SECOND SECTION

CASE OF Z.N.S. v. TURKEY

(Application no. 21896/08)

JUDGMENT

STRASBOURG

19 January 2010

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 Z.**N.S**. 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,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The **case** originated in an application (no. **21896/08**) 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, Ms **Z.N.S**. ("the applicant"), on 8 May 2008. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr S. Efe, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. On 9 May 2008 the President of the Fourth Section 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 until 27 May 2008. On 26 May 2008 the President of the Second Section decided to extend until further notice the interim measure indicated under Rule 39 of the Rules of Court.

4. On 24 September 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided that the admissibility and merits of the application would be examined together (Article 29 § 3) and that the **case** would be given priority (Rule 41).

5. The applicant and the Government each submitted written observations on the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and is currently held in the Kırklareli Foreigners' Admission and Accommodation Centre, in **Turkey**.

A. Deportation proceedings and the applicant's placement in the Kırklareli Foreigners' Admission and Accommodation Centre

7. The applicant first entered **Turkey** on 24 September 2002 using a false passport. She began living and working in Istanbul without informing the Turkish authorities or the United Nations High Commissioner for Refugees ("the UNHCR").

8. On 22 October 2003 the applicant applied to the UNHCR and asked to be recognised as a refugee. On an unspecified date in 2004 she was detained by the Turkish authorities and deported to Iran, where she claims to have been imprisoned for nine months and subjected to ill-treatment.

9. Following her release from prison in Iran, the applicant re-entered **Turkey** illegally on 3 February 2005. She learned that her **case** before the UNHCR had been closed in her absence.

10. In June 2006 the applicant was diagnosed with myomatosis of the uterus and operated in a private hospital on 5 June 2006. The medical reports, in particular the pathology results, revealed that there were no cancerous cells.

11. In the meantime, she became interested in Christianity and began attending Bible classes. On 7 September 2007 the applicant was baptised in a Protestant church in Istanbul. On an unspecified date the applicant's son, who was attending the Iranian Consulate School in Istanbul, was expelled on the ground of "conduct against the school's faith". Some time within a year of that incident the applicant applied to the Iranian Consulate in Istanbul for a passport. While there, she was asked to complete a form stating that she was a Christian.

12. On an unspecified date at the end of 2007, the applicant applied to the UNHCR and requested that her **case** be re-examined.

13. On 3 May 2008 the applicant went to the Fatih police headquarters in Istanbul in order to make statements as a witness regarding a criminal offence committed by third persons. As she was found to have identity documents with different names on them, an investigation was initiated into this and she was arrested. On an unspecified date she was released.

14. On 9 May 2008 the applicant was rearrested on suspicion of infringement of visa requirements and forging official documents. According to a letter sent by the Istanbul police to the Department responsible for foreigners, borders and asylum attached to the General Police Headquarters on the same day, the applicant had stated that she did not wish to live in Iran and that she had come to **Turkey** in order to apply to the UNHCR. The same letter stated that the applicant had been placed in the Foreigners' Department of the Istanbul police headquarters with a view to her deportation from **Turkey**.

15. On 13 May 2008 the director of the department responsible for foreigners, borders and asylum attached to the General Police Headquarters requested the Istanbul police headquarters to obtain statements from the applicant regarding a number of issues, including her failure to apply to the Turkish authorities when she had applied to the UNHCR, the reason why she had made multiple entries and exits between Iran and **Turkey** and why she was staying illegally in **Turkey**. The director also requested that the possible security risks that the applicant may pose in **Turkey** be determined.

16. On 16 May 2008 the applicant sent another letter to the Ministry of the Interior. Referring to her medical condition, she requested urgent treatment and asked to be released and issued with a temporary residence permit pending the proceedings before the UNHCR and the Court.

17. On the same day the applicant was questioned by a police officer at the Istanbul police headquarters. She maintained, *inter alia*, that she had initially entered **Turkey** with a false passport and that she had been deported to Iran where she had spent nine months in prison. She contended that when she re-entered Turkish territory on 3 February 2005 she had immediately re-applied to the UNHCR. She noted that she was against the present government in Iran and that she and her family members had been oppressed when they lived in Iran. The applicant mentioned that she had left and re-entered Turkish territory as that was the only way to renew her visa. She further contended that she had not applied to the Turkish authorities earlier as her **case** had been closed by the UNHCR.

18. On 20 May 2008 the applicant's statements were sent to the General Police Headquarters by the Istanbul police.

19. On 6 and 16 May and 2 June 2008, the applicant's representative lodged petitions with the Istanbul Police Headquarters and requested that his client be released and given a residence permit pending the outcome of her application to the UNHCR.

20. By a letter dated 10 June 2008, the deputy director of the Istanbul police headquarters informed the Kırklareli police headquarters that the applicant did not wish to return to her country, but wished to seek asylum, and had applied to the Court. The director reiterated that she had been held in the Istanbul police headquarters with a view to her deportation. He further maintained that the applicant should be held in the Kırklareli Foreigners' Admission and Accommodation Centre pending the outcome of the proceedings before the Court. On the same day the applicant was transferred to that facility.

21. On 18 July 2008 the Ministry of the Interior informed the applicant that her **case** before the Turkish authorities was suspended pending the proceedings before the Court.

22. On 29 December 2008 the applicant and her son were recognised as refugees, under the UNHCR's mandate, on religious grounds.

23. On 14 April 2009 the applicant's representative lodged a **case** with the Ankara Administrative Court. He requested the court to annul the decision of the Ministry not to release his client and to order a stay of execution of that decision pending the proceedings.

24. On 28 May 2009 the Ankara Administrative Court rejected the applicant's request for a stay of execution.

25. The applicant's representative appealed. On 24 June 2009 the Ankara Regional Administrative Court dismissed the appeal.

B. Conditions in the Kırklareli Foreigners' Admission and Accommodation Centre, alleged lack of medical assistance available to the applicant and her alleged ill-treatment

1. The applicant's account

26. In his submissions to the Court dated 16 May 2008 the applicant's representative contended that, although the applicant was suffering from serious consequences of the operation she underwent in June 2006, she did not have access to a doctor in the Kırklareli Foreigners' Admission and Accommodation Centre. On 18 June 2008 he informed the Court that the applicant had been examined by a doctor, who had ordered a further medical examination. Despite this, the Ministry of the Interior did not authorise a further examination and the applicant's health was deteriorating.

27. On 27 August 2008 the applicant, with four other persons, started a “fast to the death” to protest about her placement and the physical conditions in the Centre.

28. Before the Court, the applicant maintained that the physical conditions in the Kırklareli Centre were below the minimum standards set by the European Committee for the Prevention of Torture (the “CPT”). In support of her submissions the applicant provided a number of photographs containing images of several parts of the Centre. In one room there were two bunk beds on which there were pillows and blankets. There was no bed linen on the beds. In another room there were two beds with bed linen, pillows and blankets. The photographs of the kitchen sinks and stoves showed that the latter were unusable. Another photograph showed that there were four sinks in the bathroom. Inside, the toilets were partially covered with some kind of dark substance. Photographs of the cleaning products that had labels in the Cyrillic alphabet showed that their dates had expired nine to ten years ago.

29. The applicant finally alleged that the officers who worked at the Kırklareli Centre did not treat the detainees well. In particular, she had been insulted and threatened by a police officer.

2. The Government's account

30. The Government replied that the applicant was subjected to a series of medical examinations during July 2008 at the Kırklareli State Hospital According to the documents submitted, blood tests, an abdomino-pelvic ultrasound examination and an abdominal tomography were performed on the applicant. The doctors found no pathological signs as a result of these examinations.

31. The Government denied the applicant's allegation that the physical conditions at the Kırklareli Foreigners' Admission and Accommodation Centre did not comply with the minimum standards established by the CPT. Noting that the Centre in question was not a detention facility, the Government provided photographs of a birthday party and an engagement party, both organised in the common room of the Kırklareli Centre. They further submitted photographs of an Islamic celebration (Festival of Sacrifice) organised in the garden of the Centre.

32. In their submissions dated 9 September 2009, the Government maintained that an investigation had been initiated into the actions of the police officer who had allegedly insulted the applicant in relation to the latter's complaint of ill-treatment.

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

33. A description of the relevant domestic law and practice may be found in the **case** of *Abdolkhani and Karimnia **v**. Turkey*[1] (no. 30471/08, §§ 29-44, 22 September 2009).

B. International and national material

34. The standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning the conditions of detention of foreign nationals (see the CPT standards, document no. CPT/Inf/E (2002) 1- Rev. 2006, page 41) provide, in so far as relevant, as follows:

> "... In the view of the CPT ... where it is deemed necessary to deprive persons of their liberty for an extended period under aliens' legislation, they should be accommodated in centres specifically designed for that purpose...
>
> Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them. ..."

35. In June 2008 Human Rights Watch visited three Admission and Accommodation Centres in **Turkey**, including the Centre in Kırklareli. The relevant extracts from the report entitled "Stuck in a Revolving Door", published by Human Rights Watch on 6 November 2008, read as follows:

> "... The Kırklareli Gaziosmanpaşa Refugee Camp (hereafter Kırklareli) has had a long history as an actual refugee camp. In 1989 it was a safe haven for ethnic Turks fleeing Bulgaria; in 1992, a shelter for refugees from Bosnia; and in 1999, a place of refuge for Kosovar Albanians. It can no longer be described, truthfully, as a refugee camp, however. It is rather a detention centre for migrants, some of whom may indeed be refugees, but not refugees being protected from persecution, but rather refugees that **Turkey** is seeking to remove.
>
> At the time of Human Rights Watch's visit, Kırklareli held 174 detainees, including four women and the four-year-old child of one of the women.
>
> Although the men are locked away in a long barracks building, they were freely wandering around the outdoor grounds of the fenced-in facility during the Human Rights Watch visit. They appeared to be allowed to go outside the barracks during the afternoons. The facility is surrounded by a chain-link fence topped with barbed wire. Signs of its history as a former refugee camp are abundant in the form of old unused shelters with faded UNHCR logos and an overgrown soccer field that have not been used in many years, despite a rather comical attempt by the Kırklareli administrator to give Human Rights a guided tour intended to show that old classrooms and recreational facilities are still being used by the detainees.
>
> The women and child were housed in a separate building that the women told Human Rights Watch they had recently been asked to clean prior to a visit by another delegation. The administrator showed Human Rights Watch a large-screen television set in one of the women's private rooms, but failed to note that the TV was not plugged in and didn't work at all. Although the men are allowed to leave their barracks during

most afternoons, the guards tell the women that they are not allowed to leave their building. "The door is kept open to allow the child to come and go, but we are not allowed to walk out the door," said a 25-year-old Iranian woman.

Both men and women at Kırklareli complained about the poor quality and small quantity of food. A man claiming to be Burmese said, "The food is not good. It is not fit for humans, and it is not enough. Nothing happens if we complain. The guards say, 'If you don't like the food, go to the market and buy your own.'"

The main complaint, however, is that the detainees are not informed how long they will remain in detention. Human Rights Watch spoke privately with a man who appeared to be an informal leader of the "Burmese" at Kırklareli. He said that the Burmese numbered 160 of the 174 detainees in the camp and that most, including him, had already been held there for nine months and had no idea how much longer they would stay there. "Just tell us what to do," he said. "Give us a sentence. If they let us leave, we will work and feed our families. Let us leave or kill us."

Even though the conditions at Kırklareli did not appear to be nearly as bad as at Edirne, tensions between detainees and guards were very high. The camp administrator told Human Rights Watch, "Despite the good conditions here, there is an enmity towards us."

On the night of the day after the Human Rights Watch visit there was a riot at Kırklareli. The causes of the riot and the response of the security forces were under investigation when Human Rights Watch left the country. In the course of putting down the disturbance, Turkish security forces shot and killed one of the detainees, a young man of unknown nationality who Human Rights Watch had talked to at length. ..."

36. On 11 June 2008 around midnight a riot started in the Kırklareli Foreigners' Admission and Accommodation Centre. During the riot an asylum seeker died and another asylum seeker and two police officers were wounded. Subsequent to the riot, the Organisation for Human Rights and Solidarity for Oppressed People (Mazlum-Der), a human rights organisation based in **Turkey**, made a visit to the Centre in order to assess the situation there. During this visit, the Mazlum-Der interviewed persons held in the Centre, the Kırklareli governor, the director of the Kırklareli Centre and one of the officers who had been injured. The governor stated, *inter alia*, that the authorities were doing their best to meet the needs of the persons held in the Centre. The director also stated that they maintained good standards of living in the Centre.

37. Following the initiation of the "fast to the death" by the five persons held in the Kırklareli Foreigners' Admission and Accommodation Centre, including the applicant, on 3 September 2008 the Mazlum-Der made a second visit to the Centre in order to interview the persons on hunger strike and to observe the living conditions in the Centre. According to the report published by Mazlum-Der, they were not allowed to visit the inside of the Centre where foreign nationals were held. They could however interview the applicant and the other four persons, who maintained that there had been problems regarding the quality of food provided by the administration of the Centre, the Centre's hygiene, access to medical care and common living space.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION IN RELATION TO THE DEPORTATION PROCEEDINGS

38. The applicant complained under Articles 2 and 3 of the Convention that her removal to Iran would expose her to a real risk of death or ill-treatment.

39. The Court finds it is more appropriate to examine the applicant's complaint from the standpoint of Article 3 of the Convention alone (see *Abdolkhani and Karimnia*, cited above, § 62; *N.A.* ***v.*** *the United Kingdom*, no. 25904/07, § 95, 17 July 2008; and *Said* ***v.*** *the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI).

A. Admissibility

40. The Government submitted that no deportation order had been issued in respect of the applicant. They further noted that the applicant had infringed visa and passport requirements and that, according to the national legislation, she would be deported from **Turkey**. That did not necessarily mean that she would be sent to Iran. She could go to a third country so long as she had a visa. The Government further maintained that the applicant had failed to exhaust the domestic remedies available to her, within the meaning of Article 35 § 1 of the Convention. They contended that the applicant had failed to make a temporary asylum request to the relevant authorities. They noted that the applicant could have applied to the administrative courts if the authorities had refused such a request. In support of their submissions, the Government provided a number of judgments of the administrative courts in which those courts had annulled deportation decisions.

41. The applicant submitted that, according to the official documents, she had been placed in the Foreigners' Department of the Istanbul police headquarters on 3 May 2008 with a view to her deportation. She further contended that she had told the police officer who questioned her on 16 May 2008 that she was against the present Iranian government and she did not wish to return to her home country. She did not however inform the police officer that she had been involved in anti-regime activities in Iran, for fear that she might be deported in the context of an agreement between **Turkey** and Iran on the “exchange of terrorists”.

42. The Court observes that, according to the documents dated 9 May 2008 and 10 June 2008, the applicant was placed in the Istanbul police headquarters with a view to her deportation. Therefore it cannot accept the Government's argument that no deportation decision had been taken in her **case**. The Court further observes that the applicant had explicitly stated her position *vis-à-vis* the Iranian Government in her statement of 16 May 2008. However, the Ministry of the Interior informed the applicant's representative that the procedure regarding the applicant had been suspended pending the outcome of the proceedings before the Court. What is more, the respondent Government became aware of the applicant's refugee status under the UNHCR's mandate on the ground of her religion when the UNHCR refugee certificate submitted to the Court by the applicant was sent to them on 27 March 2009. In these circumstances and in the absence of any response by the national authorities regarding the applicant's allegations, the Court is of the view that the applicant did everything that could be expected of her.

43. As to the Government's argument that the applicant could have applied to the administrative courts, the Court reiterates that under Turkish law seeking the annulment of a deportation decision does not have automatic suspensive effect and, therefore, the applicant was not required to apply to the administrative courts in order to exhaust such domestic remedies, within the meaning of Article 35 § 1 of the Convention (see *Abdolkhani and Karimnia*, cited above, § 59). The Court accordingly rejects the Government's objections.

44. The Court observes 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.

B. Merits

45. The Government maintained that the applicant did not have a well-founded fear of persecution as she had not been subjected to any ill-treatment in Iran. They further noted that neither the applicant, nor her representative on her behalf, had claimed asylum with the national authorities.

46. The applicant alleged that she had been deported once to Iran without having been given the opportunity to object to her removal. She further contended that she feared being deported again and that that was reason why she had not mentioned her political activities in Iran to the police. The applicant maintained that, if removed to Iran, she would be exposed to a clear risk of death or ill-treatment, given that she had been involved in anti-regime activities

in Iran prior to her arrival in **Turkey** and that she had become a Christian, a fact known by the Iranian authorities. In this connection, she stressed that she had been recognised as a refugee by the UNHCR.

47. The Court observes at the outset that the applicant was arrested on 3 May 2008 and that, when she made statements to the police on 16 May 2008, she had mentioned that she did not wish to return to Iran and that she had come to **Turkey** in order to apply to the UNHCR. However, according to the documents dated 9 May and 10 June 2008, the national authorities planned her deportation without an examination of her statements. Furthermore, her **case** before the Turkish authorities was suspended pending the proceedings before the Court (see paragraphs 21 and 42 above). In these circumstances the Court is not persuaded that the national authorities conducted any meaningful assessment of the applicant's claim. It fell to the branch office of the UNHCR to interview the applicant when she was being held in the Kırklareli Foreigners' Admission and Accommodation Centre about the background to her asylum request and to evaluate the risk to which she would be exposed on the ground of her religion.

48. The Court for its part must give due weight to the UNHCR's conclusion on the applicant's claim regarding the risk which she would face if she were to be removed to Iran (see *Jabari* ***v.*** ***Turkey***, no. 40035/98, § 41, ECHR 2000-VIII; *N.A.* ***v.*** *the United Kingdom*, cited above, § 122; and *Abdolkhani and Karimnia*, cited above, § 82). The Court observes in this connection that, when the UNHCR interviewed the applicant, it had the opportunity to test the credibility of her fears and the veracity of her account of the circumstances in her home country. Following this interview, it found that the applicant risked being subjected to persecution in her country of origin.

49. In the light of the UNHCR's assessment, the Court finds that there are substantial grounds for accepting that the applicant risks a violation of her right under Article 3, on account of her religion, if returned to Iran.

50. Consequently, the Court concludes that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Iran.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 3 AND 4 AND ARTICLES 6 AND 13 OF THE CONVENTION

51. Relying on Article 5 §§ 1, 3 and 4 and Articles 6 and 13 of the Convention, the applicant complained that she had been unlawfully detained without the opportunity to challenge the lawfulness of her detention.

52. The Court considers that it is more appropriate to examine these complaints from the standpoint of Article 5 §§ 1 and 4 of the Convention.

A. Admissibility

53. 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.

B. Merits

1. Existence of a deprivation of liberty and compliance with Article 5 § 1

54. The Government maintained that the applicant was not detained but accommodated in the Kırklareli Foreigners' Admission and Accommodation Centre. The reason for the applicant's placement in this centre, which could not be defined as detention or custody, was the authorities' need for the surveillance of aliens pending deportation proceedings. The Government contended that this practice was based on section 23 of Law no. 5683 and section 4 of Law no. 5682.

55. The applicant submitted that she was detained and that her detention did not have a sufficient legal basis in domestic law. Nor had it been ordered by a court.

56. The Court reiterates that it has already examined the same grievance in the **case** of *Abdolkhani and Karimnia* (cited above, §§ 125-135). It found that the placement of the applicants in the Kırklareli Foreigners' Admission and Accommodation Centre in that **case** 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.

57. 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 therefore been a violation of Article 5 § 1 of the Convention.

2. Compliance with Article 5 § 4

58. The Government submitted that an application to administrative courts for the annulment of the decisions to place individuals in foreigners' admission and accommodation centres was an effective remedy within the meaning of Article 5 § 4 of the Convention.

59. The applicant submitted, at first, that she could not apply to administrative courts as she was unable to appoint an advocate in the absence of any valid identity documents. In her submissions dated 16 April 2009 she contended that, following her recognition as a refugee under the UNHCR's mandate, she could now empower an advocate to take proceedings on behalf of her with a notarised power of attorney. Accordingly, her advocate applied to Ankara Administrative Court and requested her release. In her submissions made in May and June 2009, the applicant maintained that the proceedings in question were not sufficiently speedy.

60. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to the judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp* ***v.*** *Belgium*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's detention to allow that person to obtain a speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov* ***v.*** *Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005; and *Vachev* ***v.*** *Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII).

61. The Court first observes that the applicant's representative lodged a **case** with the Ankara Administrative Court on 14 April 2009, requestingthe annulment of the decision of the Ministry not to release his client and to order a stay of execution of that decision pending the proceedings. The request was refused and the subsequent appeal was dismissed on 24 June 2009. Moreover, according to the information in the **case** file, the proceedings are still pending before that court. The initial review by the administrative courts thus lasted two months and ten days.

62. The Court refers to its findings under Article 5 § 1 of the Convention about the lack of legal provisions governing the procedure for detention in Turkey **pending deportation. The proceedings in issue did not raise a complex issue. The Court considers that the Ankara Administrative Court was in an even better position than the Court to observe the lack of a sufficient legal basis for the applicant's detention. The Court therefore finds that the judicial review in the present** case **cannot be regarded as a "speedy" reply to the applicant's petition (see *Khudyakova* *v.* *Russia*, no. 13476/04, § 99, 8 January 2009; and *Kadem* *v.* *Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court held that periods of 54 and 17 days, respectively,**

for examining an appeal against detention pending extradition proceedings had been too long).

63. Accordingly, the Court concludes that Turkish legal system did not provide the applicant with a remedy whereby she could obtain speedy judicial review of the lawfulness of her detention, within the meaning of Article 5 § 4 of the Convention (see *S.D. v. Greece*, no. 53541/07, § 76, 11 June 2009; and *Abdolkhani and Karimnia*, cited above, § 142).

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

III. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION WITHIN THE CONTEXT OF THE APPLICANT'S DETENTION

64. Relying on Article 3 of the Convention, the applicant complained about the material conditions in the Kırklareli Foreigners' Admission and Accommodation Centre and alleged that medical assistance was not provided there. In her submissions dated 22 June 2009, she also complained under the same head that she had been insulted and threatened by A.A., a police officer at the Centre.

1. The alleged ill-treatment of the applicant by A.A.

65. The Government maintained that an investigation had been initiated into the applicant's allegations of ill-treatment, which was pending.

66. The applicant did not make further submissions on this point.

67. The Court reiterates that a criminal investigation constitutes, in principle, an effective remedy in respect of allegations of ill-treatment. Having regard to the fact that an investigation into the actions of the police officer who had allegedly insulted the applicant is currently pending, the Court considers that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Medical assistance

68. The Government submitted that the applicant did not raise her complaint regarding the alleged lack of medical assistance before the national authorities. They contended that she had failed to exhaust the domestic remedies available to her in respect of this part of the application.

69. The applicant reiterated her allegations.

70. The Court does not consider it necessary to determine whether the applicant has exhausted domestic remedies, as this part of the application is manifestly ill-founded for the following reasons.

71. The Court reiterates that Article 3 requires that the health and well-being of detained persons should be adequately secured by, among other things, providing them with the requisite medical assistance (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). In the present **case**, the Court observes that in May 2008 the applicant's representative asked the authorities to conduct a medical examination of the applicant, noting that she was suffering from a serious illness. Subsequently, in June and July 2008 the applicant underwent a number of medical examinations in relation to her past medical operation. As a result of these examinations, the doctors observed that the applicant was not suffering from any illness. Given that the authorities secured sufficiently detailed medical examinations of the applicant and her medical history rapidly after her representative's request, the Court concludes that the applicant did have access to adequate medical assistance. It therefore concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Material conditions

a. Admissibility

72. 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, because the applicant had failed to lodge a complaint with the national authorities.

73. The applicant replied that she had not been able to raise her allegations regarding the conditions of detention since she feared the negative consequences of a complaint.

74. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems. However, the only remedies which must be tried under Article 35 § 1 of the Convention are those that relate to the breaches alleged and which at the same time are available and adequate. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness (see, among many others, *Kalashnikov* ***v****. Russia* (dec.), no. 47095/99, 18 September 2001).

75. Furthermore, the Court reiterates that, in the area of exhaustion of domestic remedies, the burden of proof is on the Government 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 complaints and offered reasonable prospects of success. Once this burden of proof is satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the **case**, or that there existed special circumstances absolving him or her from the requirement (see *Kalashnikov*, cited above).

76. In the present **case**, the Court observes at the outset that the applicant asked the administrative authorities to be released several times. She lodged a case with the Ankara Administrative Court to that end although she did not explicitly raise the issue of her detention conditions before that court. Moreover, the applicant started a “death fast” in protest against her detention and the allegedly poor conditions of detention in the K rklareli Foreigners' Admission and Accommodation Centre.

77. The Court further observes that Mazlum-Der published a report containing interviews with a number of persons detained in the K rklareli Foreigners' Admission and Accommodation Centre, including the applicant, who complained about the poor detention facilities, as well as the director of the Centre and the K rklareli Governor. According to this report, both the director of the Centre and the Governor were aware of the allegations concerning the conditions of detention. The Court therefore considers that the administrative authorities had the opportunity to examine the conditions of the applicant's detention and, if necessary, to offer redress.

78. Furthermore, while it is true that the applicant did not lodge a complaint with the national authorities, the Government have not demonstrated which remedies existed and what kind of redress could have been afforded to the applicant. Nor did they point to examples of cases where conditions of detention were improved following a complaint or an application to domestic courts. The Court is therefore led to conclude, in the particular circumstances of the present **case**, that it is not established with sufficient certainty that there existed domestic remedies capable of affording redress to the applicant in relation to her complaint concerning the conditions of detention. It accordingly dismisses the Government's objection.

b. Merits

79. The Government submitted that the applicant's allegations concerning the conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre had been baseless. They contended that the rooms in the Centre were never locked. The persons who

were held there had common areas where they watched television and dined. The Government maintained that they were even allowed to hold celebrations.

80. The applicant submitted that the hygiene and quality of food served to detainees were poor in the Centre and that therefore the detainees had to buy food from the canteen, which was expensive. She maintained that the drinking water was extremely chalky. She further contended that the detainees were allowed to go out of the building for only four hours per day and there was no facility for exercising. She also noted that she was only allowed to go into the open air for one hour a day when she was on the “death fast”.

81. 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).

82. In the present **case**, the Court observes at the outset that the applicant's and other detainees' access to food is provided by the Centre's management (see paragraph 37 above). Therefore, the Court assumes that the kitchen, photographs of which were submitted to the Court, was not being used by the applicant and other detainees. Thus, in the Court's view, access to places in the Centre, which are not in use, such as the kitchen in question, should be restricted. The Court further considers that although the applicant complained about the quality of food and drinking water in the Kırklareli Foreigners' Admission and Accommodation Centre, she failed to demonstrate how the chalky water had affected her health and to prove her allegations regarding the quality of food with appropriate arguments and evidence.

83. As regards the applicant's allegations that she was not allowed to go into the open air for more than four hours per day (and for one hour when she was on the “death fast”) and that she did not have any facilities for physical exercise, the Court refers to the European Committee for the Prevention of Torture's (CPT) standard that foreign nationals detained within the immigration context should be allowed to exercise in the open air on a daily basis. Given that the applicant did not allege that she was continuously kept indoors, the Court does not consider that an issue arises under Article 3 in the circumstances of the present **case**.

84. The Court further notes that the photographs of the rooms and the corridor in the Kırklareli Foreigners' Admission and Accommodation Centre demonstrate that the rooms enjoyed natural light and had large windows, making it possible to have access to fresh air. While it is true that some beds did not have bed linen, given that the other beds had clean bedding on them, the Court cannot reach the conclusion that the management of the Kırklareli Centre did not provide bed linen to the applicant.

85. The Court observes that on the basis of the photographs submitted by the applicant there may be two shortcomings which call for criticism in terms of hygiene in the Kırklareli Foreigners' Admission and Accommodation Centre. The first point is the state of the toilets (see paragraph 28 above), which should be replaced, and the second is the presence in the Centre of the cleaning products whose labels were in the Cyrillic alphabet and whose expiry dates had passed nine to ten years ago, although it cannot be determined whether they were actually being used by the detainees.

86. The Court is also mindful that the applicant has been detained in the Kırklareli Foreigners' Admission and Accommodation Centre for more than sixteen months and that her detention may continue for an indeterminate period of time in the absence of a procedure in domestic law setting time-limits for such detention, a fact which has led the Court to find a

violation of Article 5 § 1 of the Convention (see paragraph 56 above). The Court accepts that this uncertainty may cause a feeling of anxiety. The Court is further aware that the Government failed to make detailed submissions as to the living conditions in the Kırklareli Foreigners' Admission and Accommodation Centre, or to submit photographs or a video of the parts of the Centre where the detainees were held. Nevertheless, in the Court's view, it has not been established that the material conditions in the Kırklareli Foreigners' Admission and Accommodation Centre are so severe as to bring them within the scope of Article 3 of the Convention, despite the shortcomings identified in paragraph 85 above, and the possible feeling of anxiety that the indefinite term of the applicant's detention may cause.

87. Accordingly, there has been no violation of Article 3 on account of the conditions of detention in the Kırklareli Foreigners' Admission and Accommodation Centre.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the violations of her Convention rights. She further claimed EUR 4,000 for pecuniary damage, claiming that she would spend (*sic*) EUR 400 per month if she were not detained.

90. The Government contested these claims.

91. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations and to equitable considerations, it awards the applicant her claim in full.

B. Costs and expenses

92. The applicant also claimed EUR 3,100 for the costs and expenses incurred before the Court. Referring to the Istanbul Bar Association's scale of fees, she claimed EUR 3,000 for her legal representation. She further claimed EUR 100 for translation, telephone and fax expenditure. She also submitted that her representative had carried out thirty-five hours of legal work.

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

94. 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 the applicant has not substantiated that she actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

C. Default interest

95. 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 3 of the Convention (concerning the applicant's possible deportation to Iran and the material conditions of her detention) and the complaints under Article 5 of the Convention;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that the applicant's deportation to Iran would be in violation of Article 3 of the Convention;

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

5. *Holds* that there has been no violation of Article 3 of the Convention on account of the material conditions of detention in the Kırklareli Foreigners' Admission and Accommodation 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, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Françoise Tulkens
Registrar President

1. The judgment is not final yet.

Z.N.S. v. TURKEY JUDGMENT