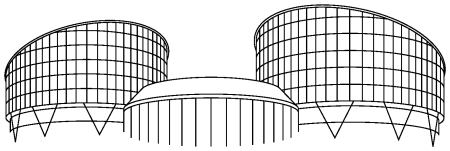

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MUSAEV v. TURKEY

(Application no. 72754/11)

JUDGMENT

STRASBOURG

21 October 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 Musaev v. Turkey,

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

Guido Raimondi, President,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, judges,
and Abel Campos, Deputy S*ection Registrar*,

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 72754/11) 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 Uktam Musaev ("the applicant"), on 28 October 2011.

2. The applicant, who had been granted legal aid, 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 4 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1981 and, according to the latest information available to the Court, lives in Aksaray.

5. On 2 April 2011 the applicant, who had been living in Turkey since 2008, was taken into custody in the context of an investigation into murder by a person or persons unknown. He was placed in the Yedikule Security Directorate in Istanbul.

6. On 4 April 2011 the applicant delivered his witness statement before a criminal court in relation to the aforementioned investigation. However, he

was not released after delivering the statement; instead he continued to be detained in the Yedikule Security Directorate for having outstayed his visa.

7. On 5 April 2011 the applicant was transferred to Şehit Tevfik Fikret Erciyes police station in Fatih, Istanbul ("Fatih police station"), where he was placed in a custodial cell for the next five days.

8. On 10 April 2011 the applicant was sent to Kumkapı Removal Centre with a view to being deported. According to the applicant's account, Kumkapı Removal Centre was severely overcrowded at the time of his detention. He had to share a dormitory measuring approximately 30-35 sq. m with twenty-four to forty-five other people and the overcrowding of the centre resulted in hygiene problems. The building was infested with insects and the quality and quantity of the food provided was also fairly poor. Moreover, there was no provision for outdoor exercise.

9. On 12 April 2011 the applicant lodged an application with the United Nations High Commissioner for Refugees (UNHCR) for refugee status.

10. On 27 April 2011 he claimed asylum from the Ministry of the Interior.

11. On 29 April 2011 the applicant was granted a temporary residence permit in the province of Aksaray as an asylum seeker and he was released from Kumkapı Removal Centre on the same day. It appears that the applicant was subsequently permitted to reside in Konya.

12. According to the latest information provided to the Court, the applicant's applications for asylum and refugee status are still pending before the domestic authorities and the UNHCR respectively.

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

13. 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."

14. At the material time, Section 27(1) of the Administrative Procedure Act (Law no. 2577) provided that the implementation of an administrative decision or act would not automatically be suspended following an application to the administrative courts. Under Section 27(2), the administrative courts could order a stay of execution if the decision or act in question was manifestly unlawful and if its implementation would cause irreversible harm.

The relevant parts of Section 28 of the same Law provided as follows at the relevant time:

> "(1) The authorities shall be obliged to adopt decisions without delay or to take action in accordance with the decisions on the merits or any request for a stay of execution issued by the Supreme Administrative Court, the ordinary or regional administrative courts, or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following service of the decision on the authorities.
>
> ...
>
> (3) Where the authorities do not adopt a decision or do not act in accordance with a decision by the Supreme Administrative Court, the ordinary or regional administrative courts, or the tax courts, a claim for compensation in respect of pecuniary or non-pecuniary damage may be lodged against the authorities with the Supreme Administrative Court and the other relevant courts.
>
> (4) In the event of the deliberate failure on the part of a civil servant to enforce a judicial decision within the thirty days [following the decision], compensation proceedings may be instigated against both the authorities and the civil servant who has refused to enforce the decision in question."

15. Article 41 of the Code of Obligations (Law no. 818) in force at the material time provided as follows:

> "Any person who causes damage to another in an unjust manner, be it wilfully, negligently or imprudently, shall afford redress for that damage."

16. Article 141 of the Code of Criminal Procedure (Law no. 5271) sets out the circumstances in which a person detained during criminal investigation or prosecution may claim compensation from the State.

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

B. International material

18. The relevant international material has been summarised in the case of *Yarashonen v. Turkey* (no. 72710/11, §§ 27-32, 24 June 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

19. 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 the deprivation of his liberty, nor had he been brought before a judge promptly. 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.

Article 5 of the Convention provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

20. The Court considers at the outset that the complaint under Article 13 falls to be examined solely under Article 5 § 4 of the Convention, 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

1. The parties' submissions

21. 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 to request a stay of execution and sought compensation in accordance with one of the following provisions: Article 125 of the Constitution, Sections 27 and 28 of the Administrative Procedure Act (Law no. 2577), Article 41 of the former Code of Obligations (Law no. 818) in force at the material time, or Article 141 of the Code of Criminal Procedure (Law no. 5271).

22. The applicant argued that the remedies indicated by the Government would not have been capable of providing effective redress in relation to his grievances. He claimed in the first place that Article 41 of the former Code of Obligations concerned disputes under civil law and thus had no relevance to his circumstances. Similarly, Article 141 of the Code of Criminal Procedure governed the compensation of persons detained in the context of a criminal investigation or prosecution in strictly defined circumstances, whereas he had not been detained in a criminal context. Lastly, the administrative remedies cited by the Government would not have been effective because there had been no administrative court judgments so far that had ruled, in an expeditious manner, on the unlawfulness of an asylum seeker's detention. He submitted a number of examples where attempts by asylum seekers in similar positions to his to instigate proceedings before administrative or criminal courts under the legal provisions indicated by the Government had proved unsuccessful.

2. The Court's assessment

23. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. 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. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's specific complaints and offered reasonable prospects of success.

24. The Court notes in this connection that while the respondent Government listed a number of legal provisions in support of their non-exhaustion objection, they have not provided any explanation as to how those general provisions were relevant to the applicant's situation, nor have they submitted any examples where such remedies were successfully applied to provide redress in circumstances similar to the applicant's. Having particular regard to the applicant's arguments in paragraph 22 above regarding the irrelevance or ineffectiveness of the remedies in question, which remain uncontested by the Government, and to the Court's findings in similar cases in the past (see, *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 142, 22 September 2009; *Tehrani and Others v. Turkey*, nos. 32940/08, 41626/08 and 43616/08, § 79, 13 April 2010; *Dbouba v. Turkey*, no. 15916/09, §§ 53-54, 13 July 2010; and *Keshmiri v. Turkey (no. 2)*, no. 22426/10, §§ 26-28, 17 January 2012) the Court is not satisfied that the remedies mentioned by the Government were appropriate and effective in the circumstances. The Court, therefore, rejects the Government's preliminary objection under this head.

25. As for the complaint under Article 5 § 3, the Court considers it to be inadmissible. It notes in this connection that while the applicant complained of not having been brought promptly before a judge under that provision, there is no evidence in the case file to suggest that he had been arrested or detained in accordance with the provisions of paragraph 1 (c) of Article 5, as required under Article 5 § 3. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

26. 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

27. The Government stated that the applicant, who was an illegal immigrant, had been transferred to Kumkapı Removal Centre pending the completion of his deportation procedure, in accordance with Section 23 of the Act on the Residence and Travel of Foreigners in Turkey

(Law no. 5683) in force at the material time. His detention had thus been in compliance with Article 5 § 1 (f) of the Convention.

28. The applicant maintained that his detention had had no basis in domestic law.

29. The Court notes that the applicant had been taken into custody initially in relation to a murder investigation, but nothing in the case file suggests that he was one of the suspects or that any criminal charges were brought against him personally. The applicant claimed that in any event, with effect from 4 April 2011 and until his release on 29 April 2011, he had clearly been detained with a view to his deportation, an allegation supported by the Government's submissions that the applicant's detention fell within the scope of Article 5 § 1 (f) of the Convention.

30. The Court has already examined a similar grievance in the case of *Abdolkhani and Karimnia* (cited above, §§ 125-135), in which it found that – in the absence of clear legal provisions in Turkish law establishing the procedure for ordering detention with a view to deportation – the applicants' detention was not "lawful" for the purposes of Article 5 of the Convention. There are no particular circumstances which would require the Court to depart from its findings in that judgment. The Court notes in particular that while Section 23 of Law no. 5683 referred to by the Government envisaged the "residence" of foreigners pending their deportation, it did not mention anything about "forceful detention" of such persons, as in the applicant's case.

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

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

32. The Government maintained that the applicant had been promptly informed about both the deportation procedure and his rights and responsibilities under the relevant domestic laws.

33. The applicant maintained that he had not been informed of the reasons for the deprivation of his liberty.

34. The general principles governing the elementary safeguard embodied in Article 5 § 2 of the Convention were set out in the case of *Abdolkhani and Karimnia* (cited above, § 136). The Court reiterates in this connection that by virtue of 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.

35. The Court notes that the Government have not submitted any documents demonstrating to the Court that the applicant was notified of the reasons for his initial detention at the Yedikule Security Directorate, or for his subsequent transfers to Fatih police station and Kumkapı Removal

Centre, where his detention was continued for a total of twenty-four days. The absence of any such document in the case file leads the Court to the conclusion that the reasons for the deprivation of his liberty were not communicated to the applicant by the national authorities (see *Moghaddas v. Turkey*, no. 46134/08, § 46, 15 February 2011; and *Athary v. Turkey*, no. 50372/09, § 36, 11 December 2012).

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

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

37. Relying on the provisions mentioned in paragraph 21 above, the Government submitted that the applicant had had effective remedies to challenge the lawfulness of his detention and to seek compensation in respect of his grievances under Article 5 of the Convention.

38. The applicant reiterated his complaints and arguments as set out in paragraph 22 above.

39. The Court has already established above that the remedies referred to by the Government could not be considered to be effective in the circumstances of the instant case (see paragraph 24 above). The Court further notes that, in the past, it has found a violation of Article 5 §§ 4 and 5 of the Convention in a number of similar cases in which 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 be awarded compensation for their unlawful detention as required under Article 5 § 5 of the Convention (see *Abdolkhani and Karimnia*, cited above, §§ 141-142; *Tehrani and Others*, cited above, § 79; *Dbouba*, cited above, §§ 53-54; and *Yarashonen*, no. 72710/11, §§ 48-50, 24 June 2014. In the absence of any submission by the Government of examples in which the domestic courts speedily examined requests and ordered the release of an asylum seeker on the grounds of the unlawfulness of his or her detention and awarded him or her compensation, the Court sees no reason to depart from its findings in the aforementioned judgments.

40. Moreover, the Court has already found that the applicant was not duly informed of the reasons for the deprivation of his liberty (see paragraph 36 above). It considers that this fact in itself had the effect of depriving the applicant's right of appeal against his detention under Article 5 § 4 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).

41. The Court therefore 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 CONDITIONS OF THE APPLICANT'S DETENTION

42. Relying on Article 3 of the Convention, the applicant complained about the material conditions of his detention at the Yedikule Security Directorate, the Fatih police station and the Kumkapı Removal Centre, respectively. He argued in particular that the custodial cells in the security directorate and the police station where he was held for the first eight days of his detention had not been suitable for longer term detention and that Kumkapı Removal Centre, where he was transferred subsequently, had been overcrowded and dirty, with inadequate food and no access to outdoor exercise.

He further claimed under Article 13 that there had been no effective domestic remedies available to him through which to lodge complaints concerning the adverse detention conditions in the said facilities.

Articles 3 and 13 of the Convention provide as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. Non-exhaustion of domestic remedies

43. 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 Articles 36 and 125 of the Constitution.

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

45. 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; and *Yarashonen*, cited above, § 54).

2. Compliance with the six-month rule

46. The Court reiterates that, in contrast to an objection as to the non-exhaustion of domestic remedies, which must be raised by the respondent Government, it cannot set aside the application of the six-month rule solely because a government has not made a preliminary objection to that effect (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I, and *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

47. The Court further reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter "within a period of six months from the date on which the final decision was taken". If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 72, 10 January 2012).

48. The Court notes in this connection that during the course of his twenty-seven day detention, the applicant was kept in three different detention facilities. The first period of his detention at the Yedikule Security Directorate came to an end on 5 April 2011 and the second period of detention at the Fatih police station on 10 April 2011, whereas the final period of his detention at Kumkapı Removal Centre continued until his release on 29 April 2011. Bearing in mind the applicant's allegations concerning the absence of any effective remedy in relation to the present complaint, and without prejudice to the Court's findings on this issue under Article 13 below, the applicant would accordingly be expected to lodge his application with the Court within six months of the end of the conditions complained about.

49. The Court notes that – since the application was introduced on 28 October 2011 – the parts of the complaints relating to the first and second periods of detention were lodged outside the six-month time-limit, given that the successive periods of detention in question could not be regarded as a "continuing situation" on account of the material differences in the type of detention facility and the conditions of detention at the respective facilities (see *Ananyev and Others*, cited above, §§ 75-78; and *Aden Ahmed v. Malta*, no. 55352/12, § 70, 23 July 2013). It follows that the applicant's complaints under Articles 3 and 13 in respect of his conditions of detention at the Yedikule Security Directorate and Fatih police station are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

50. The Court notes, on the other hand, that the complaints under Articles 3 and 13 relating to the applicant's detention in Kumkapı Removal Centre comply with the six-month rule. They are, moreover, not manifestly

ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 13 of the Convention

51. As indicated in paragraph 43 above, the Government submitted that the applicant had had effective domestic remedies by means of which he could have applied to the administrative or judicial authorities and sought compensation in respect of his grievances about the conditions of his detention.

52. The applicant maintained that the domestic remedies referred to by the Government were only available in theory but not effective in practice. In this connection he submitted two different examples, in which the Istanbul Governor's Office had refused to institute criminal proceedings in respect of complaints from two foreign nationals as regards, *inter alia*, the conditions of detention at Kumkapı Removal Centre. Both these decisions by the Istanbul Governor's Office were upheld by the Istanbul Regional Administrative Court, with no response to the allegations of adverse detention conditions, including overcrowding. Bearing those circumstances in mind, the applicant thought that there was no point in seeking a remedy regarding the poor conditions of his detention. The applicant further maintained that the proceedings before administrative courts were in any event excessively lengthy.

53. The Court points out at the outset 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 58-61) and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

54. The Court notes that it has already examined and rejected similar submissions by the Government in comparable cases and found a violation of Article 13 of the Convention (see *Yarashonen v. Turkey*, cited above, §§ 56-66). Given the particular facts of the instant case, and in the absence of any examples submitted by the Government where recourse to an administrative or judicial authority 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, the Court finds no reason to depart from its findings in the above-mentioned cases.

55. 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 of the Convention, in conjunction with Article 3, on account of the absence of an effective remedy to complain about the inadequate conditions of the applicant's detention at Kumkapı Removal Centre.

2. Article 3 of the Convention

(a) The parties' submissions

56. The Government submitted that conditions at Kumkapı Removal Centre met all the basic needs of the foreign nationals who were held there temporarily for deportation purposes. All admission and accommodation centres were subject to international inspection, such as those conducted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") or Human Rights Watch, and efforts were made to rectify the shortcomings noted during those inspections.

57. For his part, the applicant argued that he had been detained at Kumkapı Removal Centre for a period of twenty days in inhumane conditions which in some respects were worse than conditions in a prison. He claimed in this regard that he had spent the whole time in a poorly ventilated and overcrowded room measuring approximately 30-35 sq. m and accommodating twenty to forty-five persons at all times. Although there was a yard outside the detention centre, which was used as a car park, he had not been allowed to go outside for fresh air even once throughout his stay. No social or recreational activity had been offered indoors either. Moreover, the hygiene conditions in the detention centre had been extremely poor, which – coupled with the problems of overcrowding and insect infestation – had resulted in the spread of contagious diseases. The food served at the removal centre had also been inadequate.

(b) The Court's assessment

58. The Court refers to the principles established in its case-law regarding conditions of detention (see, for instance, *Kudła*, cited above, §§ 90-94; *Kalashnikov v. Russia*, no. 47095/99, § 97 et. seq., ECHR 2002-VI; and *Artimenco v. Romania*, no. 12535/04, §§ 31-33, 30 June 2009). It reiterates, in particular, that under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are consistent with respect for human dignity and that the manner and method of executing the detention measure do not cause the individual to suffer distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. When assessing conditions of detention, account must 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 must also be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005, and *Aden Ahmed*, cited above, § 86).

59. The Court further reiterates that the lack of adequate personal space in the detention area weighs heavily as a factor to be taken into account for the purpose of establishing whether or not 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, §§ 143-148). Other aspects of physical conditions of detention that are relevant for the assessment of compliance with Article 3 include the availability of outdoor exercise, access to natural light or air, 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 CPT 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).

60. Turning to the facts of the instant case, the Court notes that it recently found a violation of Article 3 of the Convention on account of the material conditions of detention at Kumkapı Removal Centre – in particular the clear evidence of overcrowding and the lack of access to outdoor exercise – during a period coinciding with the applicant's period of detention in the said facility (see *Yarashonen*, cited above, §§ 74-81). Since the Government have not presented any evidence or arguments to justify a departure from that finding, the Court is led to conclude that the conditions of his 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).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant did not submit a claim for compensation for pecuniary damage. As regards non-pecuniary damage, he claimed 20,000 euros (EUR) in respect of the breach of his Convention rights.

64. The Government contested that claim as excessive.

65. 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

66. The applicant also claimed EUR 3,165 in respect of lawyer's fees and EUR 593 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.

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

68. 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, having regard 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 3,758), covering costs under all heads. From this sum there should be a deduction of EUR 850 in respect of legal aid granted under the Council of Europe's legal aid scheme.

C. Default interest

69. 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 material conditions of detention at 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 Kumkapı Removal Centre and the lack of effective remedies by which 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 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 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 3,758 (three thousand seven hundred and fifty-eight euros), plus any tax that may be chargeable to the applicant, in

respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid;

(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 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President