the Kumkapı Foreigners' Admission and Accommodation Centre, the applicant was paraplegic and used a wheelchair. While they denied that the applicant had been subjected to any inhuman or degrading treatment during the term of his detention, the Government did not contest the applicant's allegations regarding the specific conditions he was kept in, namely that he was detained for seven days in a regular detention facility, which was not adapted for wheelchair users, and that no special arrangements were made during that time to alleviate the hardships he faced.

50. The Court reiterates in this connection that where authorities decide to place and keep a person with a disability in detention they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII; *Farbtuhs v. Latvia*,

no. 4672/02, § 56, 2 December 2004; *Jasinskis v. Latvia*, no. 45744/08, § 59, 21 December 2010; and *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012; and the international law material in paragraphs 35-37 above).

51. The Court notes that as a result of the lack of effort to cater for his disability, the applicant experienced serious difficulties in meeting his most basic needs, such as using the toilet. The Court notes in this connection that the inaccessibility of the sanitation facilities raises a particular concern under Article 3 of the Convention, in particular as the applicant was dependent entirely on the good will of the police officers to assist him, on account of the structural deficiencies at the place of detention (see *Grimailovs v. Latvia*, no. 6087/03, § 158, 25 June 2013). The fact that the applicant's wife was occasionally available to accompany him and the police officers to the toilets did not diminish the applicant's suffering in this regard.

52. The Court further considers that the circumstances in which the applicant was made to spend his nights, which apparently involved sleeping on a hard table in an office that was unsuitable for overnight use, was equally unacceptable, taking into account in particular that the applicant had sustained a serious spinal injury not very long before.

53. There is no evidence in this case of any positive intention to humiliate or debase the applicant. The Court nevertheless considers that the detention of the applicant in conditions where he was denied some of the minimal necessities for a civilised life, such as sleeping on a bed and being able to use the toilet as often as required without having to rely on the help of strangers, was not compatible with his human dignity and exacerbated the mental anguish caused by the arbitrary nature of his detention (see paragraph 68 below), regardless of its relatively short period. In these circumstances, the Court finds that the applicant was subjected to degrading treatment incompatible with Article 3 of the Convention (see, *mutatis mutandis*, *Price*, cited above; and *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, § 84, 3 November 2011).

54. There has, accordingly, been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention between 12 and 18 August 2009.

55. Having reached the above conclusion, the Court does not need to examine additionally whether there has been a violation of Article 3 on account of the alleged disruption of his medical care during his detention at the Kumkapı Foreigners' Admission and Accommodation Centre, noting also that the applicant has not provided any detailed information about the particular treatment he needed, nor has he explained how, if at all, the seven-day interruption of his treatment adversely affected his condition (see *Arutyunyan v. Russia*, no. 48977/09, § 82, 10 January 2012).

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

56. The applicant complained under Articles 5 §§ 1, 3 and 4 of the Convention that his detention at the Kumkapı Foreigners' Admission and Accommodation Centre had no legal basis and that there were no judicial remedies available to him to challenge the lawfulness of his detention. He maintained under Article 5 § 5 of the Convention that he had no right to compensation under domestic law in respect of these complaints. He further claimed under Article 8 of the Convention that his right to family life had been breached on account of his unlawful detention.

A. Article 5 of the Convention

1. Admissibility

57. The Government did not contest the admissibility of the applicant's complaints.

58. The Court observes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

59. The Government maintained that the applicant had been detained with a view to deportation from Turkey in accordance with the relevant domestic legislation. His detention had therefore been in conformity with Article 5 § 1 (f) of the Convention.

60. The Government further submitted that the applicant had had the opportunity to apply to the administrative courts under Article 125 of the Constitution to object to the decision to hold him at the Kumkapı Foreigners' Admission and Accommodation Centre, and indeed had done so. They therefore considered that the applicant had had a remedy whereby he could challenge the lawfulness of his deprivation of liberty.

61. They lastly contended that the applicant also benefited from a right to compensation within the meaning of Article 5 § 5 of the Convention, as he could claim compensation for damage caused by any act of the administration under Article 125 of the Constitution.

62. The applicant reiterated his complaints.

(a) Alleged violation of Article 5 § 1 of the Convention

63. The Court considers at the outset that the applicant's complaints under Article 5 §§ 1 and 3 regarding the alleged unlawfulness of his detention should be examined from the standpoint of Article 5 § 1 of the Convention alone.

64. The Court observes that the applicant was taken into detention on 12 August 2009. Although he was initially induced to attend police headquarters under false pretences, once there he was verbally informed of the decision to deport him. He was subsequently released on 18 August 2009 by an executive decision, after spending seven days at the Kumkapı Foreigners' Admission and Accommodation Centre.

65. The Court notes the Government's submission that the applicant was detained with a view to his deportation, in conformity with Article 5 § 1 (f) of the Convention. The Court reiterates that any deprivation of liberty under the second limb of Article 5 § 1 (f) would be justified as long as deportation proceedings were in progress, and only to the extent that the deprivation of liberty in question was effected "in accordance with a procedure prescribed by law".

66. The Court has already examined a similar grievance in the case of *Abdolkhani and Karimnia* (cited above, §§ 125-135), 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. There are no particular circumstances which would require the Court to depart from its findings in that judgment.

67. The Court is particularly struck by the fact that the applicant continued to be deprived of his liberty for four more days after an interim decision of the Ankara Administrative Court ordering the suspension of his deportation, which had unequivocally rendered his continued detention devoid of any legal ground, as the deportation procedure was no longer in progress.

68. In the light of the foregoing, the Court considers that there has been a violation of Article 5 § 1 of the Convention.

(b) Alleged violation of Article 5 § 4 of the Convention

69. The Court notes that on 14 August 2009 the applicant applied to the Ankara Administrative Court under Article 125 of the Constitution, which provides in general terms that all acts or decisions of the authorities may be subject to judicial review, and complained specifically of the unlawfulness of his detention.

70. On the very same day, the Ankara Administrative Court suspended the execution of the applicant's deportation pending the submission of certain information by the administration, but did not pronounce on the legality of his detention, nor did it order his release. Nevertheless, on 18 August 2009 the State authorities decided at their own discretion to release the applicant until the judicial review process before the Ankara Administrative Court was complete.

71. The Court reiterates that the purpose of Article 5 § 4 is to guarantee persons who are deprived of their liberty the right to judicial supervision of

the lawfulness of the measure to which they are thereby subjected. A remedy must be made available during a person's detention to allow the individual to obtain speedy judicial review of the lawfulness of the detention. That review should be capable of leading, where appropriate, to release (see *Abdolkhani and Karimnia*, cited above, § 139). The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. Nonetheless, whatever the form of judicial review may be, it is essential that the competent domestic court or body expressly pronounce on the question of the lawfulness of a deprivation of liberty when so requested. Moreover, the question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the particular circumstances of each case.

72. The Court observes that in the instant case, despite his specific complaint, the administrative court did not examine the lawfulness of the applicant's detention, neither when it initially ordered the suspension of his deportation, nor at the subsequent stages of the proceedings. This is despite the fact that there was clearly no legal basis for the applicant's detention, as established under Article 5 § 1 above. The Court stresses that the Ankara Administrative Court was in an even better position than the Strasbourg Court to observe this lack of legal basis in domestic law governing the procedure for detention pending deportation (see, *mutatis mutandis*, *Athary v. Turkey*, no. 50372/09, § 41, 11 December 2012).

73. The Court is mindful of the fact that the applicant regained his liberty on the seventh day of his detention. However, his release did not result from a review of the legality of his detention by a competent court, as required under Article 5 § 4 of the Convention, but was brought about by a purely discretionary decision of the executive, which could be reversed at any moment. Moreover, unlike in some other cases where the applicants were released within a matter of hours before any judicial scrutiny of their detention could in practice have taken place (see, for example, *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 45, Series A no. 182; *Slivenko v. Latvia* [GC], no. 48321/99, § 159, ECHR 2003-X; and *M.B. and Others v. Turkey*, no. 36009/08, § 45, 15 June 2010), the Ankara Administrative Court had the opportunity in the instant case to pronounce on the lawfulness or otherwise of the applicant's detention, such as when it delivered its interim decision on 14 August 2009 suspending the execution of the deportation decision. In fact, the administrative court could reasonably have been expected to rule on the unlawfulness of the applicant's detention on that very day, if for no other reason than that its interim decision, by its very nature, had the automatic effect of rendering the detention absolutely groundless, regardless of whatever legal regime it may have been governed by before.

74. In these circumstances, having regard to the clear lack of a legal basis for the applicant's detention in domestic law and the very strict standards of speedy review under Article 5 § 4 where an individual's liberty is at stake (see, *mutatis mutandis*, *Shcherbakov v. Russia (no. 2)*, no. 34959/07, § 101, 24 October 2013), the Court concludes that the applicant was denied an effective remedy whereby he could obtain a speedy judicial review of the lawfulness of his detention.

75. There has accordingly been a violation of Article 5 § 4 of the Convention.

(c) Alleged violation of Article 5 § 5 of the Convention

76. Having regard to its above findings, and in the absence of any examples provided by the Government of cases where proceedings pursued under Article 125 of the Constitution resulted in the granting of compensation for unlawful detention pending deportation proceedings, the Court concludes that the applicant did not have an enforceable right to compensation within the meaning of Article 5 § 5 of the Convention (see *Dbouba v. Turkey*, no. 15916/09, § 55, 13 July 2010).

77. There has therefore been a violation of Article 5 § 5 of the Convention.

B. Article 8 of the Convention

78. With regard to the alleged violation of Article 8 stemming from the applicant's detention, the Court considers that having already found that the applicant's detention in the Kumkapı Foreigners' Admission and Accommodation Centre was in breach of Article 5 § 1 of the Convention (see paragraph 68 above), it is not necessary to examine the admissibility or the merits of this complaint.

III. ALLEGED VIOLATION OF ARTICLES 2, 3, AND 8 OF THE CONVENTION IN RELATION TO THE APPLICANT'S THREATENED DEPORTATION

79. The applicant complained under Articles 2 and 3 of the Convention that his deportation to Israel or the Gaza Strip, directly or indirectly, would expose him to a real risk of ill-treatment and/or death, bearing in mind that he and his family had been targeted by Israeli forces before and that he was wanted in Israel. He further maintained under Article 8 of the Convention that his removal from Turkey would constitute an interference with the family life that he had established with his wife in Turkey.

80. As part of his complaints under Articles 3 and 8 of the Convention, the applicant also contended that his removal from Turkey would call a halt to his medical treatment, thereby denting any prospects of his full recovery.

He claimed in particular that if returned to the Gaza Strip he would not have access to the same level of treatment and care, and as his removal would entail separation from his wife, he would also be denied the constant assistance he received from her in order to meet his daily needs.

A. The parties' submissions

81. Without raising any particular objections in respect of the admissibility of the applicant's complaints, the Government stated that the deportation order against the applicant had been based on intelligence indicating his involvement in acts of international terrorism and thus pursued the aim of protecting national security and public order. The deportation order did not, however, specify the country to which he would be removed; the applicant would therefore be deported to any third country willing to offer him a visa. The medical services available in that third country would also be taken into consideration before executing the deportation decision. In these circumstances, the applicant's allegations concerning the potential risks he would face in Israel or the Gaza Strip were irrelevant. The Government also confirmed that there were no criminal charges against the applicant in Turkey, nor had an official request for his extradition been submitted by Israel.

82. The applicant contended that while the Government claimed that he did not have to be deported to Israel or the Gaza Strip but could choose his destination, that was not a realistic argument in view of his economic, physical and legal status as a stateless Palestinian.

B. The Court's assessment

83. Turning to the remainder of the complaints under this head, although the respondent State did not raise any objection as to the Court's competence *ratione personae* in relation to these complaints, this issue calls for consideration *proprio motu* by the Court (see *M.A. v. Cyprus*, no. 41872/10, § 115, ECHR 2013 (extracts)).

84. In this context, the Court reiterates that the word "victim" in Article 34 of the Convention denotes a person directly affected by the act or omission in issue. In other words, the person concerned must be directly affected by it or run the risk of being directly affected by it. It is not therefore possible to claim to be a "victim" of an act which is deprived, temporarily or permanently, of any legal effect (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 92, ECHR 2007-I).

85. In cases where the applicants faced expulsion or extradition the Court has consistently held that an applicant cannot claim to be the "victim" of a measure which is not enforceable (see *Vijayanathan and Pusparajah v. France*, judgment of 27 August 1992, Series A no. 241‑B, § 46; see also

Pellumbi v. France (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of a deportation or extradition order has been stayed indefinitely or otherwise deprived of legal effect, and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Nasrulloyev v. Russia*, no. 656/06, § 59, 11 October 2007; *Dobrov v. Ukraine* (dec.), no. 42409/09, 14 June 2011; *Rakhmonov v. Russia*, no. 50031/11, §§ 34-37, 16 October 2012; and *Budrevich v. the Czech Republic*, no. 65303/10, §§ 64-72, 17 October 2013).

86. The Court notes in this connection that the deportation order of 27 July 2009 against the applicant was quashed by the Ankara Administrative Court on 22 April 2010, following an interim decision by the Court under Rule 39 that the deportation should be suspended. Moreover, the Ministry's objections to the quashing of the deportation order were rejected by a final decision delivered by the Supreme Administrative Court on 6 July 2012. Consequently, the deportation order, which was at the basis of the applicant's complaints before the Court, is no longer enforceable.

87. While the Court acknowledges that the quashing of the deportation order was due to the application of the Rule 39 measure, it also wishes to stress that the scope of that interim measure was limited both in geographic and temporal terms: accordingly, the measure barred only the applicant's expulsion to Israel and/or the Gaza Strip, and only until such time as the UNHCR had reached a decision on the applicant's refugee status. Despite these limitations of the interim measure, the Court notes that there have been no further attempts to remove the applicant on the grounds of national security since then to any third countries that were willing to accept him, even after the applicant withdrew his application for refugee status from the UNHCR. Moreover, whereas in the initial period following the quashing of the deportation order the applicant was granted short-term residence permits not exceeding six months, on 18 March 2013 the General Security Directorate of the Ministry finally decided to grant the applicant a long-term temporary residence permit, valid for one year with the possibility of renewal, on the strength of the genuine family life he had established in Turkey.

88. In the light of the aforementioned developments, the Court considers that the applicant does not currently face a risk of expulsion.

89. The Court further notes that in the event of a fresh deportation attempt in the future, it would be open to the applicant to resort to a judicial procedure in which his claim of possible ill-treatment and/or death in the country of destination would be newly assessed domestically (see *Ghosh v. Germany* (dec.), no. 24017/03, 5 June 2007).

90. In such circumstances the Court considers that the applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention in relation to his complaints under Articles 2, 3 and 8 of the Convention concerning his threatened deportation from Turkey.

91. It follows that these complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

92. The Court stresses that the above finding does not prevent the applicant from lodging a new application before the Court and from making use of the available procedures, including under Rule 39 of the Rules of Court, in respect of any new circumstances that may arise, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Dobrov*, cited above; *Bakoyev v. Russia*, no. 30225/11, § 100, 5 February 2013; and *Budrevich*, cited above, § 69).

IV. RULE 39 OF THE RULES OF COURT

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

V. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLES 2, 3 AND 8 OF THE CONVENTION

94. Relying on Article 13 of the Convention, the applicant complained of the lack of an effective domestic remedy with regard to his complaints under Articles 2, 3 and 8 of the Convention, where the risks involved in his deportation from Turkey could be subjected to meaningful judicial scrutiny. In particular, he complained that a challenge to a deportation order did not have automatic suspensive effect.

A. Admissibility

95. The parties did not make any specific submissions on the admissibility of this complaint. However, having regard to its findings concerning Articles 2, 3 and 8 above, the Court will examine *proprio motu* whether the applicant maintains his victim status in relation to his Article 13 complaint.

96. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce - and hence to allege non-compliance with - the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. However, Article 13 cannot reasonably be interpreted as requiring a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious the complaint

may be: the grievance must be an "arguable" one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

97. The Court has refrained from giving an abstract definition of the notion of arguability, preferring in each case to determine, in the light of the particular facts and the nature of the legal issues raised, whether a claim of a violation forming the basis of a complaint under Article 13 is arguable, and if so whether the requirements of this provision were met in relation thereto. In making its assessment the Court will also give consideration to its findings on the admissibility of the substantive claim (*see Ivan Atanasov v. Bulgaria*, no. 12853/03, §§ 100-101, 2 December 2010, and *Boyle and Rice*, cited above, § 54). However, the fact that a substantive claim is declared inadmissible does not necessarily exclude the operation of Article 13 (see *I.M. v. France*, no. 9152/09, § 103, 2 February 2012; *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 55-56, ECHR 2007-II; and *M.A.v. Cyprus*, cited above, §§ 119-121).

98. More specifically, and of relevance to the present case, in deportation cases the Court has taken the view that loss of victim status in respect of alleged violations of Articles 2, 3 and 8 of the Convention because an applicant was no longer exposed to the threat of deportation did not necessarily render that complaint non-arguable or deprive an applicant of his victim status for the purposes of Article 13 (see *M.A. v. Cyprus*, cited above, § 118). For example, in the cases of both *I.M.* and *Gebremedhin* (cited above), although the Court ruled that the applicants could no longer be considered victims in respect of the alleged violation of Article 3, it found that the main complaint raised an issue of substance and that, in the particular circumstances, the applicants were still victims of the alleged violation of Article 13 taken together with Article 3. The same approach was taken recently by the Court in the case of *De Souza Ribeiro* in relation to a deportation complaint under Articles 8 and 13 (see *De Souza Ribeiro v. France* [GC], no. 22689/07, §§ 84-100, 13 December 2012, read together with *De Souza Ribeiro v. France*, no. 22689/07, §§ 22-26, 30 June 2011).

99. It therefore falls upon the Court to determine whether the applicant's grievances under Articles 2, 3 and 8 of the Convention in relation to his threatened deportation raised "arguable" issues that merited an examination by the national authorities for the purposes of Article 13 of the Convention.

100. As regards the complaints under Articles 2 and 3, the Court notes the applicant's claims that he and his family were subjected to three lethal missile attacks by Israeli forces between 2000 and 2007. At least the last of those attacks had directly targeted his home and had left him severely injured, to the point of necessitating his transfer to Turkey for intensive medical care. The applicant had moreover claimed that he was wanted in Israel and would face torture if detained by the Israeli authorities.

101. The National Intelligence Agency of Turkey had itself alleged that the applicant was involved with terrorist organisations, apparently operating against Israeli elements.

102. Having regard to the information obtained *proprio motu*, the Court notes that during the period when the applicant faced imminent threat of deportation, Israeli forces were widely reported to be carrying out military operations targeted at persons suspected of terrorist activities by conducting incursions into Palestinian areas or by the use of remotely controlled weapons (see paragraph 38 above). Moreover, there is a plethora of material from the relevant time suggesting the torture or ill-treatment of Palestinian detainees by Israeli authorities, in particular those accused of national security offences (see paragraphs 39 and 40 above). In the Court's opinion, this information, together with the applicant's history of targeted attacks and possible involvement in terrorism, as suspected by the National Intelligence Agency, was sufficient to suggest that the applicant could face a risk of ill-treatment or death if returned to the Gaza Strip or Israel, bearing in mind that national security concerns do not trump the rights under Articles 2 and 3 (see *Auad v. Bulgaria*, no. 46390/10, § 100, 11 October 2011).

103. In this connection, the Government's argument before the Court that the applicant would not be deported to Israel or the Gaza Strip is immaterial, as while the legal procedure against deportation was pending before the domestic courts, which is the material period for the purposes of the Court's examination under Article 13, the State authorities did not deny the possibility of deportation to either of those destinations.

104. In the light of the foregoing, and without going into a separate examination of the arguability of the complaint regarding the interruption of medical treatment, the Court considers that the applicant's complaints under Articles 2 and 3 did raise an arguable question as to the compatibility of his intended deportation in 2009 with those provisions.

105. As regards his complaint under Article 8, the Court notes that the State authorities never disputed, either during the domestic proceedings or subsequently before the Court, that the applicant had entered into a genuine family relationship with this wife, who is a Turkish citizen, in Turkey. In these circumstances, the Court similarly considers that the applicant's claims under Article 8 regarding the risk of interference with his private and family life were sufficiently arguable to attract the protection of Article 13 of the Convention. While the Court acknowledges that the protection afforded under Article 8, as opposed to Articles 2 and 3, is not absolute, and that national security concerns could legitimately rupture family life, his complaint at the time still raised an issue of substance which merited a rigorous examination by the domestic authorities (see *Amie and Others v. Bulgaria*, no. 58149/08, §§ 98-102, 12 February 2013).

106. In view of its above findings, the Court concludes that the facts constituting the alleged violation of Article 13 had already materialised by

the time the risk of the applicant's deportation had ceased to exist, the applicant's deportation having been halted at the time only because of the application by the Court of the Rule 39 measure. Moreover, although there are no enforceable deportation orders against the applicant at the moment and he has a renewable residence permit, his grievances under Article 13 have never been acknowledged or redressed by the State authorities (see M.A. v. Cyprus, cited above, § 120).

107. In these circumstances, it cannot be said that the applicant can no longer claim to be a victim of the alleged violation of Article 13 taken in conjunction with Articles 2, 3 and 8. Consequently, and given that this complaint is not inadmissible on any other grounds, it must be declared admissible.

B. Merits

1. The parties' submissions

108. The Government stated that the deportation order against the applicant had been based on intelligence indicating his involvement in acts of international terrorism, and thus pursued the aim of protecting national security and public order. Articles 36 and 125 of the Turkish Constitution provided the applicant with a remedy whereby he could bring proceedings before competent courts against this deportation order, and the applicant had indeed made use of this opportunity in the instant case. The Government reiterated that in any event, since the country of destination would be of the applicant's own choosing, the possibility of being exposed to a real risk within the context of the Convention was non-existent.

109. The applicant in turn argued that the available domestic remedies fell short of the requirements of Article 13. Neither the State authorities which ordered his deportation nor the administrative court that reviewed the deportation decision made an assessment of the risks involved under Articles 2 and 3 in the event of his deportation, despite his express requests, particularly during the administrative proceedings. Similarly, they did not take into account that he had established a family life in Turkey. The administrative court only overturned the impugned decision because of the interim measure issued by the Court, which was binding on the domestic authorities. Had it not been for the Court's interim measure, the domestic court would have rejected his case. Moreover, at no point during the deportation proceedings had he been informed of the factual and legal grounds underlying his proposed deportation. The allegations that he had been involved in international terrorism were not supported by any concrete evidence, which was further demonstrated by the fact that no criminal proceedings had been brought against him in Turkey.

2. The Court's assessment

110. The Court has already found that the applicant's complaints under Articles 2, 3 and 8 of the Convention are "arguable" and that the applicant can still claim to have been entitled to a remedy in that respect.

(a) Article 13 in conjunction with Articles 2 and 3

111. Given the irreversible nature of the harm which might occur if the alleged risk of torture or ill-treatment materialised, and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 in this context requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there is a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, through direct or indirect *refoulement*, which must be carried out without regard to any perceived threat to the national security of the expelling State (see *Auad*, cited above, § 120), and (ii) a remedy with automatic suspensive effect (see *Muminov v. Russia*, no. 42502/06, § 101, 11 December 2008; *Gebremedhin [Gaberamadhien]*, cited above, § 66; and *Jabari v. Turkey*, no. 40035/98, § 39 or 50, *ECHR 2000- VIII*). It is, therefore, inconsistent with Article 13 for such measures to be executed before the national authorities have examined their compatibility with the Convention (see *M. and Others v. Bulgaria*, no. 41416/08, § 129, 26 July 2011; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 153, 11 January 2007; and *Čonka v. Belgium*, no. 51564/99, § 79, ECHR 2002-I). The same principles apply when expulsion exposes the applicant to a real risk of a violation of his rights safeguarded by Article 2 of the Convention (see *M.A. v. Cyprus*, cited above, § 133).

112. Turning to the facts of the instant case, the Court reiterates at the outset that it has already been established that judicial review in deportation cases in Turkey could not be regarded as an effective remedy, since an application for the quashing of a deportation order did not have automatic suspensive effect, thus exposing any person in the applicant's position to the risk of deportation at any moment without a prior independent examination of his claims (see *Abdolkhani and Karimnia*, cited above, § 116).

113. While this finding is sufficient on its own to constitute a violation of Article 13 of the Convention, the Court nevertheless wishes to address another issue which it considers particularly problematic. It notes in this connection that contrary to the requirement of rigorous scrutiny under Article 13, the Ankara Administrative Court did not in any way deal with the aforementioned issue of "personal risk" when examining the applicant's legal challenge to his deportation. The Court believes that this deficiency is due, at least to some extent, to the fact that neither the original deportation order nor any subsequent submissions by the Ministry to the domestic

courts specified where exactly the applicant would be deported to. Such ambiguity is unacceptable, not only because it exacerbated the applicant's already precarious position, but also because it inevitably hampered a meaningful examination of the risks involved in his deportation, thus rendering the protection afforded under Article 13 illusory (see, *mutatis mutandis*, *Auad*, cited above, § 133).

114. In the light of the above, the Court concludes that the applicant was not afforded an effective remedy in relation to his complaints under Articles 2 and 3 of the Convention regarding his threatened deportation from Turkey. There has accordingly been a violation of Article 13 of the Convention under this head.

(b) Article 13 of the Convention in conjunction with Article 8

115. The Court notes that by contrast to the requirement in relation to Articles 2 and 3, where expulsions are challenged on the basis of potential interference with private and family life, it is not imperative for a remedy to have automatic suspensive effect for it to be effective. Nevertheless, in immigration matters, where there is an arguable claim that expulsion threatens to interfere with the alien's right to respect for his private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (see *De Souza Ribeiro*, cited above, § 83).

116. If expulsion has been ordered by reference to national security considerations, certain procedural restrictions may be necessary to ensure that no leakage detrimental to national security occurs, and any independent appeals authority may have to afford a wide margin of appreciation to the executive. However, these limitations can by no means justify doing away with remedies altogether whenever the executive has chosen to invoke the term "national security". There must be some form of adversarial proceedings. Furthermore, the question whether the impugned measure would interfere with the individual's right to respect for his or her family life and, if so, whether a fair balance has been struck between the public interest involved and the individual's rights must be examined (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 137, 20 June 2002). The relevant factors to be taken into account when carrying out the balancing exercise have been summarised in the Court's judgment in the case of *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 57-59, ECHR 2006-XII).

117. Unlike the situation in *Al-Nashif* (cited above), it appears that while the applicant did not have access to all the evidence against him, the Ankara Administrative Court, which was tasked with reviewing the deportation

decision, was informed by the executive of the reasons grounding that decision. Be that as it may, there is nothing in the case file to suggest that the Ankara Administrative Court actually carried out a genuine inquiry into the allegations of the State authorities on the basis of the information provided to it, such as by way of verifying the relevant factual circumstances and assessing whether genuine national security concerns were truly at stake. The domestic court's absolute silence on these matters raises the suspicion that it took the authorities' assertions at face value, rather than subjecting them to a rigorous scrutiny.

118. This failure is particularly striking considering that the applicant was already at a disadvantage on account of his inability to access all the information used against him, which had forced him to build his defence arguments on the basis of very general accusations. The Court recalls in this connection that the accusations against the applicant were largely based on some telephone conversations he had allegedly had with unknown persons in Israel (see paragraph 17 above). However, there is no information in the case file to ascertain whether the secret surveillance measures in question were lawfully ordered and executed, nor was this aspect of the matter considered by the administrative court (see *C.G. and Others v. Bulgaria*, no. 1365/07, § 48, 24 April 2008), which again raises concerns of arbitrariness.

119. The Court further notes that the administrative court similarly failed to discuss in any way whether the applicant's deportation would interfere with his family life, and whether such interference would strike a fair balance in the circumstances between the relevant competing interests, namely the public interest in protecting national security and the applicant's interest in preserving his family life (see *Maslov v. Austria* [GC], no. 1638/03, § 76, ECHR 2008).

120. Having regard to the foregoing, the Court concludes that the applicant did not have an effective remedy in relation to his complaint under Article 8 of the Convention, where the issues at stake were thoroughly examined in proceedings that were adversarial and which provided him with sufficient safeguards against arbitrary conduct on the part of State authorities. There has therefore been a violation of Article 13 of the Convention in conjunction with Article 8.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. The applicant also cited Articles 6, 9 and 10 of the Convention, without however substantiating these claims in any way.

122. Having regard to the documents in its possession, the Court finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows

that these complaints must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

123. The applicant did not submit a claim for compensation for pecuniary damage. As regards non-pecuniary damage, he claimed 70,000 euros (EUR) in view of the breach of his Convention rights.

124. The Government contested this claim as baseless.

125. 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 gravity of the violations in question and to equitable considerations, it awards the applicant EUR 9,750 under this head.

B. Costs and expenses

126. The applicant also claimed EUR 3,600 for legal expenses incurred before the Court and EUR 450 for other costs and expenses, such as court fees, stationery, photocopying, translation and postal costs incurred before the domestic courts and the Court. In this connection, he submitted a time sheet showing that his legal representative had carried out forty-five hours' legal work, a legal fee agreement that he had concluded with his representative, and invoices for the remaining costs and expenses.

127. The Government contested this claim, which it deemed to be unsubstantiated.

128. 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 sum of EUR 3,400 covering costs under all heads.

C. Default interest

129. 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

1. *Declares*, unanimously, the complaints under Articles 3 (conditions of detention incompatible with the applicant's disability), 5 and 13 of the Convention admissible, and the complaints under Articles 2, 3 and 8 (regarding the applicant's threatened deportation) and Articles 6, 9 and 10 inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention at the Kumkapı Foreigners' Admission and Accommodation Centre;

3. *Holds*, unanimously, that it is not necessary to examine the complaint under Article 3 in relation to the interruption of the applicant's medical treatment during his detention at the Kumkapı Foreigners' Admission and Accommodation Centre;

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

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

6. *Holds*, unanimously, that there has been a violation of Article 5 § 5 of the Convention;

7. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention in conjunction with the Articles 2, 3 and 8 in relation to the applicant's threatened deportation from Turkey;

8. *Holds*, unanimously, that it is not necessary to examine the admissibility or the merits of the complaint under Article 8 regarding the disruption of the applicant's family life during his detention;

9. *Decides*, unanimously, to lift the interim measure indicated to the Government under Rule 39 of the Rules of the Court;

10. *Holds*, unanimously,
(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 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,400 (three thousand four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

11. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting and partly concurring opinion of Judge A. Sajó is annexed to this judgment.

G.R.A.
S.H.N.

PARTLY DISSENTING, PARTLY CONCURRING OPINION OF JUDGE SAJÓ

Although I share the view of the majority with respect to their Article 5 findings in this case, I respectfully disagree regarding the majority's Article 3 conclusions. I agree with the majority's conclusions regarding the violation of Article 13, but on a narrower ground.

Under Article 3 of the Convention, the majority found that the applicant's conditions of detention were unsuitable for a wheelchair-bound person and constituted degrading treatment. To date the Court has required only that "where authorities decide to place and keep a person with a disability in detention they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability" (see paragraph 50 of the judgment). There were policemen (as well as the applicant's wife, on occasion) readily available to assist the applicant, and the hotel facilities to which he was carried by the policemen were not located at a very great distance. In fact the distance could have been the same within the detention facility, requiring the same help from the policemen. The applicant's detention under these conditions lasted only seven days, and its short duration should not have been discounted when assessing whether the treatment constituted a violation. Were the Court to apply its standards and impose a positive obligation on States to provide accessible detention facilities for persons with disabilities, for example under Article 8 in conjunction with Article 14, I would have no difficulties in applying those considerations to the present case. But the treatment of the applicant, while far from ideal, does not meet the threshold of inhuman or degrading treatment required by Article 3.

As to the finding of a violation of Article 13 of the Convention, I think most of the reasoning is speculative, although it follows from our case-law that in matters of deportation detention the Turkish system does not satisfy the requirements of the right to an effective remedy. These considerations apply for the period the applicant was detained and actually faced deportation. In a deportation case in which the deportation has been stayed and the applicant has arguable victim status, it appears entirely speculative to comment on the lack of an effective remedy were the domestic proceedings or the detention to have continued. It would be another matter if the deportation proceedings had progressed further and the applicant had subsequently found himself without an effective remedy. Given that these were not the circumstances of this case after the applicant's release, I find it difficult to vote in favour of a violation of the right to an effective remedy where the need for such remedy was obviated to some extent by the outcome or staying of the proceedings.