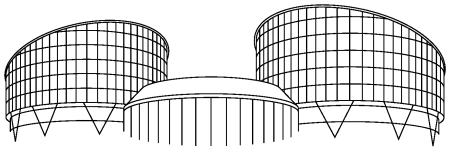

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KHALDAROV v. TURKEY

(Application no. 23619/11)

JUDGMENT

STRASBOURG

5 September 2017

This judgment is final but it may be subject to editorial revision.

In the case of Khaldarov v. Turkey,

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

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 4 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 23619/11) 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 an Uzbek national, Mr Ulugbek Khaldarov ("the applicant"), on 23 December 2010.

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 28 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On 25 April 2008 the applicant arrived in Turkey legally on a visa valid for one month.

5. On 24 April 2010 the applicant, who had been living in Turkey since April 2008, was taken into police custody while he was at Istanbul Atatürk Airport. He made a statement to the airport police on the same day. According to the document containing his statement, the applicant was informed that he was suspected of lacking a valid identity document and of illegal entry into Turkey. He was kept in detention at the airport police station for the following three days.

6. On 27 April 2010 the applicant was sent to Istanbul Kumkapı Removal Centre. According to the applicant's account, the centre was severely overcrowded at the time of his detention, which resulted in hygiene problems. The building was infested with insects and the quality and

quantity of the food was also fairly poor. Moreover, there was no provision for outdoor exercise.

7. On 2 June 2010 the applicant applied for release to the Istanbul Magistrates' Court. The court decided on the same day that it did not have jurisdiction as the applicant had not been detained within the scope of a criminal investigation. The court therefore ruled that any request had to be brought before the administrative courts.

8. On an unspecified date the applicant made an asylum claim to the Ministry of the Interior and lodged an application for refugee status with the United Nations High Commissioner for Refugees (UNHCR).

9. On 25 June 2010 the applicant was granted a temporary residence permit in the province of Bilecik as an asylum-seeker and was released from Kumkapı Removal Centre on the same day.

10. According to information provided by his representative on 4 January 2017, a deportation order was issued in respect of the applicant on an unspecified date in 2016. He has been detained at İzmir Işıkkent Removal Centre since 20 September 2016 with a view to his expulsion. The domestic proceedings brought by the applicant against the deportation order and the applicant's application to the UNHCR for refugee status are still ongoing.

II. RELEVANT LAW AND PRACTICE

11. The relevant domestic law and practice at the material time and the relevant international material can be found in *Abdolkhani and Karimnia v. Turkey* (no. 30471/08 §§ 29-45, 22 September 2009); *Yarashonen v. Turkey* (no. 72710/11, §§ 27-32, 24 June 2014); and *Musaev v. Turkey*, no. 72754/11, §§ 13-16, 21 October 2014).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

12. Relying on Article 5 § 1 of the Convention, the applicant complained that he had been unlawfully detained. He further complained under Article 5 § 2 that he had not been duly informed of the reasons for being deprived of his liberty. Under Article 5 §§ 3 and 4 and Article 13, the applicant submitted that he had not been able to have his detention reviewed by a court. Lastly, he maintained under Article 5 § 5 of the Convention that he had had no right to compensation under domestic law in respect of those complaints.

13. The Government contested his arguments.

14. The Court considers at the outset that the complaint brought under Article 5 §§ 3 and 4 and Article 13 falls to be examined solely under Article 5 § 4 of the Convention (see *Amie and Others v. Bulgaria*, no. 58149/08, § 63, 12 February 2013).

A. Admissibility

15. The Court notes that these complaints 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. Articles 5 §§ 1 and 5 of the Convention

16. The Court notes at the outset that the Government stated that they were aware of the Court's relevant case-law. They referred in particular to *Abdolkhani and Karimnia v. Turkey* (no. 30471/08 §§ 125-135-45, 22 September 2009), and *Z.N.S. v. Turkey* (no. 21896/08 §§ 56-57, 22 September 2009).

17. The Court has already examined similar grievances in a number of recent cases and found violations of Article 5 §§ 1 and 5 on account of the absence at the material time of clear legal provisions in Turkish law on procedures for ordering the detention of foreigners and providing remedies to receive compensation (see *Abdolkhani and Karimnia*, cited above, §§ 128-135; *Yarashonen v. Turkey* (no. 72710/11, §§ 48 and 50, 24 June 2014); and *Musaev v. Turkey*, no. 72754/11, §§ 39 and 41, 21 October 2014); and *Aliev v. Turkey*, no. 30518/11, §§ 67 and 69, 21 October 2014). The Court notes that the Government have not provided any arguments or information that would require the Court to depart from its findings in those judgments.

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

2. Articles 5 §§ 2 and 4 of the Convention

19. The Government submitted, in response to the applicant's complaint under Article 5 §§ 2 and 4 of the Convention, that he had been informed of the reasons for his detention on 24 April 2010 and that he could have applied to the administrative courts, under Articles 36 and 125 of the Constitution, to challenge the lawfulness of his detention.

20. The applicant maintained his allegations.

21. The Court observes that the applicant was arrested on 24 April 2010 and subsequently held in police custody. He signed a document on the same

day which stated that he had been accused of lacking a valid identity document and with illegal entry into Turkey. On 27 April 2010 he was sent to Istanbul Kumkapı Removal Centre. Thus, from 27 April 2010 onwards he was detained in the context of immigration controls. This finding is supported by the decision of the Istanbul Magistrates Court of 2 June 2010, which stated that the applicant had not been detained within the scope of a criminal investigation. In that connection, the Court observes that there is nothing in the case file to show that the applicant was informed of the grounds for his continued detention. The Court is therefore led to the conclusion that the reasons for the applicant's detention from 27 April 2010 onwards were never communicated to him by the national authorities (see *Abdolkhani and Karimnia*, cited above, §§ 137-138, and *Moghaddas v. Turkey*, no. 46134/08, §§ 45-46, 15 February 2011).

22. As the Court noted above, the applicant was not duly informed of the reasons for his detention from 27 April 2010 onwards. This fact in itself had the effect of depriving the applicant's right of appeal against detention under Article 5 § 4 of all substance (see S*hamayev and Others v. Georgia and Russia*, no. 36378/02, § 432, ECHR 2005-III; *Abdolkhani and Karimnia*, cited above, § 141; *Moghaddas*, cited above, §§ 49-50; and *Musaev*, cited above, § 40). Furthermore, the Government have not submitted any examples of judicial decisions made at the material time in which the national courts had speedily examined requests and ordered the release of a foreign national on the grounds of the unlawfulness of his or her detention at a removal centre.

There has accordingly been a violation of Article 5 §§ 2 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE MATERIAL CONDITIONS OF THE APPLICANT'S DETENTION AT KUMKAPI REMOVAL CENTRE

23. Relying on Article 3 of the Convention, the applicant complained about the material conditions at Kumkapı Removal Centre.

24. The Government contested that argument.

A. Admissibility

25. 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 that the applicant should have applied to the administrative or judicial authorities and sought compensation.

26. The applicant contested the Government's argument, stating that no adequate remedy existed in relation to his complaint.

27. The Court notes that it has already examined and rejected similar submissions by the respondent Government in comparable cases (see *Yarashonen*, cited above, § 66; *Musaev*, cited above, § 55; and *Alimov v. Turkey*, no. 14344/13, § 67, 6 September 2016). In the absence of any examples from the Government of instances where recourse to an administrative or judicial authority at the material time led to the improvement of detention conditions and/or to an award of compensation for the anguish suffered on account of adverse material conditions, the Court finds no reason to depart from its findings in the above-mentioned cases. It accordingly dismisses the Government's objection.

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

B. Merits

29. The Government submitted that the conditions of the applicant's detention at Kumkapı Removal Centre had complied with the requirements of Article 3 of the Convention. In support of their submissions, the Government submitted photographs of some of the sleeping and communal areas, taken at an unspecified date, 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.

30. The applicant maintained his allegations.

31. The Court notes that it has already found a violation of Article 3 of the Convention on account of the material conditions of detention at Kumkapı Removal Centre – in particular because of the clear evidence of overcrowding and the lack of access to outdoor exercise – in a number of cases brought before it by applicants who had been detained there in 2010, 2011 and 2012 (see *Yarashonen*, cited above, § 81; *Musaev*, cited above, § 61; and *Alimov* cited above, § 85). The Court notes that it paid special attention in the aforementioned cases to the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), members of the Grand National Assembly of Turkey and of the UN Special Rapporteur on the human rights of migrants regarding the problem of overcrowding and the lack of outdoor exercise at the centre following visits there in June 2009, May 2012 and June 2012 respectively (see *Yarashonen*, cited above, §§ 25, 28 and 30). The Court observes that the Government have not presented any evidence or arguments capable of justifying a departure from those conclusions. In particular, there is no evidence in the case file to show that the lack of adequate personal space in the dormitory rooms was alleviated by a possibility for a sufficient amount of freedom of movement within the

removal centre or that the applicant had access to regular outdoor exercise. The Court is therefore led to conclude that the conditions of the applicant's detention at Kumkapı Removal Centre 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 (see *Yarashonen*, cited above, § 80).

32. There has therefore been a violation of Article 3 of the Convention on account of the material conditions in which the applicant was detained at Kumkapı Removal Centre.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE MATERIAL CONDITIONS OF THE APPLICANT'S DETENTION AT ISTANBUL ATATÜRK AIRPORT

33. The applicant complained under Article 3 of the Convention about the conditions of his detention at Istanbul Atatürk Airport police station.

34. The Court observes that the applicant did not make any detailed submissions regarding the conditions of his detention at the airport and has thus failed to substantiate his allegation under that head. The Court therefore finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

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

A. Damage

36. The applicant claimed 24,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government contested that claim.

38. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 4,130 in respect of lawyer's fees and EUR 554 for other costs and expenses incurred before the Court, such as travel expenses, translation and postage. He submitted a time-sheet showing that his legal representatives had carried out thirty-five hours of

legal work on the application to the Court, a legal services agreement with his representatives and an invoice for postal expenses.

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

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,026 covering costs for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 of the Convention and the complaint under Article 3 of the Convention regarding the material conditions of his detention at Kumkapı Removal Centre admissible and the remainder of the application inadmissible;

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

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months 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;

(iii) EUR 3,026 (three thousand and twenty-six 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;

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

Done in English, and notified in writing on 5 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President