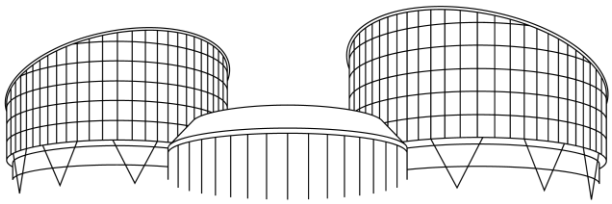

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF RANJBAR AND OTHERS v. TURKEY

(Application no. 37040/07)

JUDGMENT

STRASBOURG

13 April 2010

FINAL

13/07/2010

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

In the case of Ranjbar and Others v. Turkey**,**

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Işıl Karakaş,
Nona Tsotsoria, *judges*,

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

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 37040/07) 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 five Iranian nationals, Mr Alireza Ranjbar, Mr Pejman Piran, Mr Abolfazl Ajorlu, Mr Seyid Ali Alemzadeh and Mr Mostaba Naderani Vatanpur ("the applicants"), by an e-mail sent in the evening of Friday 24 August 2007.

2. The applicants were represented by Mr S. Efe and Mr V.R. Turgut, lawyers practising in Ankara and Van respectively. Their forms of authority were issued by the applicants' immediate relatives in Iran and Iraq. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants' representative alleged that his clients' deportation to Iran would subject them to ill-treatment and torture and that they were not afforded protection under Article 5, in particular as they had been unlawfully detained for a period of more than six days and had no means to challenge the lawfulness of their detention.

4. A request for an interim measure under Rule 39 of the Rules of Court was processed on Monday 27 August 2007, and the applicants' representative was asked to submit additional supporting information. In the morning of 28 August 2007 the Acting President of the Chamber to which the case had been allocated initially decided to apply Rule 40 (urgent notification of an application) until the requisite information was provided. Following the submission of this information on the same day, the President subsequently indicated to the Government, under Rule 39, that the applicants should not be deported to Iran until further notice.

5. On 4 September 2007 the respondent Government informed the Court that the applicants had already been deported to Iraq on 22 August 2007, two days before the Rule 39 request had been filed by their representative. The interim measure was consequently lifted on 6 September and further information concerning the applicants' deportation was requested from the respondent Government.

6. On 9 April 2008 the applicants' representative informed the Court that the applicants had been resettled in Sweden and wished to pursue their application. Forms of authority issued by the second, third and fourth applicants were subsequently submitted, but the applicants' representative informed the Court on 1 October 2009 that he had not been able to contact the first and fifth applicants.

7. On 13 May 2008 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1972, 1982, 1985, 1978 and 1983 respectively and currently live in Sweden.

9. The applicants fled Iran and entered Turkey illegally on various dates in 2005 and 2006.

10. On various dates between 19 April 2005 and 3 October 2006, the applicants appeared at the office of the United Nations High Commissioner for Refugees (“the UNHCR”) in Turkey, which recognised their refugee status and issued them with refugee certificates on 24 August 2007.

11. On unspecified dates the applicants lodged asylum applications with the Turkish authorities and sought residence permits. They were questioned twice by police officers from the Aliens Department on various dates in November 2006 for an assessment of their asylum request. During the questioning the applicants stated that they had been members of different illegal organisations and had been involved in anti-regime activities in Iran. They had either been detained on numerous occasions or sentenced to imprisonment and/or punishment by lashing. They all maintained that they would face a personal risk of ill-treatment or death if they were to be returned to Iran.

12. The applicants were permitted to live in Van pending the asylum proceedings and were allowed to leave the city boundaries subject to specific permission. In this connection one of the applicants (Mostaba

Naderani Vatanpur) was issued with a permit allowing him to travel to Ankara between 22 and 31 August 2007 for various resettlement interviews.

13. On an unspecified date the applicants' asylum request was rejected by the authorities on the ground that they had not complied with the relevant criteria. In respect of the fourth applicant, the interview forms indicated that the authorities did not find the applicant's replies credible and considered that he had left his country for higher economic standards.

14. On an unspecified date the applicants were apprehended and held at the Van Security Directorate for an undetermined period before they were notified of the deportation orders on 22 August 2007 at 12.30 p.m. The deportation orders bear the signatures of the applicants and a translator. The applicants were deported to Iraq on the same day.

15. Upon their arrival in Iraq the applicants claimed to have been held in detention for about a month. They then had lived in Northern Iraq for some five months before they were resettled in Sweden on 10 February 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. A description of the relevant domestic law can be found in the Court's judgment in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-45, 22 September 2009).

THE LAW

I. SCOPE OF THE CASE

A. In respect of the first and fifth applicants

17. The Court notes that the applicants' representative informed it on 1 October 2009 that he had not been able to contact the first and fifth applicants (Mr Alireza Ranjbar and Mr Mostaba Naderani Vatanpur).

18. The Court considers that, in these circumstances, these applicants may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine* and bearing in mind that the applicants are resettled in Sweden, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

19. In view of the above, the Court holds that it is appropriate to strike the application out of the list of cases in respect of the first and fifth applicants. The Court will therefore confine its examination of the case in respect of the second, third and fourth applicants.

B. In respect of the remaining applicants

20. The Court observes that, following the communication of the present case to the respondent Government, further new complaints under Articles 3 and 6 of the Convention as well as under Article 1 of Protocol No. 7 were submitted on 2 February 2009, concerning in particular the conditions of the applicants' detention both in Turkey and Iraq and the lack of procedural safeguards.

21. The Court considers that the new complaints raised under Articles 3 and 6 do not elaborate on the applicants' original complaints and relate to events which occurred more than six months before the initial complaints were lodged with the Court on 24 August 2007. The Court reiterates that, when a new complaint is raised for the first time during the proceedings before the Court, the running of the six-month period is not interrupted until this complaint is actually lodged (see *Sarl Aborcas and Borowik v. France* (dec.), no. 59423/00, 10 May 2005, and *Loyen v. France* (dec.), no. 46022/99, 27 April 2000). The Court therefore rejects them in accordance with Article 35 §§ 1 and 4 of the Convention (*Hazırcı and Others v. Turkey*, no. 57171/00, § 54, 29 November 2007).

22. The Court further observes that Turkey has not ratified Protocol No. 7. It follows that this part of the complaints is incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

23. The applicants initially complained under Articles 2 and 3 that their deportation to Iran would expose them to ill-treatment and even death. Following their deportation to Iraq and resettlement in Sweden, the applicants maintained the same complaints and asserted that they had lived in fear that the Iraqi authorities could return them to Iran.

24. The Government contended that the applicants had not exhausted domestic remedies and that they had not been deported to Iran at any point in time and therefore lacked victim status. The applicants had been deported to Iraq with due respect for the principle of *non-refoulement*.

25. The Court notes that the applicants are currently resettled in Sweden. They had already been deported to Iraq on 22 August 2007, two days before the matter was brought before the Court. In other words, there was no

interim measure in force at the time of the applicants' deportation and, therefore, the Government's consequent responsibility under Article 34 had not been engaged.

26. In view of the fact that the applicants' complaints under this heading concerned their possible deportation to Iran, which did not take place, and that they currently live in Sweden, the Court holds that the applicants can no longer claim to be victims, within the meaning of Article 34, as far as their complaints under Articles 2 and 3 of the Convention are concerned (see, *mutatis mutandis*, *Mohammedi v. Turkey* (dec.), no. 3373/06, 30 August 2007, and *Ayashi v. Turkey* (dec.), no. 3083/07, 18 November 2008).

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

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

28. The applicants asserted that they ought to have been allowed to benefit from the protection of Article 5 in general during their detention. They complained in particular that they had been detained for a period of more than six days and had no means to challenge their detention in breach of Article 5 §§ 3 and 4 of the Convention.

29. The Court which is the master of the characterisation to be given in law to the facts of the case (see *Castravet v. Moldova*, no. 23393/05, § 23, 13 March 2007) finds that the complaints at issue fall to be examined under Article 5 §§ 1 and 4 of the Convention.

30. On communication of the application to the respondent Government, a further question was raised by the Court concerning compliance with Article 5 § 2 of the Convention with regard to the notification to the applicants of the reasons for their deprivation of liberty.

A. The parties' submissions

31. The Government contested the complaints and contended that the applicants had not been arrested or detained but had been held as an administrative measure prior to deportation, in conformity with Article 5 § 1 (f) of the Convention. The applicants had been involved in activities against the Iranian administration during their stay in Turkey and for reasons of national security their residence in Turkey had not been deemed appropriate by the Turkish authorities. The legal grounds for their deprivation of liberty were sections 19 and 23 of the Act on the Residence and Travel of Foreigners in Turkey (Law no. 5683) and section 8 of the Passport Act (Law no. 5682). As to the complaint under Article 5 § 2 of the Convention, deportation orders had been issued in conformity with Article 32 of the 1951 Convention relating to the Status of Refugees (“the Geneva Convention”) and the applicants had been notified of the

deportation orders in the presence of a translator. Regarding the complaint under Article 5 § 4 of the Convention, the Government submitted that the applicants had had the right to object against the deportation orders before the relevant authorities, failing which they could have brought complaints before the administrative courts. They had been aware of the domestic procedure but had not made use of it.

32. The Government did not make any submissions as to the Court's specific questions regarding the national-security grounds which had prompted the authorities to issue deportation orders in respect of the applicants, the overall length of the applicants' deprivation of liberty and the manner of their deportation.

33. The applicants contended that they had been unlawfully detained for a period of six days before their deportation on 22 August 2007. They asserted that official records indicating the date, time and location of their detention, the grounds for it and the name of the arresting officer had not been kept by the authorities. Additionally, they had not been allowed to see their lawyers during this period. Furthermore, neither they nor their lawyers had received an official letter indicating the reasons for their detention.

B. The Court's assessment

1. Admissibility of Article 5 §§ 1, 2 and 4

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

2. Merits

(a) Article 5 § 1

35. The Court observes that the Government did not contest that the applicants had been held at the Van Security Directorate. According to the Government, the applicants had been held as an administrative measure for deportation purposes and there had therefore not been any need for them to be brought before a judge.

36. The Court considers that, whether for administrative or any other purposes and irrespective of its length, the applicants' forced placement at the Van Security Directorate under the given circumstances amounted to a “deprivation of liberty” with a view to their deportation.

37. The Court points out that Article 5 § 1 of the Convention circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be

given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311). By laying down that any deprivation of liberty should be "in accordance with a procedure prescribed by law", Article 5 § 1 requires, firstly, that any arrest or detention should have a legal basis in domestic law (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). The Convention here refers essentially to national law and establishes the need to apply its rules, but it also requires that any measure depriving the individual of liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 44, Series A no. 93). What is at stake here is not only the "right to liberty" but also the "right to security of person".

38. "Lawfulness" and "absence of arbitrariness" are common requirements for the whole of Article 5 of the Convention, including Article 5 § 1 (f). In this connection, particular safeguards against arbitrariness, such as the recording of accurate holding data concerning the date, time and location of detainees, as well as the grounds for the detention and the name of the persons effecting it, are necessary for the detention of an individual to be compatible with Article 5 § 1 (see *Yasin Ateş v. Turkey*, no. 30949/96, § 142, 31 May 2005). These rules apply equally for anyone who is deprived of their liberty, whether for administrative, criminal or any other purposes.

39. The Court therefore first needs to establish whether the requirements of "lawfulness" and the "absence of arbitrariness" were met before moving on to examine the issue of whether the applicants' deprivation of liberty was governed by the exceptions set out in Article 5 § 1 (f) of the Convention.

40. The Court notes in the instant case that the legal provisions referred to by the respondent Government (see paragraph 30 above) provide that foreigners who do not have valid travel documents or who cannot be deported are obliged to reside at places designated by the Ministry of the Interior. These provisions do not refer to a deprivation of liberty in the context of deportation proceedings. They concern the residence of certain groups of foreigners in Turkey, but not their detention. Nor do they provide any details as to the conditions for ordering and extending detention with a view to deportation, or set time-limits for such detention.

41. The Court finds that the applicants' deprivation of liberty, irrespective of its duration, did not have a sufficient legal basis in the particular circumstances (see *Abdolkhani and Karimnia*, cited above, § 133).

42. The Court further notes that the Government were requested to submit the applicants' deportation files and provide specific information as to the periods of detention, the overall length of their deprivation of liberty and the manner of their deportation. Among the documents submitted in

reply, the Court observes that there are no records of holding data showing the date, time and location of the applicants' detention. It is not clear when, where and by whom exactly the applicants were apprehended and how long they had actually been deprived of their liberty before they were deported. The case file further contains no information regarding when and how the applicants were deported. In other words, there exists no information regarding the termination of the applicants' deprivation of liberty while they were still under the control of the Turkish authorities.

43. In view of the above, the Court finds that the deprivation of liberty to which the applicants were subjected did not have a strictly-defined statutory basis circumscribed by adequate safeguards against arbitrariness (see *Nasrulloyev v. Russia*, no. 656/06, § 77, 11 October 2007; *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports* 1996-V; and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008-...). The national system thus failed to protect the applicants from arbitrary detention and, consequently, their detention cannot be considered "lawful" for the purposes of Article 5 of the Convention.

The Court concludes that there has been a violation of Article 5 § 1 of the Convention.

(b) Articles 5 §§ 2 and 4

44. Having regard to the above findings of violations stemming from the absence of holding data and thus the inability to determine the exact length of detention before deportation, the Court holds that no separate issue arises under Articles 5 §§ 2 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

45. The second, third and fourth applicants claimed 24,300 euros (EUR) in respect of pecuniary damage, mainly covering their expenses in Iraq, such as accommodation, food, clothing and telephone calls. They further alleged that they had had to pay two months of additional rent for their flat in Turkey following their deportation and that their belongings in Turkey had had to be sold urgently at a low price because of their need for money. They maintained that they could not work during their stay in Iraq and had thus been deprived of possible income. Furthermore, had they not been deported to Iraq they would have had been resettled in the United States during that period and would also have been entitled to a certain amount of income.

The applicants also claimed EUR 100,000 in respect of non-pecuniary damage.

46. The Government contested these claims and maintained that they were excessive.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim.

However, it considers that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to equitable considerations, the Court therefore awards the second, third and fourth applicants EUR 9,000 each in respect of non-pecuniary damage.

B. Costs and expenses

48. The second, third and fourth applicants also claimed EUR 4,100 for the costs and expenses incurred before the Court such as lawyers' fees, telephone calls, fax costs and taxi fees. In relation to their claim they referred to the Ankara Bar Association's scale of fees.

49. The Government contested these claims and maintained that only costs actually incurred could be reimbursed.

50. The Court considers that, in the absence of any relevant documents in support of these claims as required by Rule 60 of the Rules of Court, it makes no award under this head (see *Gök and Güler v. Turkey*, no. 74307/01, § 66, 28 July 2009).

C. Default interest

51. 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. *Decides* to strike the application out of its list of cases in respect of the first and fifth applicants;

2. *Declares* admissible the complaints under Article 5 §§ 1, 2 and 4 concerning the unlawfulness of the remaining applicants' deprivation of liberty before their deportation, the lack of notification of the reasons for their detention, the ineffectiveness of the judicial review of the applicants' detention;

3. *Declares* the remainder of the applications inadmissible;

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

5. *Holds* that no separate issue arises under Article 5 §§ 2 and 4 of the Convention;

6. *Holds*
(a) that the respondent State is to pay the second, third and fourth applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President