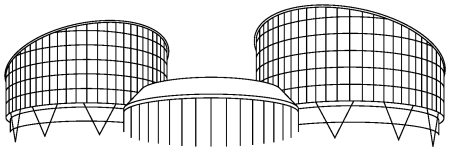

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF YARASHONEN v. TURKEY

(Application no. 72710/11)

JUDGMENT

STRASBOURG

24 June 2014

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

In the case of Yarashonen 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,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 72710/11) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national of Chechen origin, Mr Zalim Yarashonen ("the applicant"), on 28 October 2011.

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

3. On 18 March 2013 the application was communicated to the Government.

4. The applicant and the Government each filed observations on the admissibility and merits of the application. The Russian Government, who had been informed of their right to intervene under Article 36 of the Convention, did not make use of this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's arrest and detention

5. The applicant was born in 1984 and lives in Istanbul.

6. On an unspecified date in 2000 the applicant fled Russia and travelled to Turkey following the alleged killing of his father and brother by Russian security forces.

7. On 25 October 2010 he was arrested at Atatürk International Airport in Istanbul, following an identity check, on the ground that he had entered Turkey illegally and possessed no passport. He was placed in custody at the police station in the airport.

8. On 26 October 2010 the applicant was questioned by a police officer at Atatürk International Airport police station. He stated that he had entered Turkey in 2000 through the Sarp border crossing on the Georgian border using his birth certificate and that he had never possessed a passport.

9. On 1 November 2010 the applicant was transferred to the Kumkapı Removal Centre.

10. On 17 February 2011 the applicant met with his lawyer, Mr A. Yılmaz, who also represented him during the proceedings before the Court. There is no information in the case file regarding the scope of their meeting, nor is it clear whether this was the applicant's first meeting with his lawyer.

11. On 13 April 2011 the applicant met with another lawyer, Mr F. Amca. The lawyer indicated in his meeting notes that the applicant had not yet filed an asylum request at that point. He further noted that the applicant had caught flu three to four months before, but had not sought any treatment and was still suffering from it. It appears from the lawyer's notes that at the end of the meeting the lawyer advised the applicant to speak to the officers in charge at the removal centre about his asylum request and his health problems.

12. On 18 April 2011 the applicant applied for asylum.

13. On 21 April 2011 the applicant's lawyer, Mr A. Yılmaz, sent a letter to the General Security Directorate of the Ministry of the Interior by standard post complaining that the applicant was being detained unlawfully and requesting his release. In the letter he also brought the applicant's health issues to the authorities' attention and requested medical assistance. According to the information provided by the parties, the letter reached the Ministry of the Interior on 2 May 2011.

14. In the meantime, on 29 April 2011, the applicant was released from detention and granted an asylum-seeker certificate. He was instructed to reside in the Sakarya province pending the determination of his asylum request.

15. On 30 April 2011 the applicant went to a private clinic in Istanbul complaining of a cough and fatigue. He was diagnosed with an infection of the lower respiratory tract on the basis of a chest X-ray examination. He was prescribed a ten-day course of antibiotics and was asked to return to the clinic for a check-up at the end of that period. It is not clear whether the applicant did return to the clinic for his check-up.

16. On 9 June 2011, as his symptoms persisted, the applicant went to the Süreyyapaşa Thoracic and Cardiovascular Surgery Training and Research Hospital in Istanbul. Further medical tests conducted at the hospital revealed that the applicant was suffering from tuberculosis pleurisy. He received in-patient treatment at the hospital until 15 June 2011. On being discharged, he was advised to apply to a tuberculosis clinic for follow-up treatment. The applicant has not provided any information regarding his state of health or the treatment he received following his discharge.

B. The conditions of detention at the Kumkapı Removal Centre

1. The applicant's account

17. The applicant claimed that the Kumkapı Removal Centre was severely overcrowded at the time of his detention, which lasted five months and twenty-seven days. He had to share a dormitory room of approximately 40 sq. m with twenty-four to forty-five other people, who were provided with only fifteen bunk-beds. The centre had an overall capacity of 560 people at the relevant time, but accommodated around 600 people. The overcrowding of the centre led to problems of hygiene. The building was infested with insects and there were frequent outbreaks of contagious diseases; he had thus contracted a serious bacterial infection. The quality and quantity of the food provided was also fairly poor. Moreover, there was no provision for outdoor exercise at the Kumkapı Removal Centre, which meant that he had been unable to go outside throughout his detention.

2. The Government's account

18. The Government submitted that the Kumkapı Removal Centre where the applicant was detained had a capacity of 300 persons. The detainees were accommodated on three floors: the first two floors were reserved for male detainees, and the third floor for females. There were five dormitory rooms on each floor, measuring 50, 58, 69, 76 and 84 sq. m respectively. There were fifteen to twenty beds in each of the ten rooms reserved for male detainees and all rooms were sufficiently ventilated. There were also five showers and six toilets per floor, as well as a cafeteria measuring 69 sq. m, where breakfast, lunch and dinner were served daily on each floor. The detainees had the right to outdoor exercise in suitable weather conditions. A doctor was present on the premises every Thursday and the detainees also had access to medical care in cases of emergency. As for the hygiene in the facility, there were six cleaning staff working full time at the removal centre, and the building was disinfected whenever necessary.

19. In support of their claims, the Government submitted, *inter alia*, photos of two of the dormitory rooms, both of which appeared well lit and fairly clean, as well as of the hallway and the cafeteria on one of the floors

reserved for male detainees. Although the total number of beds cannot be ascertained from the photos, it is observed that there were two rows of bunk beds positioned against the walls in both rooms, leaving a narrow corridor in the middle of the room. While some of the bunks were touching each other, others were separated by big metal lockers. No other furniture, such as tables and chairs, was present in the rooms; there were blankets on the beds in only one of the rooms and the other room had no bedding at all. A television was available on each floor in the cafeteria. Moreover, a metal sit-up bench and an exercise bike were shown on the photo of the hallway of one of the floors reserved for male detainees. No photos of the toilets or the showers were provided.

20. The Government further stated that when the applicant first arrived in the Kumkapı Removal Centre on 1 November 2010, there were 265 detainees in total (163 male and 102 female). They also claimed that from 1 November 2010 until the applicant's release on 29 April 2011, the number of detainees never exceeded 300 and submitted the registers showing the occupation rates in respect of male detainees on various dates as follows:

Date	**Number of male detainees**		
	First floor	**Second floor**	**Total**
1 November 2010	No separate count	No separate count	163
28 February 2011	55	101	156
1 March 2011	64	124	188
15 March 2011	52	114	166
31 March 2011	49	108	157
14 April 2011	42	Unknown	Unknown
15 April 2011	Unknown	160	Unknown
28 April 2011	Unknown	136	Unknown

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

1. Relevant legislation and practice

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

Article 36

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

Article 125

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

> If the implementation of an administrative measure would result in damage which is difficult or impossible to compensate and the measure is also clearly unlawful, a stay of execution may be granted, stating reasons ...”
>
> The administration shall be liable to make compensation for damage resulting from its actions or decisions.”

22. Section 2(1) (b) of the Administrative Procedure Act (Law no. 2577) provides that administrative proceedings can be brought on account of a violation of personal rights by an administrative action or measure.

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

2. Report of the Sub-committee established by the Human Rights Inquiry Committee of the Grand National Assembly of Turkey

24. At its meeting of 8 December 2011 the Human Rights Inquiry Committee of the Grand National Assembly of Turkey established a sub-committee to look into the problems encountered by refugees, asylum seekers and irregular migrants in Turkey, including the conditions in which they were detained pending their deportation. For that purpose, on 10 and 11 May 2012 two Members of Parliament (“MPs”) visited the removal centres in Edirne, Kırklareli and Istanbul, including the Kumkapı Removal Centre.

25. The visit report indicated that the Kumkapı Removal Centre had a total capacity of 300 detainees (200 male and 100 female). However, at the time of the delegation’s visit (11 May 2012), the removal centre accommodated 297 male, 97 female and 7 minor detainees. The number of beds varied according to the rooms and the hygiene in the toilets and bathrooms was unsatisfactory. There was a big cafeteria in the removal centre, with sufficient amenities, as well as the possibility to purchase food and basic provisions. The detainees had freedom of movement inside the centre and also had access to television in the cafeterias. They also benefited from the sports equipment provided in the corridors.

26. The delegation was particularly critical of the fact that the detainees were authorised to go outdoors only once a week, when the weather conditions permitted. It recommended measures allowing the detainees daily outdoor exercise at their own convenience.

B. International material

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

"29. In the view of the CPT, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel.

Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

...

79. Conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. For example, detained irregular migrants ... should be restricted in their freedom of movement within the detention facility as little as possible."

The same report also indicates, on pages 25 and 26, that material conditions of detention may in certain cases be such as to favour the spread of transmissible diseases and that States have a duty of care towards persons deprived of their liberty to prevent this problem by, *inter alia*, ensuring satisfactory hygiene and absence of overcrowding in places of detention, as well as access to natural light and good ventilation.

28. In June 2009 the CPT visited six removal centres for foreigners in different provinces in Turkey, including the Kumkapı Removal Centre in Istanbul (referred to as the "Istanbul-Kumkapı Detention Centre") where the applicant was also detained. The relevant extracts from its visit report dated 16 December 2009 read as follows:

"*Istanbul-Kumkapı Detention Centre*, which was opened in March 2007, is the largest detention facility for immigration detainees in Turkey, with an official capacity of 560 places (for 360 male and 200 female detainees). At the time of the visit, the centre was accommodating 124 foreign nationals.

...

44. As regards material conditions in the detention centres visited, the delegation noted a sharp reduction in the number of detained persons during the two preceding weeks in several establishments visited (in particular at Istanbul-Kumkapı and Edirne-Tunça), where apparently up to 50% of all detainees had been released. This had obviously had a beneficial effect on the living conditions prevailing in the establishments at the time of the visit.

...

45. At Istanbul-Kumkapı, material conditions in the new detention facility were generally much better than those found in the past in the former detention facilities in Istanbul [footnote: Though some improvements were made only very shortly before the visit (e.g. painting of walls, contracting of external cleaning staff, etc.)]. In

particular, most detention rooms were spacious, well lit (with good access to natural light) and very clean.

That said, it is clear that the centre's current official capacity of 560 places is far too high, given the space and facilities available. In particular, the living space in the detention rooms is insufficient (e.g. 58 m² for 30 beds), and communal rooms are inadequate in terms of size and equipment (e.g. on the ground floor with a total of 120 beds, the communal room was equipped with eight tables and 23 chairs). The CPT recommends that steps be taken to significantly reduce the official capacity of Istanbul-Kumkapı Detention Centre and to ensure that future occupancy levels are always kept within the limits of the new capacity**.**

...

47. It is of particular concern that, with the exception of Kırklareli and, as regards women and children, Istanbul-Kumkapı [footnote: At Kumkapı, the existing courtyard was primarily used as a parking area for police vehicles. Due to the limited space available, only female detainees and children benefited from daily outdoor exercise, whereas male adult detainees were usually denied outdoor exercise for weeks and months on end], foreign nationals held in the detention centres visited were offered no outdoor exercise at all. Such a state of affairs is unacceptable.

During the end-of-visit talks, the delegation made an immediate observation and called upon the Turkish authorities to take the necessary measures to ensure that all immigration detainees at the detention centres in Ağrı, Edirne-Tunça, Istanbul-Kumkapı, Konya and Van are able to benefit from at least one hour of outdoor exercise per day.

By letter of 23 September 2009, the Turkish authorities informed the Committee that foreign nationals held at Istanbul-Kumkapı Detention Centre "are allowed to open air for an *average of one hour per day* and benefit from outdoor activities"...

The CPT welcomes the steps taken thus far and would like to receive confirmation that all foreign nationals held at Ağrı and Istanbul-Kumkapı Detention Centres are able to benefit from at least one hour of outdoor exercise per day.

...

51. In several detention centres visited, many complaints were received about the quality and/or quantity of the food provided. The director of one of the centres visited affirmed to the delegation that, in his experience, the budgetary allocation of 4.60 TLR per person and day was clearly insufficient. The CPT recommends that the provision of food to immigration detainees be reviewed in all the detention centres for foreigners, to ensure that it is adequate in terms of both quantity and quality."

29. On 11 June 2010 the Turkish Government responded to the aforementioned CPT report. Below are extracts from the relevant parts of the Government's response:

"According to Article B/4 of the Circular on the fight against illegal migrants (No. 632 dated 19 March 2010), a Directive will be prepared by the Directorate General of Security to be disseminated to Governorships, on the physical condition requirements of the return centers and basic management elements of these centers.

This Directive will cover the issues such as establishment and administration of return centers, arrangement of in kind and monetary assistance allocated by the NGOs, relations with these organizations, registries on illegal migrants accommodated in these centers (compulsory registry books and modalities of

safekeeping precious belongings as well as other belongings of illegal migrants that cannot be used at return centers) and modalities of transferring illegal migrants from provinces where holding capacity has been surpassed to other provinces with available places.

...

Article B/5 of the Circular on the fight against illegal migration states that 'the necessary conditions of the return centers where illegal migrants are accommodated until their deportation and the basic elements of implementation in these centers are enclosed and procedures shall be conducted according to these elements until the Directive issued by the Directorate General of Security enters into force.'

According to Article 19 of the "Basic Elements" Section of the Circular, the following procedures shall be conducted regarding the centers;

...

e. Necessary measures shall be taken for adequate access to natural light.

f. Outdoor exercise on a daily basis shall be offered to persons held for 24 hours or more.

g. Necessary measures shall be taken in order to provide longer hours and a greater variety of activities to the illegal migrants accommodated in the centre.

h. Television sets shall be provided for the use of illegal migrants.

...

According to Articles 9, 10, 11, 12 and the "Basic Elements" Section of the Circular on the fight against illegal migration;

-Hot water shall be provided throughout the day.

-Sufficient number of toilets shall be constructed both in men's and women's sections.

-Sufficient number of washing machines shall be provided. Sheets and blankets utilized by illegal migrants shall be regularly washed to meet hygiene conditions.

-Mineral water shall be provided on a daily basis to illegal migrants, where tap water is not potable.

-The services provided to illegal migrants (such as food and cleaning) shall be realized by outsourcing, in principle.

..."

30. The United Nations ("UN") Special Rapporteur on the human rights of migrants, Mr François Crépeau, undertook an official visit to Turkey on 25-29 June 2012 at the invitation of the Turkish Government. He visited, *inter alia*, the removal centres in Kumkapı and Edirne, and submitted a report to the UN General Assembly on 17 April 2013 (A/HRC/23/46/Add.2). The relevant parts of the report read as follows:

"42. During his visit, the Special Rapporteur noted an insufficient regulation of the reasons for administrative detention of migrants, its duration, detention conditions and the access to safeguards for the detained migrants.

...

52. While a circular issued by the Turkish National Police in September 2010 gave the instruction to systematically inform irregular migrants held in removal centres in writing of the reason for being held in the centre, the duration of stay, their right to have access to a lawyer, and the right of appeal against the decision to be held in a removal centre or deportation order, the Special Rapporteur's interviews with detained migrants at Edirne and Kumkapı removal centres indicate that this circular is not systematically implemented in practice.

...

54. The Special Rapporteur also remains disturbed about the conditions in these removal centres: detainees, including children, are often locked in their rooms or wards, and are given little or no access to outdoor areas. Overcrowding and unclean conditions, including inadequate food, are also significant concerns."

31. The European Commission's 2011 Progress Report on Turkey published on 12 October 2011 (SEC (2011) 1201) made the following observations regarding the absence of detailed provisions on the management of removal centres in Turkey (page 91):

"4.24 ... There is no comprehensive set of rules/guidelines for the management and operation of removal centres. The TNP [Turkish National Police] has been tasked with drafting a 'directive' to regulate issues concerning the management of removal centres, including the physical conditions in centres, staff to be appointed, the security of and in the centres, provision of food and health, treatment of vulnerable groups, as well as involvement of civil society in the centres. This 'directive' has not yet been adopted."

The Progress Report of 2012 (published on 10 October 2012, SWD 2012 (336) page 75) similarly noted that "minimum living standards at removal centres and their inspection remain unregulated".

32. Lastly, in its report "Stranded: Refugees in Turkey Denied Protection" released in 2009[1], Amnesty International expressed its concerns regarding the arbitrary detention of asylum seekers and refugees in Turkey in the following terms:

"Amnesty International is concerned that many of the violations of the rights of refugees and asylum-seekers in detention stem from the lack of legal protection in national law for persons in administrative detention. Asylum-seekers and refugees held in administrative detention in foreigners' guest-houses are regarded as under administrative supervision (*idari gözetim*) rather than detention. In practice this results in asylum-seekers and refugees being unfairly denied the legal protections applicable to all persons in detention provided under international law. Irrespective of national law categorizations, individuals hold rights under international law as highlighted above, including the right to be free from arbitrary detention and protections if detained."

1. Page 25 at http://www.amnesty.org/en/library/asset/EUR44/001/2009/en/0f217291-cae8-4093-bda9-485588e245d8/eur440012009en.pdf.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. Relying on Article 5 §§ 1, 2, 3 and 4 and Article 13 of the Convention, the applicant complained that he had been unlawfully detained without the opportunity to challenge the lawfulness of his detention and that he had not been duly informed of the reasons for his deprivation of liberty. He further maintained, under Article 5 § 5 of the Convention, that he had had no right to compensation under domestic law in respect of these complaints.

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

A. Admissibility

35. As regards the complaint under Article 5 § 3 of the Convention, the Court notes that the applicant was not arrested or detained in accordance with the provisions of paragraph 1 (c) of Article 5, as no criminal charges were brought against him on suspicion of having committed an offence. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see *Soldatenko v. Ukraine*, no. 2440/07, § 103, 23 October 2008).

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

B. Merits

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

37. The Government stated that the applicant had been detained from 25 October 2010 to 29 April 2011 for deportation purposes, within the meaning of Article 5 § 1 (f) of the Convention.

38. The applicant maintained his allegation that his detention had had no legal basis in domestic law.

39. The Court has already examined a similar grievance in the case of *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, §§ 125-135, 22 September 2009, in which it found that in the absence of clear legal provisions in Turkish law establishing the procedure for ordering detention

with a view to deportation, the applicants' detention was not "lawful" for the purposes of Article 5 of the Convention. There are no particular circumstances which would require the Court to depart from its findings in that judgment.

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

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

41. The Government submitted that, following his arrest, the applicant was questioned by police officers on 26 October 2010 in relation to his illegal entry into Turkey, at which point he was also informed of the reasons for his detention.

42. The applicant reiterated his complaint.

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

44. Referring to the Government's submission noted in paragraph 37 above, the Court observes that the applicant was detained for deportation purposes from the very start of his detention on 25 October 2010. Nevertheless, neither the record of the interview dated 26 October 2010, nor any other documents submitted by the Government show that he had been notified of the reasons for his detention at the airport police station or subsequently at the Kumkapı Removal Centre (see *Dbouba v. Turkey*, no. 15916/09, § 52, 13 July 2010).

45. There has therefore been a violation of Article 5 § 2 of the Convention.

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

46. The Government submitted that the applicant could have applied to the administrative courts under Articles 36 and 125 of the Constitution in order to challenge the lawfulness of his detention.

47. The applicant maintained his allegations and claimed that the remedy suggested by the Government was not effective in practice.

48. The Court notes that it has found a violation of Article 5 §§ 4 and 5 of the Convention in the past in a number of similar cases, where it concluded that the Turkish legal system did not provide persons in the applicant's position with a remedy whereby they could obtain judicial review of the lawfulness of their detention, within the meaning of

Article 5 § 4, and receive compensation for their unlawful detention as required under Article 5 § 5 of the Convention (see *Abdolkhani and Karimnia*, cited above, § 142; *Tehrani and Others v. Turkey*, nos. 32940/08, 41626/08 and 43616/08, § 79, 13 April 2010; and *Dbouba*, cited above, §§ 53-54). In the absence of any examples submitted by the Government in which the administrative courts had speedily examined requests and ordered the release of an asylum seeker on grounds of unlawfulness of his or her detention and had awarded him or her compensation, the Court sees no reason to depart from its findings in the aforementioned judgments.

49. Moreover, the Court has already found that the applicant was not duly informed of the reasons for the deprivation of his liberty (see paragraph 45 above). It considers that this fact in itself had the effect that the applicant's right of appeal against his detention under Article 5 § 4 was deprived of all substance (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 432, ECHR 2005-III; *Abdolkhani and Karimnia*, cited above, § 141; and *Dbouba*, cited above, § 54).

50. In the light of the above, the Court concludes that there has been a violation of Article 5 §§ 4 and 5 of the Convention.

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

51. Relying on Article 3 of the Convention, the applicant complained about the material conditions at the Kumkapı Removal Centre and alleged that he had been denied medical assistance there despite the health problems that had affected him during the last three or four months of his detention. He also complained, under Article 13, that there were no effective domestic remedies available to him to complain of a violation of his rights under Article 3.

A. Material conditions of detention

1. Admissibility

52. The Government submitted that this part of the application should be rejected for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. They maintained in this connection that the applicant should have applied to the administrative or judicial authorities and sought compensation in accordance with Article 125 of the Constitution or section 2(1) (b) of the Administrative Procedure Act. The Government indicated that they were not able to submit any sample administrative or judicial decisions specifically reviewing conditions of detention at a foreigners' removal centre; however, that did not mean that the

administrative remedies they suggested were ineffective. Instead, they submitted a sample case in which an administrative court had awarded compensation under Article 125 of the Constitution to a person whose son had lost his life in police custody, following the conviction of the relevant police officers of torture.

53. The applicant contested the Government's argument, stating that no adequate remedy existed in relation to his complaint, which also explained the Government's failure to submit concrete and relevant examples of how the legal provisions in question would provide effective redress in practice. The applicant, for his part, submitted two different examples, in which the Istanbul Governor's Office had refused to institute criminal proceedings in respect of the complaints of two foreigners as regards the conditions of detention at two different removal centres, including the one in Kumkapı. Both decisions of the Istanbul Governor's Office had been upheld by the Istanbul Regional Administrative Court. The claimant, who had been held in Kumkapı, had expressly complained of the severe overcrowding there, but neither the Governor's Office nor the Istanbul Regional Administrative Court had responded to that allegation in their decisions. In those circumstances the applicant considered that there was no point in using a remedy regarding the poor conditions of his detention.

54. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the complaint that the applicant did not have an effective remedy at his disposal by which to complain of the inhuman and degrading conditions during his detention. The Court therefore finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (see, among others, *Sergey Babushkin v. Russia*, no. 5993/08, § 34, 28 November 2013).

55. The Court further finds that the applicant's complaints under Articles 3 and 13 of the Convention concerning the conditions of his detention at the Kumkapı Removal Centre and the lack of effective remedies in that respect are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. The Court therefore declares these complaints admissible.

2. Merits

(a) Article 13 of the Convention

56. As indicated in paragraph 52 above, the Government submitted that the applicant had had effective remedies in respect of his grievances about the conditions of his detention.

57. The applicant reiterated his complaints and arguments set out in paragraph 53 above.

58. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the

Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention as in the present case (see below paragraphs 74-81) and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

59. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in theory, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 96, 10 January 2012). The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Ananyev and Others*, cited above, § 94). The "authority" referred to in Article 13 does not necessarily have to be a judicial authority, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective.

60. In the area of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: (i) an improvement in the material conditions of detention, and (ii) compensation for the damage or loss sustained on account of such conditions. If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred (see *Sergey Babushkin*, cited above, § 40).

61. The Court stresses that where the fundamental right to protection against torture, inhuman or degrading treatment is concerned, preventive and compensatory remedies have to be complementary in order to be considered effective. In contrast to cases concerning the length of judicial proceedings or non-enforcement of judgments, where the Court has accepted in principle that a compensatory remedy alone may suffice (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 187, ECHR 2006-V; and *Burdov v. Russia (no. 2)*, no. 33509/04, § 99, ECHR 2009 -...), the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to that provision requires, in the Court's view, that the States parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any

such treatment rapidly. Otherwise, the prospect of future compensation would legitimise particularly severe suffering in breach of this core provision of the Convention and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements (see *Ananyev and Others*, cited above, § 98).

62. Turning to the facts of the present case, the Court observes that the Government have suggested, in broad terms, that it was open to the applicant to raise his complaints with the domestic authorities and bring an action for compensation before the administrative courts in general judicial review proceedings as provided for in Article 125 of the Constitution and section 2(1)(b) of the Administrative Procedure Act. They did not refer to any other remedies designed specifically to afford redress for inadequate conditions of detention in foreigners' removal centres.

63. The Court reiterates in this regard that it is incumbent on the respondent Government to illustrate the practical effectiveness of the remedies they suggest in the particular circumstances in issue with examples from the case-law of the relevant domestic courts or decisions of the administrative authorities (see *Ananyev and Others*, cited above, § 110; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 219, ECHR 2012). The Turkish Government did not, however, submit a single judicial or administrative decision showing that an immigration detainee had been able to vindicate his or her rights by using the remedies suggested, that is, where recourse to an administrative court or authority had led to the improvement of detention conditions and/or to an award of compensation for the anguish suffered on account of the adverse material conditions (see similar findings of the Court in the context of Article 35 § 1 in *Abdolkhani and Karimnia v. Turkey (no. 2)*, no. 50213/08, § 25, 27 July 2010; and *Kurkaev v. Turkey*, no. 10424/05, §§ 26-27, 19 October 2010). They likewise failed to provide an explanation as to why they could not submit any such examples.

64. The Court considers that the onus on the Turkish Government to prove the existence of effective domestic remedies in this context was particularly stringent for two reasons. Firstly, the Court reiterates that there was a lacuna in Turkish law at the material time regarding the detention of foreign nationals in the context of immigration controls, whereby such practice was not regarded as a deprivation of liberty but as mere "accommodation" or "sheltering" of foreigners in removal centres or "guest houses" pending their deportation (see, for instance, *Abdolkhani and Karimnia*, cited above, § 120, as well as the relevant extract from the Amnesty International report cited in paragraph 32 above). The wholly arbitrary practice governing the deprivation of liberty of immigration detainees raises a legitimate concern about the extent to which these individuals' rights would be upheld when challenging the conditions of their unrecognised detention. Secondly, as noted by the UN Special Rapporteur and the European Commission, at the material time there was no

comprehensive regulation in Turkey on the conditions in which irregular immigrants should be detained (see paragraphs 30 and 31 above). In its response to the CPT report of 16 December 2009, the Government indicated that the Directorate General of Security had been tasked with preparing a directive concerning, *inter alia*, the material conditions in foreigners' removal centres and that the "basic elements" set out in Circular no. 632 would apply in the interim (see paragraph 29 above). The Court notes that the Government have not provided any information on whether the "basic elements" are being enforced. Nor have they indicated whether the aforementioned directive has come into force. In these circumstances, even assuming that detention conditions in foreigners' removal centres were amenable to review, as indicated by the Government, the standards against which such conditions would be assessed are unclear.

65. In view of this ambiguity regarding all aspects of detention pending deportation, the Court requires more concrete evidence of the effectiveness in practice of the remedies suggested by the Government. In the absence of such evidence, the Court cannot but conclude that the capacity of the general remedies mentioned by the Government to provide effective preventive and/or compensatory redress in this context has not been established with a sufficient degree of certainty.

66. The Court therefore rejects the Government's objection concerning the non-exhaustion of domestic remedies and concludes that there has been a violation of Article 13 on account of the absence of an effective remedy to complain about the conditions of detention on the particular facts of the instant case.

(b) Article 3 of the Convention

(i) The parties' submissions

67. The Government reiterated their account of the detention conditions at the Kumkapı Removal Centre (see paragraphs 18-20 above) and stated that those conditions complied with the requirements of Article 3 of the Convention. They provided photos of some of the sleeping and communal areas, as well as copies of the logs recording the number of male detainees at the removal centre on various dates during the applicant's detention.

68. The applicant maintained that during the period of his detention the Kumkapı Removal Centre was extremely crowded and accommodated approximately 600 persons, contrary to the information provided by the Government. The applicant submitted a report drafted by two medical doctors as evidence of the size and number of the dormitory rooms and other facilities reserved for male detainees in the removal centre, which conflicted somewhat with the figures provided by the Government. According to that report, there were only four rooms measuring 76, 50, 58 and 40 sq. m respectively on the first floor, and five rooms measuring 69,

76, 50, 58 and 84 sq. m respectively on the second floor. Each floor was also equipped with five showers, six toilets and a cafeteria of 69 sq. m. The applicant claimed that he shared a room of approximately 40 sq. m with thirty-five to forty-five people (between 1.14 to 0.89 sq. m per person), who were provided with only fifteen bunk beds to use between them. Some of the detainees were forced to sleep on the floor on blankets, or on the rug provided in the prayer area. The cramped condition of the rooms was also evident in the photos provided by the Government, which showed that there was not much space to move between the furniture. Some of the bunk beds were touching each other and two people could hardly walk side by side in the room. The applicant further claimed that while the Government had indicated the number of detainees per floor, they had failed to provide specific information on the surface area and occupancy rate of the particular room where he had stayed for over six months.

69. The applicant added that, contrary to the Government's allegations, he had not been allowed outdoors even once during the entire period of his detention, which had lasted approximately six months. Moreover, the cafeterias on each floor, to which the Government had referred, were only accessible during meal times; he had had to spend the rest of the time in his overcrowded room, which was poorly ventilated, polluted with cigarette smoke and unclean. The rooms looked deceptively cleaner and tidier in the photos provided by the Government; it was evident that they had been cleaned just before the photos had been taken. In reality, the whole facility was infested with insects, including bedbugs. By way of proof, the applicant submitted a photograph of a detainee who had been badly bitten by bedbugs. Sleeping conditions were further aggravated by the fact that the light was permanently on in the room and by the general commotion and noise from the large number of detainees. The applicant complained, lastly, of the poor quality of the food provided at the removal centre.

(ii) The Court's assessment

(α) General principles

70. The Court reiterates that, according to its case-law, 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 of severity is 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. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot

conclusively rule out a finding of a violation of Article 3 (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §§ 95-96, 24 January 2008).

71. Under Article 3, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity and that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Riad and Idiab*, cited above § 99; *S.D. v. Greece*, no. 53541/07, § 47, 11 June 2009; and *A.A. v. Greece*, no. 12186/08, § 55, 22 July 2010). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005; and *Aden Ahmed v. Malta*, no. 55352/12, § 86, 23 July 2013).

72. The extreme lack of personal space in the detention area weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005, and, for a detailed analysis of the principles concerning the overcrowding issue, see *Ananyev and Others*, cited above, §§ 143-48). Whereas the provision of four square metres of living space remains the acceptable minimum standard of multi-occupancy accommodation (see *Hagyó v. Hungary*, no. 52624/10, § 45, 23 April 2013), the Court has found that where an applicant has less than three square metres of floor surface at his or her disposal, the overcrowding must be considered to be so severe as to justify in itself a finding of a violation of Article 3 (see *Tunis v. Estonia*, no. 429/12, § 44, 19 December 2013, and the cases cited therein). The Court also takes into account the space occupied by the furniture items in the living area in reviewing complaints of overcrowding (see *Petrenko v. Russia*, no. 30112/04, § 39, 20 January 2011; and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 87, 27 January 2011).

73. The Court further reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3. Such elements include access to outdoor exercise, natural light or air, availability of ventilation, and compliance with basic sanitary and hygiene requirements (see *Ananyev and Others*, cited above, § 149 et seq. for further details, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 222, ECHR 2011). The Court notes in particular that the Prison Standards developed by the Committee for the Prevention of Torture make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the

open air every day and preferably as part of a broader programme of out-of-cell activities (see *Ananyev and Others*, cited above, § 150).

(β) Application of the above principles in the present case

74. The Court notes that the parties have contested many aspects of the applicant's detention conditions at the Kumkapı Removal Centre, including the total capacity of the centre, the number of dormitory rooms allocated to male detainees, the size of those rooms, the opportunities for outdoor exercise and recreational activities, the quality of the food provided and the hygiene of the premises. However, the Court does not consider it necessary to resolve the conflicting submissions of the parties, as it can establish a violation of Article 3 on the basis of the pertinent facts that have been presented, or are undisputed, by the respondent Government.

75. The Court notes in this connection that the Government submitted no information on the size of the room where the applicant was held or on the number of persons accommodated in that room. They only provided general information on the number of rooms allocated to male detainees; the number of beds in each room, which apparently varied between fifteen and twenty; the respective sizes of those rooms; and the number of occupants per floor on various dates during the period of the applicant's detention, without however mentioning on which floor the applicant was held (see paragraphs 18-20 above for the Government's submissions).

76. In view of the limited nature of the information provided by the Government, it is not possible to establish with any certainty the personal space available to the applicant in the room. In these circumstances, the Court has no option but to make an approximate assessment of floor space per detainee, by dividing the total area of the rooms allocated to the male detainees (674 sq. m) by the total number of those detainees. Accordingly, having regard to the numbers provided by the Government, even on 28 February 2011, when the male detainee population was at its lowest (a total of 156 as indicated in the chart in paragraph 20 above), the personal space per male detainee was approximately 4.32 sq. m, which is marginally higher than the recommended minimum area of 4 sq. m. The Court notes that the floor area per detainee dropped as low as 3.58 sq. m on 1 March 2011, when the total number of male detainees recorded by the Government increased to 188. In the light of those figures, which in reality should be significantly lower in view of the fixtures in the rooms, it is reasonable to consider that the applicant did not have sufficient personal space in his dormitory room even on the basis of the more favourable data provided by the Government.

77. This finding also coincides with the earlier observations of the CPT regarding the problem of overcrowding at the Kumkapı Removal Centre, which provide a reliable basis for the Court's assessment (see *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). While the Court does not

rule out the possibility that improvements were made between the CPT's visit in June 2009 and the applicant's detention from November 2010 to April 2011 – such as the reduction of the centre's official capacity – the subsequent visits of the members of the Grand National Assembly of Turkey and the UN Special Rapporteur on the human rights of migrants in May and June 2012 respectively also corroborate the evidence of a problem of overcrowding at the removal centre in question (see paragraphs 25 and 30 above). In particular, the number of male detainees reported by the MPs, which was 297 on the day of the scheduled visit, shows that the personal space per male detainee at the relevant time was only 2.27 sq. m, which in itself would lead to a violation of Article 3.

78. Moreover, while scarce space in relative terms may in some circumstances be compensated for by the freedom to spend time away from the dormitory rooms (see *Valašinas v. Lithuania*, no. 44558/98, § 103 and 107, ECHR 2001-VIII; and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004), the Court considers that the applicant did not enjoy sufficient freedom of movement either. The Court notes first and foremost, and with grave concern, the applicant's allegation that he was not allowed to step outside the building even once during the entire period of his detention, that is, for approximately six months. While the Government indicated by way of response that detainees were authorised to go outdoors "in appropriate weather conditions", they did not state whether the applicant had benefited from that right or how often such authorisation was granted. In any event, access to outdoor exercise is a fundamental component of the protection afforded to persons deprived of their liberty under Article 3 and as such it cannot be left to the discretion of the authorities; according to the CPT, all detainees, even those confined to their cells as a punishment, have a right to at least one hour of exercise in the open air every day regardless of how good the material conditions might be in their cells (see the CPT standards, document no. CPT/Inf/E (2002) 1-Rev. 2013, § 48). This, however, was clearly not the case at the Kumkapı Removal Centre at the relevant time, as also reported by the CPT, the UN Special Rapporteur and the delegation of Turkish MPs (see paragraphs 28, 30 and 26 above, respectively). Bearing in mind the purpose of detention of individuals pending deportation, the Court notes furthermore that certain aspects of the conditions in which the applicant was detained were even stricter than the Turkish prison regime for prisoners serving a life sentence (see *X v. Turkey*, no. 24626/09, §§ 25 and 26, 9 October 2012 for the relevant domestic-law provisions governing the Prison Service and execution of sentences).

79. It further appears that the applicant did not benefit from freedom of movement or recreational activities indoors either. In this regard the applicant alleged, and the Government did not dispute, that the cafeterias on each floor, which were apparently the only communal areas available to the

detainees at the material time, were only accessible during meal times and even then were acutely inadequate – in view of their small size (69 sq. m). – to accommodate the detainees on each floor. In these circumstances, the applicant was effectively confined to his overcrowded dormitory room with no furniture other than beds and lockers for months on end. Moreover, the applicant alleged, and the Government did not deny, that the limited sports equipment observed in the photos submitted by the Government was not available at the time of his detention.

80. The Court considers that the above findings, coupled with the length of the applicant's unlawful detention and the possible feelings of anxiety that its indefinite term may have caused, are sufficient to conclude that the conditions of his detention caused the applicant distress which exceeded the unavoidable level of suffering inherent in detention and attained the threshold of degrading treatment proscribed by Article 3. It is therefore not necessary to examine the applicant's remaining allegations regarding the conditions of his detention. The Court nevertheless wishes to stress that although there is no conclusive proof that the applicant contracted tuberculosis during his detention at the Kumkapı Removal Centre, overcrowding, coupled with the absence of regular exercise and lack of hygiene in places of detention, may lead to the spread of contagious diseases which the national authorities have a duty to prevent, as the CPT has indicated time and again (see, for instance, paragraph 27 above).

81. In the light of the foregoing, there has been a violation of Article 3 of the Convention on account of the material conditions in which the applicant was detained in the Kumkapı Removal Centre.

B. Medical assistance

82. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him in relation to this complaint as the authorities had not been informed of his health problems until they received his lawyer's letter of 21 April 2011. Moreover, the letter in question was posted, and not even faxed, to the Ministry of the Interior, rather than being sent directly to the authorities of the removal centre or to the Istanbul Security Directorate, both of which would have been in a position to provide the applicant with immediate medical assistance. The Government further indicated that a doctor was available at the removal centre on a weekly basis.

83. The applicant maintained his complaints and contended that both he and his lawyer had claimed medical assistance repeatedly. He also claimed that he had not been informed of the regular presence of a doctor on the premises.

84. The Court reiterates that Article 3 requires that the health and well-being of detained persons should be adequately secured by, among

other things, providing them with the requisite medical assistance (see, *mutatis mutandis*, *Kudła*, cited above, § 94). However, without prejudice to its findings in paragraphs 80 and 81 above regarding the material conditions at the removal centre which may have favoured the spread of infectious diseases, the Court is not persuaded that the applicant exhausted the available remedies in relation to this particular complaint.

85. The Court observes at the outset that the applicant alleged in very general terms that he had suffered from flu-like symptoms during the last three or four months of his detention, without specifying what those symptoms entailed. The Court gathers, however, from the medical report issued by a private clinic the day after the applicant's release that the symptoms manifested themselves as fatigue and coughing at the relevant time, which are not particularly alarming as such. Therefore, in the absence of any evidence that the applicant's medical condition was so serious as to oblige the authorities to offer him treatment on their own initiative, the onus was on the applicant to bring his health problems to the attention of the competent authorities and to seek medical assistance. However, contrary to his allegations, there is no evidence in the case file that the authorities of the removal centre had been duly alerted to his grievances either by the applicant himself or by his legal representatives whom he had met on at least two occasions during the final three months of his detention when he was allegedly ill (17 February and 13 April 2011).

86. The Court observes in this connection that while there is no record of the applicant's first meeting with his legal representative on 17 February 2011, it is clear that he informed his lawyer during the later meeting on 13 April 2011 that he had been suffering from what he thought was flu for the past few months. However, according to the lawyer's meeting notes, the applicant did not indicate, or even imply, that he had actually discussed his health issues with the authorities of the removal centre, nor did he accuse the authorities of deliberately denying him medical assistance despite his requests.

87. The doubts regarding the applicant's inaction are reinforced by the fact that at the end of their meeting on 13 April 2011 the lawyer simply advised the applicant to speak to the authorities of the removal centre about his health issues. The Court considers that had the applicant's pleas for medical treatment been repeatedly ignored as alleged, or had his condition visibly called for immediate medical assistance, his lawyer could reasonably have been expected to file an official request with the authorities of the removal centre immediately after their meeting so as to ensure the provision of medical assistance without any further delay.

88. The Court notes that the applicant's lawyer instead waited until 21 April 2011 before taking any action on the matter. On that date he sent a letter to the Ministry of the Interior mainly asking for the termination of the applicant's unlawful detention and also requesting, in one brief sentence, the

treatment of the applicant's "persistent flu". It appears that the letter in question, which reached the Ministry three days after the applicant's release from detention, was the first and only instance when the applicant's grievances were brought to the authorities' attention and that this offered no prospects of immediate intervention. Moreover, the Court cannot overlook the fact that nothing in the letter suggested that any earlier attempts by the applicant to seek medical assistance had been ignored.

89. Having regard to the foregoing, the Court is led to conclude that the applicant did not take the necessary steps to alert the competent authorities to his health problems during the course of his detention (see, *mutatis mutandis*, *Ildani v. Georgia*, no. 65391/09, § 29, 23 April 2013). Nor did he pursue this issue before the relevant authorities and/or courts following his release from detention or his subsequent diagnosis with tuberculosis.

90. In these circumstances, while acknowledging the seriousness of the applicant's diagnosis, the Court is of the opinion that he has failed to establish that he exhausted all avenues available to him regarding his medical needs. It therefore concludes that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

91. The applicant's corresponding complaint under Article 13 is likewise inadmissible, as the Court has already found that there were available remedies in the present context which the applicant was expected to exhaust. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

92. The applicant did not submit a claim for compensation for pecuniary damage. As regards non-pecuniary damage, he claimed 40,000 euros (EUR) in view of the breach of his Convention rights.

93. The Government contested that claim as excessive.

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

B. Costs and expenses

95. The applicant also claimed EUR 3,422 for lawyer's fees and EUR 575 for other costs and expenses incurred before the Court, such as

travel expenses, stationery, photocopying, translation and postage. In that connection, he submitted a time sheet showing that his legal representatives had carried out twenty-nine hours' legal work, a legal services agreement concluded with his representatives, and invoices for the remaining costs and expenses.

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

97. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum requested in full (EUR 3,997) covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection as to the non-exhaustion of domestic remedies in relation to the adverse material conditions of detention at the Kumkapı Removal Centre to the merits of the complaint under Article 13 of the Convention and *dismisses* it;

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

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

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the material conditions of the applicant's detention at the Kumkapı Removal Centre;

5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 on account of the absence of effective remedies to complain about the material conditions of detention at the Kumkapı Removal Centre;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

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

(ii) EUR 3,997 (three thousand nine hundred and ninety-seven 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;

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

Done in English, and notified in writing on 24 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President