



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

SECOND SECTION

**CASE OF MOGHADDAS v. TURKEY**

*(Application no. 46134/08)*

JUDGMENT

STRASBOURG

15 February 2011

**FINAL**

*15/05/2011*

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



**In the case of** Moghaddas v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

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

Having deliberated in private on 25 January 2011,

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

**PROCEDURE**

1. The case originated in an application (no. 46134/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Iranian national, Mr Ali Moghaddas (“the applicant”), on 28 September 2008. The applicant was represented by Mrs D. Abadi, director of Iranian Refugees' Alliance Inc., a non-governmental organisation based in New York. Mrs Abadi was approved by the President of the Chamber to represent the applicant in the written proceedings before the Court pursuant to Rule 36 § 4 (a) of the Rules of Court. The Turkish Government (“the Government”) were represented by their Agent.

2. On 29 September 2008 the President of the Chamber to which this case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicant should not be deported to Iran or Iraq until 27 October 2008. On 3 October 2008 the parties informed the Court that the applicant had been deported from Turkey on 28 September 2008, prior to the notification of the application and the indication of the interim measure by the Court. On 27 October 2008 the interim measure previously indicated under Rule 39 of the Rules of Court expired.

3. On 27 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to give the case priority (Rule 41 of the Rules of Court) and to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Switzerland.

#### A. Background to the case

5. In 1990 the applicant fled from Iran to Turkey to escape arrest by the Iranian authorities for assisting a member of the People's Mojahedin Organisation of Iran ("the PMOI") to flee Iran.

6. In early 1991 he crossed the border from Turkey to Iraq and joined the PMOI there. In Iraq the applicant lived in the Al-Ashraf camp, where PMOI members were accommodated. In 2003 or 2004 he left the PMOI, as he no longer agreed with its goals and methods. After his departure from the Al-Ashraf camp, he went to the Temporary Interview and Protection Facility ("the TIPF"), a camp created by the United States forces near Al-Ashraf.

7. On 12 September 2007 the applicant applied to the United Nations High Commissioner for Refugees ("the UNHCR") in Iraq for refugee status. In April 2008, however, before he could be interviewed by the UNHCR and possibly granted refugee status, the TIPF was closed down and the applicant was transferred to Erbil in northern Iraq, along with other former PMOI members.

8. In September 2008 the applicant fled from Iraq to Turkey, on account of the constant fear of being attacked or being sent back to Iran, coupled with the difficulties encountered in the extension of his residence permit in Iraq.

#### B. The applicant's arrest and detention

9. On 14 September 2008 the applicant attempted to escape to Greece from Turkey by boat together with a friend, but they were stranded in the water for approximately eighteen hours when their inflatable boat capsized. On 15 September 2008 at approximately 11.00 a.m. they were rescued and arrested by Turkish coastguards. They were also examined by a doctor at the Güzelçamlı Health Clinic at 2.10 p.m. on the same day; no injuries or other abnormalities were identified. The applicant was later transferred to the Güzelçamlı gendarmerie station in Kuşadası, Aydın.

10. The applicant was questioned at the gendarmerie station in the absence of a lawyer, where he informed the authorities of his political background and requested leave to stay in Turkey temporarily pending

resettlement in a third country. According to a form explaining arrested persons' rights which the applicant had signed, he had been reminded of his right to remain silent and to appoint a lawyer. It appears that the applicant was not provided with an interpreter during the interview. He tried to communicate with the police with his limited knowledge of Turkish and with the assistance of his friend, who was of Azeri ethnic origin and spoke some Turkish.

11. On the same day the applicant was subjected to an administrative sanction by the Kuşadası public prosecutor for attempting to leave Turkey illegally without a passport or other valid identification document, in contravention of Section 33 of the Passport Act (Law no. 5682). The applicant was fined 100 Turkish liras (TRY).

*1. Conditions of detention - submissions of the applicant*

12. The applicant was detained at the Güzelçamlı gendarmerie station until 26 September 2008, under allegedly deplorable conditions. More specifically, for the first three days of his detention he was detained in the basement of the gendarmerie station, which measured less than thirty square metres and accommodated over forty detainees and had no sanitary facilities, ventilation or bedding. The applicant alleges that the detainees were taken to the toilet four at a time and only every twenty-four to thirty hours, which forced them to relieve themselves in empty bottles and bags in each other's presence. When they were taken to the toilet, the guards kicked the toilet door and poured water from above the door on those who stayed longer than a few minutes. In the basement, there was not enough space for everyone to lie down even on the floor and some detainees shared lice-infested blankets. Moreover, meals were served only twice a day with dirty dishes and spoons, and no clean drinking water was provided. The applicant asserts that detainees were kept in that overcrowded, barely lit and barely ventilated basement at all times, except for the few minutes when they were taken to the toilet.

13. After the first three days, the applicant was allegedly removed from the basement and taken to an upstairs holding cell, which he refers to as the "second-level basement" to repair the station's electrical wiring and equipment from early in the morning until late at night. The new cell measured eight square metres and held eleven other detainees. It had only one bunk bed, a toilet and sink, but no hot water or shower. The applicant states that he received no medical attention throughout his detention.

14. During his detention at the gendarmerie station he was not allowed to contact anyone, including any lawyer. He was only able to make a brief unauthorised telephone call to his brother in the United States of America ("the USA") to inform him of his situation. He arranged for a local lawyer to assist the applicant in applying for asylum. The applicant's brother also got in touch with the UNHCR Turkey Branch Office, which in turn

contacted the Turkish authorities on 24 September 2008 to inform them of the applicant's wish to apply for asylum and to request the suspension of his deportation.

15. On 26 September 2008 the local lawyer arranged by the applicant's brother managed to gain access to the applicant at the gendarmerie station and obtained written authorisation to represent him in the domestic asylum proceedings. The applicant claimed that he was interviewed for a second time by the police that day.

## *2. Conditions of detention - submissions of the Government*

16. The Government supplied information, photographs and video footage demonstrating the conditions at the relevant gendarmerie station. Their submissions indicated that the detention facilities where the applicant was kept were cleaned and maintained regularly, that the number of detainees never exceeded the holding capacity of the detention facilities and they were regularly taken out to the back yard of the gendarmerie station for fresh air, that meals were regularly supplied by the administration and any medical needs were met within twenty-four hours at the Güzelçamlı Health Clinic, that detainees had at their disposal toilets and showers which they were allowed to use without any limitations and the administration supplied them with basic personal hygiene products. Moreover, according to the documents submitted by the Government, the applicant was reminded of his legal rights upon his arrest and he was asked to inform the authorities if he wanted to contact anyone. The applicant however never asked to contact the outside world throughout his stay at the Güzelçamlı gendarmerie station, nor did anyone attempt to get in touch with him.

## **C. The applicant's deportation**

17. On 26 September 2008 the applicant was handed over to police officers from the aliens department of the Aydın police headquarters with a view to his deportation. He was subsequently handcuffed and put in a bus with a number of Iraqi nationals and driven to the Iraqi border, which took twenty-four hours. He was not allowed to contact his lawyer at this juncture.

18. During the night of 27 September 2008 he was handed over to the Iraqi authorities at the Habur official border crossing. The authorities refused to admit him as he was not an Iraqi national.

19. On 28 September 2008 the applicant was taken to the Silopi police headquarters in Şırnak and was informed that he would be deported to Iran. The applicant pleaded with them to stop the deportation, telling them that he would be executed if deported to Iran.

20. At around 9.00 p.m. on the same day the applicant was taken to the river near the Habur official border crossing. The applicant alleged that he was forced to cross the fast-flowing river into Iraq illegally despite his

protests. He further claimed that after he managed to enter Iraq covertly, he had first to cross the Zakhu border area, where he risked being shot at by border guards, and then mountainous terrain and a minefield before reaching the UNHCR office in Dohuk.

21. On 1 January 2009 the applicant was granted refugee status under the UNHCR's mandate by the UNHCR office in Erbil, Iraq.

22. On 10 September 2009 the applicant fled Iraq and arrived in Switzerland.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

23. A description of the relevant domestic law and practice as well as the international material may be found in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-51, 22 September 2009).

24. Paragraph 58 of the Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 14 September 2001 states as follows:

“The CPT does not contest a State's right to remove from its territory foreign nationals who contravene aliens legislation, provided that international obligations such as those related to asylum and *non-refoulement* are respected. However, removals should be carried out at official border crossing points. It is not acceptable that persons be forced to enter neighbouring countries illegally; it is all the more unacceptable when such actions oblige the persons concerned to cross rivers or mountainous areas, thereby exposing them to hazards and even placing their lives at risk. In the CPT's view, forcible removals of this kind will in many cases amount to inhuman or degrading treatment”.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION

#### **A. Alleged violation of Articles 2, 3 and 13 of the Convention in relation to the deportation of the applicant**

25. The applicant complained that his removal to Iraq without an individual assessment of his claims, despite the real risk of being exposed to inhuman and degrading treatment there and the risk of his *refoulement* to Iran, where he was likely to be tortured and executed, had breached

Articles 2 and 3 of the Convention. He further complained under Article 13 of the Convention that he had not had an effective domestic remedy at his disposal whereby he could challenge the decision to deport him to Iraq and that he had not been allowed to have access to the asylum procedure.

26. The Government contested the applicant's allegations.

27. The Court notes that this part of the application concerned the applicant's deportation to Iraq, which put him at risk of ill-treatment and of being sent to Iran, where he would risk being persecuted as a former PMOI member. The Court observes that the applicant's deportation to Iraq was effected on 28 September 2008, before the matter was brought before the Court. The Court further notes that there is no information in the case file to indicate that the applicant was subjected to any adverse treatment in violation of Articles 2 or 3 of the Convention while in Iraq as he had suspected, or that he was removed or threatened with removal to Iran by the Iraqi authorities.

28. It follows, particularly bearing in mind that the applicant now lives in Switzerland, that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

#### **B. Alleged violation of Article 3 of the Convention in relation to the manner in which the deportation of the applicant was effected**

29. The applicant argued under Article 3 of the Convention that following the Iraqi authorities' refusal to admit him through the official Habur border post, he was locked up overnight inside a bus while handcuffed to a seat and was kept in various police and gendarmerie stations until he was deported to Iraq by illegal means, which exposed him to various deadly hazards, such as drowning and being blown up by a mine.

30. The Government contested these allegations, which in their opinion were completely unsubstantiated. They did not, however, submit any documentary evidence to counter the applicant's claims.

31. The applicant maintained his allegations regarding the manner of his forcible removal to Iraq. He submitted a satellite image of the relevant border crossing area in support of his claims, as well as a signed statement from M.N., a survivor of and eyewitness to a past incident where a number of refugees who had been forced to cross the same river had drowned on 23 April 2008.

32. The Court notes in the first place that the Government's failure to make any submissions in respect of the legal framework within which the applicant was deported to Iraq raises the question whether the deportation was carried out in the absence of a proper legal procedure. The Court observes in this connection that the UNHCR and a number of other sources, such as Amnesty International, have reported that there are cases where non-Iraqi nationals have been deported to Iraq forcibly and illegally by the



Turkish authorities (see *Abdolkhani and Karimnia*, cited above, § 85). According to the UNHCR's press release of 25 April 2008, there were witness reports that the Turkish authorities had attempted to deport sixty persons to Iraq through the official border crossing on 23 April 2008. As the Iraqi border authorities only accepted Iraqi nationals and refused to admit eighteen non-Iraqi refugees, the latter had been forced to cross a fast-flowing river by the Turkish police. Four of them had been swept away by the strong river current and had drowned. Their bodies could not be recovered (see *Abdolkhani and Karimnia*, cited above, § 47).

33. The Court further notes the 2001 periodic report of the CPT to the Government of Turkey, in which it was emphasised that forcible removals exposing refugees to hazards and placing their lives at risk could amount to inhuman and degrading treatment (see paragraph 24 above).

34. Before moving on to examine the applicant's claims, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see, among many others, *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative. It depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Labita v. Italy* [GC], no. 26772/95, §§ 120 and 121, ECHR 2000-IV).

35. The Court notes in the instant case that there is no evidence in the case file corroborating the applicant's account of the events. The witness statement in respect of a previous incident involving the drowning of four Iranian refugees cannot, in the absence of other evidence, lead to the conclusion that the applicant was also deported under the same hazardous conditions. Furthermore, the Court cannot but notice that although the applicant went directly to the UNHCR's Dohuk office once in Iraq, there is no indication in the case file that the allegations in question were reported to the UNHCR.

36. In view of the foregoing, the Court concludes that although it may be accepted that he was deported unlawfully, the applicant has failed to adduce sufficient evidence to substantiate his allegations that the manner in which he was deported to Iraq attained the minimum level of severity required under Article 3 of the Convention and thus amounted to inhuman and degrading treatment within the meaning of this provision.

37. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION IN RELATION TO THE DETENTION OF THE APPLICANT

38. The applicant complained that his detention at the Güzelçamlı gendarmerie station was unlawful and thus in breach of Article 5 § 1 (f) of the Convention. He also alleged under Article 5 §§ 2 and 4 of the Convention that he had not been provided with information at any stage of his detention regarding the reasons for his deprivation of liberty, its maximum length or any means of challenging it. Lastly, he maintained under Article 3 of the Convention that the conditions in which he was detained at the Güzelçamlı gendarmerie station, coupled with the mental anguish arising from lack of communication with the outside world, the uncertain length of the detention and the risk of being deported, amounted to inhuman and degrading treatment.

### A. Alleged violations of Article 5 of the Convention

#### *1. Admissibility*

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

#### *2. Merits*

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

40. The Government maintained that the applicant had been placed in the Güzelçamlı gendarmerie station on account of his illegal entry into Turkey. He had, however, not been detained or placed in custody but was merely under surveillance, in accordance with section 23 of the Act on the Residence and Travel of Foreigners in Turkey (Law no. 5683), pending the assessment of his temporary asylum request. They contended that “detention” was deprivation of liberty in accordance with a court decision, whereas there had been no such court decision in the present case. The applicant's status could therefore only be considered within the scope of Article 5 § 1 (f) of the Convention.

41. The applicant maintained his allegations that he had been detained within the meaning of Article 5 § 1 of the Convention without a judicial or administrative decision regarding his deportation or detention and that his detention had no legal basis.

42. The Court reiterates that it has already examined the same grievance in the aforementioned case of *Abdolkhani and Karimnia* (cited above, §§ 125-135). It found in that case that the placement of those applicants in the Kırklareli Foreigners' Admission and Accommodation Centre constituted a deprivation of liberty and concluded that, in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the deprivation of liberty to which the applicants were subjected was not "lawful" for the purposes of Article 5 of the Convention.

43. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Abdolkhani and Karimnia* judgment.

There has accordingly been a violation of Article 5 § 1 of the Convention.

**(b) Alleged violation of Article 5 § 2 of the Convention**

44. The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he or she is being deprived of liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of Article 5 § 2 any person 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 (see *Abdolkhani and Karimnia*, cited above, § 136).

45. The Court observes that the applicant was arrested on 15 September 2008 and subsequently detained in police custody for the following thirteen days. The arrest record, which was signed by the applicant, indicated that the arrest had been effected on account of the applicant's attempt to leave Turkey by illegal means, pursuant to Law no. 5682. Following his arrest, the applicant was requested to make a statement to gendarmerie officers regarding his illegal attempt to leave the country. Later on the same day, an administrative sanction was imposed on the applicant by the Kuşadası public prosecutor for infringing section 33 of Law no. 5682 by attempting to leave Turkey without a passport. He was, nevertheless, kept in detention, despite the lack of any evidence in the case file to indicate that any further charges had been brought against him that could justify his continued detention. It therefore appears that, from 15 September 2008 onwards, the applicant had not been detained on account of a criminal charge, but in the context of immigration controls. In these circumstances, the Court must assess whether the applicant was informed of the reasons for this detention in accordance with the requirements of Article 5 § 2 of the Convention.

46. The Court notes that the Government were explicitly requested to make submissions as to whether the applicant had been informed of the reasons for his detention and to provide the relevant documents in support of their response. The Government did not submit any information. In the absence of a reply from the Government and of any documents in the case file which could otherwise indicate that the applicant was informed of the grounds for his continued detention, the Court is led to the conclusion that the grounds for his detention were never communicated to the applicant by the national authorities. The Court moreover notes that the applicant was at no point provided with a proper interpreter, despite his very limited understanding of Turkish, which also demonstrates the authorities' unwillingness to inform him of the reasons for his detention.

Against this background, the Court concludes that there has been a violation of Article 5 § 2 of the Convention.

**(c) Alleged violation of Article 5 § 4 of the Convention**

47. The Court observes that the Government failed to make any submissions to demonstrate that the applicant had at his disposal a procedure through which the lawfulness of his detention could be examined by a court.

48. The Court moreover notes the applicant's allegation that he was not provided with the opportunity to contact a lawyer, or anyone else for that matter, during his detention at the Güzelçamlı gendarmerie station, which allegation was not effectively rebutted by the Government. Although the applicant had apparently signed a form following his arrest explaining his rights as an arrested person, including his right to appoint a lawyer, the effectiveness of such a form is highly debatable in view of the applicant's very limited knowledge of Turkish. The Court observes that the applicant only gained access to a lawyer eleven days into his detention through the intervention of his brother, who lived in the USA, which is contested by the Government. Furthermore, the applicant was removed from the gendarmerie station with a view to deportation immediately after meeting the lawyer, before he had had any meaningful opportunity to challenge his detention.

49. In these circumstances, and bearing particularly in mind its finding that the applicant had not been informed of the reasons for the deprivation of his liberty (see paragraph 46 above), the Court considers that the applicant's right to appeal against his detention was deprived of all effective substance (see *Abdolkhani and Karimnia*, cited above, § 141).

50. Accordingly, the Court concludes that the Turkish legal system did not provide the applicant with a remedy whereby he could obtain judicial review of the lawfulness of his detention, within the meaning of Article 5 § 4 of the Convention (see *S.D. v. Greece*, no. 53541/07, § 76, 11 June 2009).

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

## **B. Alleged violation of Article 3 of the Convention**

51. The Government initially failed to make any submissions as regards the applicant's allegations concerning the conditions of his detention at the Güzelçamlı gendarmerie station. However, upon request, they subsequently supplied information, photographs and video footage, demonstrating that the applicant's basic needs had been duly met by the authorities. The Government further emphasised that contrary to his allegations, neither the applicant nor any other person held at the Güzelçamlı gendarmerie station had been subjected to inhuman or degrading treatment.

52. The applicant maintained his allegations regarding the material conditions of the detention facilities at the Güzelçamlı gendarmerie station. He submitted a sketch plan of the detention premises in support of his allegations.

53. The Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his or her human dignity, that the manner and method of the execution of the measure do not subject the detainee to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that the individual's health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

54. The Court notes the serious allegations made by the applicant regarding the conditions of his detention at the Güzelçamlı gendarmerie station, including overcrowding, poor hygiene, malnutrition, maltreatment and lack of fresh air and medical assistance. It considers, however, on the basis of the photographs and video footage provided by the Government that there appear to be no grounds to reproach them for the physical conditions at the relevant detention facilities. It is noted in this connection that the detention room had ample natural light, as well as six mattresses, bedding, one table and two chairs. The sanitary facilities were properly equipped, with two private toilets, three urinals, two private showers, six washbasins, three soap dispensers and six mirrors. Moreover, the overall hygiene of the premises was fairly satisfactory. That being said, the Court cannot but note that the sketch plan of the detention premises provided by the applicant does not appear to match entirely the photographs and video footage furnished by the Government, which unequivocally pertain to the Güzelçamlı gendarmerie station. Nor is there any indication in the material submitted by the Government that the applicant was moved to another cell at the “the second-level basement ” after the first three days of his detention as he alleged, or that such a separate cell even existed on the premises.

55. As for the allegation of overcrowding, the Court cannot determine from the documents in the case file the number of persons held at the Güzelçamlı gendarmerie station during the relevant period, nor can it establish unequivocally whether the applicant was kept indoors continuously or, if not, how often he was taken outdoors for fresh air and exercise. The Government deny both allegations in their submissions. The applicant's assertions on these grounds, therefore, remain unsubstantiated. The Court also notes that the applicant similarly failed to substantiate why he was in need of medical assistance while being kept in detention, or how the lack of such assistance adversely affected his state of health.

56. The Court accepts that the illegal nature of the applicant's detention, coupled with the uncertainty as to its duration arising from the absence of a procedure in domestic law setting time-limits for such detention, might have caused him a feeling of anxiety. The Court, nevertheless, is not in a position to conclude that the applicant has made a prima facie case that the physical conditions at the Güzelçamlı gendarmerie station were sufficiently harsh to bring them within the scope of Article 3 of the Convention, despite the possible shortcomings. The Court also notes in this regard the relatively short duration of the applicant's detention, eleven days approximately, in concluding that the applicant's suffering appears to fall below the minimum level of severity required under Article 3 of the Convention.

It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

#### **A. Damage**

57. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested this claim as unsubstantiated and excessive.

59. 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 equitable considerations, the Court therefore awards the applicant EUR 9,000 in respect of non-pecuniary damage.

#### **B. Costs and expenses**

60. The applicant also claimed EUR 4,645 for costs and expenses incurred before the Court. In this connection he submitted a time sheet

indicating sixty hours' legal work carried out by his legal representative and a table of costs and expenditure.

61. The Government contested this claim, noting that only costs actually incurred could be reimbursed.

62. 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 finds it reasonable to award the applicant the sum of EUR 3,500 for his costs before it.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* admissible the complaints under Article 5 §§ 1, 2 and 4 concerning the unlawfulness of the applicant's deprivation of liberty before his deportation, the lack of notification of the reasons for his detention and the ineffectiveness of the judicial review of the detention;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 §§ 1, 2 and 4 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
    - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
    - (ii) EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
  - (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;

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

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Deputy Registrar

Françoise Tulkens  
President