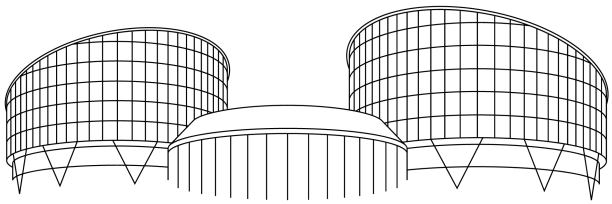

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE of TEHRANI and OTHERS v. TURKEY

(Applications nos. 32940/08, 41626/08, 43616/08)

JUDGMENT

STRASBOURG

13 April 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 cases of Tehrani v. Turkey, Norouzi v. Turkey and Kazempour Marand and Ranjbar Shorehdel 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 present cases originated in three applications (nos. 32940/08, 41626/08 and 43616/08) 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 four Iranian nationals, Mr Mohammad Javad Tehrani, Mr Parviz Norouzi, Mr Nader Kazempour Marand and Mr Parviz Ranjbar Shorehdel ("the applicants"), on 14 July, 2 September and 15 September 2008 respectively.

2. The applicants, who had been granted legal aid, were represented by Mrs D. Abadi, director of Iranian Refugees' Alliance Inc., a non-governmental organisation in New York. The Turkish Government ("the Government") were represented by their Agent.

3. On 15 July, 2 September and 15 September 2008 respectively, the President of the Chamber to which the cases were allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicants should not be deported to Iran or Iraq. In application no. 41626/08 the interim measure was put in place until further notice, whereas for the other two applications it was applied until 13 August and 13 October 2008. Following the Government's responses to the Court's questions in the latter two applications, the President of the Chamber decided on 8 August and 10 October 2008 respectively to extend the interim measures until further notice.

4. On 28 November, 2 September and 16 December 2008, the President of the Second Section decided to give notice of the respective applications

to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

5. On 12 February 2010 the President of the Chamber decided to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicant in application no. 41626/08 should be examined by a psychiatrist in a fully equipped state hospital for diagnosis of his mental state.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

A. Background

1. Application no. 32940/08

6. The applicant was born in 1969 and is currently being held in the Kırklareli Foreigners' Admission and Accommodation Centre (*Kırklareli Yabancılar Misafirhanesi*) (the "Kırklareli Accommodation Centre").

7. The applicant left Iran on 30 December 2002 and joined the People's Mojahedin Organisation of Iran ("PMOI") in the Al-Ashraf camp in Iraq on 11 January 2003. Following the disarmament of the PMOI on 3 June 2004, he started living at the Temporary Interview Protection Facility ("the TIPF"), also in Iraq. On 5 May 2006 the United Nations High Commissioner for Refugees ("UNHCR") in Iraq recognised the applicant as a refugee.

8. With the assistance of a people-smuggler, the applicant left Iraq at the end of June. In his application form the applicant stated that he was arrested on 4 July 2008, whereas in his two subsequent statements given to the Turkish authorities he stated that he was arrested in Turkey on 7 July 2008. Among the documents submitted by the Government is a list of individuals arrested on 7 July 2008 and the applicant's name is included therein.

9. The applicant was initially taken to a police station following his arrest. It appears from the documents submitted by the Government that at this station the applicant's fingerprints were taken on 5 July 2008 and, during his questioning on 7 July 2008, he was informed that he had been arrested for illegal entry into the country. The statement form dated 7 July 2008 bears the applicant's signature as well as that of a translator.

10. On 7 July 2008 the applicant was transferred to the Tunca Foreigners' Admission and Accommodation Centre (*Tunca Yabancılar*

Misafirhanesi, the "Tunca Accommodation Centre") in Edirne where, on 22 July 2008, he was questioned about his entry into Turkey, his political background and the reasons for his flight from his country of origin.

11. The authorities initially transferred the applicant to a larger building at the Tunca Accommodation Centre on 7 December 2008, then to the Kırklareli Accommodation Centre on 1 June 2009.

2. Application no. 41626/08

12. The applicant, an Iranian national, was born in 1951 and is currently being held at the Kırklareli Accommodation Centre.

13. The applicant was living in Iran with his wife and five children when he became involved with the PMOI. In 1990 they fled to Turkey, where he was recognised as a refugee by the UNHCR. At the time the applicant's wife was pregnant with their sixth child. The applicant and his family resettled in Finland in 1992. The following year the applicant left Finland to join the PMOI in Iraq. In 2004 he defected from the PMOI and initially stayed at the TIPF and then at the Al-Ashraf camp until 2008.

14. Some time in early 2008 the applicant re-established contact with his family in Finland and left the Al-Ashraf camp on 4 March 2008. With the assistance of a people-smuggler he entered Turkey illegally in either May or June 2008 and went to İstanbul. He lodged a request with the Finnish authorities in Turkey for a visa to enter Finland. While waiting for the outcome the applicant decided to flee to Greece.

15. The applicant stated before the Court that he was arrested by the Turkish authorities on the night of 4 August 2008 and taken to a gendarmerie station in Didim, Aydın, where he asked for asylum and temporary leave to remain in Turkey. He was then transferred the same night to an abandoned warehouse operated by the Didim Gendarmerie Headquarters and kept there for ten days, before being transferred to a detention facility in Didim on 15 August 2008. The applicant was held here for a period of twenty-two days.

16. In their submissions the Government maintained that, following his arrest, the applicant was held at the accommodation centre for foreigners within the premises of the Aydın Security Headquarters (the "Didim Accommodation Centre"). Among the documents submitted by the Government, an arrest report lists the names of twenty-two foreigners arrested on 4 August 2008, among whom there is a certain Perviz Muhammed, an Iranian national aged sixty-six. A transfer document dated 14 August 2008 lists seventeen Iranian nationals, which includes the same Perviz Muhammed but notes that he was arrested on 5 August 2008. This document further indicates that these seventeen individuals were transferred from the gendarmerie headquarters to the Didim Accommodation Centre.

17. On 28 August 2008 the Finnish authorities granted the applicant a visa to enter Finland. On 4 September 2008 he was further granted work and residence permits for Finland.

18. On 5 September 2008 the authorities transferred the applicant to the Kırklareli Accommodation Centre where he has been held since.

19. On 5 September 2008, either in Didim or in Kırklareli, a police officer took the applicant's statement in relation to the asylum procedures. The applicant stated that he and his family had been resettled in Finland sixteen years earlier by the UNHCR. He had then returned to Iraq on duty. He had been arrested by the Turkish authorities while attempting to return to Finland after having completed his duty.

20. On 12 January 2010 the Court received a letter from the applicant requesting to withdraw his application. On 22 January 2010 the applicant's representative notified the Court that the applicant wished to pursue his application. On 11 February 2010 the applicant's representative sent to the Court two letters written by the applicant on 7 February 2010, in English and in Turkish, noting that he had been held in detention for seventeen months and specifying that he wanted to be deported to Iran where his life would be in danger. The applicant's representative further submitted a psychological status report drawn by C.S., apparently a free lance psychologist. The report indicated that the applicant was showing depressive symptoms, stress and anxiety disorder and that he needed urgent psychological and psychiatric support. In this connection it was further stated that the applicant said that he wished to go back to Iran which meant committing suicide and that he considered this to be better than the vagueness of his present situation.

20. Following the Court's interim measure requesting diagnosis of the applicant's mental state to be carried out in a fully equipped state hospital, the Government submitted on 5 March 2010 a medical report drawn by a psychiatrist on 1 March 2010. This single paragraph report stated that the applicant did not suffer from a psychotic illness, that he had insight into his condition and further diagnosis could not be carried out since the applicant refused to undergo a thorough psychiatric examination.

3. Application no. 43616/08

21. The applicants were born in 1960 and 1966 respectively. They are currently settled in Kırklareli on the basis of a temporary residence permit.

22. The first applicant (K.M.) was involved with the PMOI in the early 1980s, while he was studying in the United Kingdom (“the UK”) where he lived between 1978 and 1986. He then went to Iraq, was recruited by the PMOI and lived in the Al-Ashraf Camp until 19 November 2006. After leaving the Al-Ashraf Camp, the applicant went to the TIPF where the UNHCR recognised his refugee status on 16 October 2007. The applicant

left the TIPF on 23 December 2007 and went to Erbil, where he met the second applicant.

23. The second applicant (P.R.S.) joined the PMOI in Iraq in 1990. In April 2004 he defected from the organisation and went to reside in the TIPF, where the UNHCR recognised him as a refugee on 5 May 2006.

24. In 2008 the applicants decided to flee Iraq and go to the UK; they paid 7,000 United States dollars (USD) to people-smugglers. On 11 September 2008 they crossed the border from Turkey to Greece, where they were arrested and sent back. Upon arrival on Turkish territory on the same day, the Turkish border officials arrested the applicants along with many others and drew up a list of names involving sixty-seven foreigners. It is further stated in this document that, in the absence of a translator, those listed could not be questioned with regard to the alleged breach of the Passport Code. The authorities took the applicants to the Tunca Accommodation Centre the following day.

25. On 17 September 2008 officers at the Passports and Foreigners' Directorate ("*Pasaport Yabancılar Şube Müdürlüğü*") questioned the applicants. Statement forms drawn up during the questioning indicate that, stating they spoke Turkish, the applicants did not request a translator and gave a brief description of their background as well as how they had travelled to Greece. The Statement forms further indicate that the applicants were transferred to the said Directorate following judicial proceedings against them for having illegally entered Turkey.

26. On 14 October 2008 the applicants were transferred to the Kırklareli Accommodation Centre.

27. On 14 May 2009 the applicants requested the Ministry of Interior to release them.

28. The Ankara Administrative Court ordered the applicants' release on 7 and 27 October 2009 respectively. The authorities released the applicants on 25 November 2009 and granted a temporary residence permit valid for five months. On an appeal by the General Security Headquarters, the Ankara Regional Administrative Court overturned, by a decision of 11 November 2009, the Ankara Administrative Court's decision in respect of the first applicant. The court based its decision on public order and general security grounds due to the applicant's former PMOI membership. At the time the judgment was drafted the applicant had not yet been recalled to the Kırklareli Accommodation Centre.

B. Conditions at the Tunca Accommodation Centre (in respect of applications nos. 32940/08 and 43616/08)

1. The applicants' account

29. The applicants in applications nos. 32940/08 and 43616/08 mainly complained about overcrowded rooms, poor hygiene, the poor quality of food, a lack of proper drinking water, medical attention, insufficient hot water for bathing, an insufficient number of public telephones, and a lack of fresh air and exercise.

30. In this connection the applicant in application no. 32940/08 submitted varying figures in respect of the size and capacity of the accommodation centre. Accordingly, he claimed in his initial application form that he had been kept in a building ("the first building") consisting of three rooms, each measuring 20-25 square metres with about twenty beds and accommodating up to 160 detainees. Thus he had to sleep on the floor for three nights before being able to occupy a bunk bed. Following his transfer to a bigger building ("the second building"), the applicant submitted that this new place had been approximately 250 square metres accommodating a varying number of people, from 30 to 280. In his final submissions to the Court, the applicant maintained that the men's unit in the first building measured 233 square metres, the sleeping area of which was 169 square metres, containing 55 beds for an average of 120 to 150 persons. In these submissions the applicant further stated that the second building was 408 square metres with a sleeping area of 288 square metres and accommodated an average of 250 to 300 persons without any ventilation or sufficient light. The applicant added that, during the two months following his transfer to the second building, there had been no beds at all and the occupants had had to sleep on an insufficient number of dirty blankets and mattresses placed on the floor. 90 bunk beds had gradually been brought into the accommodation centre. The building furthermore had no heating. There had been three toilets without a flush, scarce hot water and no working showers. The applicant had only been allowed into the fresh air eight times during his eleven-month stay at the Tunca Accommodation Centre.

31. The applicant in application no. 32940/08 initially submitted fourteen photographs in respect of the first building he had been kept in. The photographs seem to have been taken with a mobile telephone. It is not clear whether these photographs are of the same room or of different rooms. There are bunk beds closely lined up parallel to the walls of the room with no apparent sheets, covers or pillows, some with blankets. In all photographs there is an uncountable number of men either lying down in the space in the middle of the room, within touching distance of each other, or sitting on blankets on the floor. Some of the men seem to be walking around

those who are lying down. One of the photographs shows men leaning over some individuals lying on the floor to reach a public telephone on the wall. In another photograph a crowd of men is sitting on the floor elbow to elbow eating a meal while others appear to be queuing for theirs at the far end of the room.

32. The applicant in application no. 32940/08 subsequently submitted video footage of the second building and photographs derived from it, which had been recorded on the mobile telephone of another individual following the applicant's departure. These visual submissions indicate that individuals were kept in a hangar-like hall with bunk beds lined up close to each other by the walls and numerous dirty mattresses spread around on the floor in the middle, mostly without any linen, pillows or blankets. The photographs and footage lack sufficient light. Daylight seems to enter the hall from a number of windows placed near the high sloping roof and the main entrance to the hall, which is accessed through iron bars. The exact number of toilets and showers is not clear, since a piece of cloth has been placed in front of a door, blocking the view behind. However, as far as can be established, there appear to be two stained toilets, a broken shower and a row of taps near a wall, possibly for washing feet. The building in general appears worn and dirty. The visual submissions do not reveal lockers, tables, chairs or any sort of personal items.

33. The applicants in application no. 43616/08 submitted the same fourteen photographs described above in respect of application no. 32940/08. They claimed in their initial application form that the facility they had been kept in consisted of three rooms and a bathroom, measuring in total 130 square metres with an average of 120 people and 44 beds. In their subsequent submissions they stated that the facility measured 233 square metres in total, with an average of 120 to 150 individuals and a total of 55 beds. The applicants maintained that, as a result, many individuals had to sleep on the floor with no bedding at all. They contended that the rooms did not have proper lighting or ventilation. Furthermore, they had not been allowed to spend time outdoors, which had been particularly unbearable due to cigarette smoking indoors.

34. The applicants contested the Government's replies summarised below.

2. The Government's account

35. The Government maintained that there were two buildings for the purpose of holding illegal migrants, the total capacity of which amounted to 300 persons. In this connection the Government stated that the photographs submitted by the applicants had been taken during a two-hour period when newcomers were gathered for pre-interview, interview and medical screening stages, following which they would have been settled in their rooms.

36. The food distributed at the accommodation centre consisted of three-course meals and was supplied by a catering company. There was constant hot water for bathing and a water purifier for drinking water. The accommodation centre did not have a clinic but had an infirmary. Those who were sick were taken to local hospitals. The wards were regularly disinfected to ensure hygiene.

37. In support of their submissions the Government provided ten photographs, which showed a big glass medicine container, rows of bunk beds placed close to each other with brand new mattresses still in their plastic coverings and pillows piled in a corner, a shower which did not appear to have a door or a curtain, a public telephone, a three-course meal served on a tray, a water purifier, an on-site shop and a playground for children, as well as a small football field.

C. Conditions at the Kırklareli Accommodation Centre (in respect of all three applications)

1. The applicants' account

38. In application no. 32940/08 the applicant referred to the submissions of the applicants in application no. 43616/08, and maintained that the conditions at the Kırklareli Accommodation Centre were better than those at the Tunca Accommodation Centre due to fewer detainees and time outdoors. He maintained however that this facility was intolerable for an extended stay, because the food distributed lacked nutritional and calorific value, the water was undrinkable, hot water was not regularly available, work and educational activities were not provided and there was only minimal medical support.

39. In their submissions to the Court, the applicants in application no. 43616/08 maintained that the physical conditions in the Kırklareli Accommodation Centre were below the minimum standards set by the European Committee for the Prevention of Torture ("the CPT"). In this respect they submitted a drawing of a room which they maintained was 14.2 square metres. Providing a number of photographs the applicants complained in particular that the hygiene and quality of food served to detainees had been poor and the drinking water extremely chalky. They therefore had to buy food from the over-priced on-site shop. The applicants further contended that they had insufficient access to hot water for showering. The applicants additionally complained that the Kırklareli Accommodation Centre lacked proper recreation and exercise space, as well as medical facilities. The exercise facilities outdoors were only accessible between noon and 5 p.m.

40. Photographs presented by the applicants show three-course meals varying between soup, mixed vegetables, bulgur, beans, chick-peas, lentils,

bread and jam. There seems to be a white chalky substance at the bottom of a glass of water. Large cauldrons of food appear placed on tables in a hall. There are photographs of a dilapidated, unused kitchen. Some photographs show meals distributed by staff members, others by detainees. One of the photographs indicates that the staff member distributing food is wearing plastic gloves. There are no queues for meals. The applicants further submitted photographs of two showers in closed cabins. One of the showers appears to be broken. There are also photographs of two squat toilets, one with dark stains and the other appearing reasonably clean. Applicants also submitted photographs of barbed wire surrounding the accommodation facility, metal bars outside their windows, a tower water tank, rubbish containers where there seem to be large amounts of cartons, paper and plastic bags lying around, as well as a broken plastic chair, and a volleyball field with overgrown grass. There are also photographs of a round-table gathering apparently between State officials and occupants of the accommodation centre, as well as of a religious ceremony, the subsequent distribution of meat and an exchange of greetings.

41. The applicants objected to the Government's replies below.

2. The Government's account

42. The Government submitted that the rooms were of a standard size, shared by four people and measuring 35 square metres. They maintained that the kitchen facility seen in the photographs submitted by the applicants was not in use and the food was supplied externally by a catering company. With regard to the tap water, the Government stated that the staff had been using the same water supply and that there had been no medical incident arising from its use. Additionally the Government provided photographs of various social events organised at the accommodation centre. Other photographs included those of a medical clinic in the centre, individuals playing volleyball and walking around in the garden, playing in the snow, a girl around the age of three riding a small bicycle outdoors, the distribution of meals, toilets and sinks, a prayer room, a football field, a television room and a table tennis facility. One of the rooms appears to have a toilet and shower. Other photographs indicate that there is a separate shower and toilet area as well as a washing machine for common use. Some of the photographs provide images of daily life, such as an individual painting on canvas or two individuals having tea in a room. Rooms seem to have natural light coming through large windows. Whether bunk beds or ordinary beds, all beds appear to have pillows, blankets and linen. Photographs show that the rooms are equipped with curtains, ceiling lights, large personal lockers and central heating radiators. They are decorated with detainees' personal belongings, such as carpets on floors or posters on walls. Some rooms seem to have plastic tables and chairs. In one of the photographs there is a computer, a ventilator and a small Christmas tree. The Government also

presented photographs of the barbed-wire perimeter, empty rubbish containers, the collection of garbage by municipality staff and an official giving presents to occupants.

D. Conditions at Didim (in respect of application no. 41626/08)

1. The applicants' account

43. The applicant in application no. 41626/08 complained that he had initially been detained for a period of ten days in poor conditions in an overcrowded warehouse operated by the Didim Gendarmerie Headquarters. He claimed to have been held in unhygienic conditions with insufficient natural light and ventilation, insufficient access to sanitary facilities, without bedding, safe drinking water, proper food, medical support, sufficient hot water, any indoor or outdoor activities or contact with the outside world.

44. With respect to the conditions at the Didim Accommodation Centre, the applicant maintained that he shared a dormitory with six other people and had no privacy. He suffered from a lack of fresh air, proper food, drinking water, proper bedding, extra clothing, personal hygiene items and hot water, as well as insufficient access to sanitary facilities. He had observed a total of 60 beds and 60 occupants in the centre during his stay. He had not been allowed access to the outdoors and was refused contact with the outside world.

45. The applicant further contested the Government's replies summarised below.

2. The Government's account

46. The Government maintained that the applicant had been taken to the Didim Accommodation Centre following his arrest, and did not reply to the applicant's allegations regarding his alleged detention in a warehouse operated by the Didim Gendarmerie Headquarters. With respect to the Didim Accommodation Centre, the Government maintained that there were ten dormitories with bunk beds. The families were kept in separate rooms where possible. All rooms had windows opening outward. The facility had a kitchen, prayer room, dining hall, television room, toilet, bathroom and twenty-four-hour hot water. According to the Government, the tap water was drinkable and the food at the centre was provided by a catering company. The inhabitants of the accommodation centre underwent monthly medical checkups and medicine was provided by the State. Likewise, cleaning materials such as washing powder, soap and bleach, was provided by the Aydın Security Headquarters. In this connection the Government provided a number of receipts indicating payments to a catering company,

bakery, market and a dairy products company. The Government also submitted the menu served at the accommodation centre between July and December 2008. The menu indicates that meals consisting of two to three courses were served every day of the week. The food varied between soup and vegetables, pasta and meat or meatballs and dried beans and yoghurt. Salad and fruit seem to be served occasionally. The Government further submitted two receipts dated 7 and 8 August 2008 indicating payment to a pharmacy for a total of thirty-eight prescriptions.

47. The Government provided thirteen photographs of the Didim Accommodation Centre. There are photographs of two separate rooms, seemingly occupied by two families. The rooms have large windows with curtains and iron bars on the outside, central heating radiators and bunk beds with white bedding and blankets. In one of the rooms there is a flat carpet and in the other a plastic chair. There are also photographs of a kitchen with an electric stove, a squat toilet, an electric water heater, a small sink and what seems to be the main entrance of the centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law and practice concerning asylum procedures

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

B. The Ankara Administrative Court ruling of 17 September 2008

49. A.A., an Iranian refugee, was held in an accommodation centre at the relevant time. On 14 July 2008 he requested the Ministry of the Interior to release him and subsequently lodged a case with the Ankara Administrative Court on 6 August 2008. Stating that he had been recognised as a refugee by UNHCR, A.A. mainly argued that his detention was unlawful. At the time, A.A.'s request for a residence permit on family reunification grounds was under examination by the Swedish authorities. On 17 September 2008 the Ankara Administrative Court ordered A.A.'s release.

C. The Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe

50. Following his visit to Turkey between 28 June and 3 July 2009, the Commissioner for Human Rights of the Council of Europe published a

report on 1 October 2009 regarding, *inter alia*, the situation of asylum seekers and refugees. The relevant part of the executive summary reads as follows:

> "... Having welcomed the efforts made by the Turkish authorities to improve living conditions in places of detention he visited [İstanbul and İzmir], the Commissioner remains concerned about reports of severe deficits in other holding facilities. He urges the authorities to secure dignified standards of living for all detained asylum seekers, to ensure that detention is the exception and be limited to certain purposes and to the shortest possible time. ... Further he urges the authorities to ensure the prompt provision of information to asylum-seekers in a language they understand, including the reasons of their arrest and detention, [and] to provide for prompt judicial review of detention ..."

D. International and national material on the Kırklareli and Tunca Accommodation Centres

1. CPT Standards and Human Rights Watch Report on the Kırklareli Accommodation Centre

51. The relevant paragraphs of the CPT Standards (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) concerning the conditions of detention of foreign nationals, as well as of a report on the Kırklareli Accommodation Centre issued by Human Rights Watch on 6 November 2008, may be found in the case of *Z.N.S. v. Turkey* (no. 21896/08, §§ 34-37, 19 January 2010).[1]

2. Human Rights Watch Report on the Tunca Accommodation Centre

52. In June 2008 Human Rights Watch visited, *inter alia*, the Tunca Accommodation Centre and published a report on 6 November 2008 entitled 'Stuck in a Revolving Door'. The relevant extracts from the report read as follows:

> "... Human Rights Watch spent two full days visiting the Edirne Tunca detention facility. The access we were given to the facility was particularly remarkable given the absolutely dreadful conditions we found there. On the first day we visited, June 11, 2008, the detainee population was 703. The capacity of the facility is 200. By our second visit, 263 people had been released, including, as it turned out, nearly everyone who spoke Arabic and Farsi, the languages of our interpreters. Nevertheless, we were permitted to interview anyone we chose in a completely private setting in a courtyard outside a building holding most of the detainees.
>
> The Tunca facility at Edirne is comprised of two buildings, each divided into two rooms. The smaller of the two buildings holds in one room women and children and in the other men who appear to have prospects of relatively quick identification and cooperation from their home consulates to effect their removal from Turkey. The

[1] The judgment is not yet final.

countries of origin of the men in the small building included Algeria, Iran, Iraq, Kazakhstan, and Ecuador. The larger building which holds by far the larger number of detainees is divided into a smaller room for men who will be released to Istanbul because they are members of nationalities that cannot be deported, such as Somalis and Palestinians, and the larger room which holds the largest number of men—about 400 on our first visit—who are held indefinitely pending their relatives providing tickets for their return flights or until they can be deported. Most of the men in the big room appeared to be south Asians from countries like Bangladesh, Pakistan, Sri Lanka, India, as well as various African nationalities. The authorities also put "Afghans," "Somalis," "Burmese," and "Palestinians" in the big room when they doubted their declared nationalities.

...

The conditions in the big building, particularly in the bigger of the two rooms, are abysmal—completely unfit for human habitation, even for a short duration. As a place of indefinite detention, the conditions alone are inhuman and degrading.

Words fail to describe the sight and smell of 400 men crammed into a single room. For our own security, we were not allowed to walk into the room, but stood at the only door to the room, a padlocked iron gate, where we peered into the darkness. Though men crowded toward us, they parted their human sea so we could see the jammed crowd all the way to the wall. There was no space between any bodies; they sat shoulder to shoulder both along the walls and in the room's interior.

...

The big building looks like an old warehouse. It is dark and fetid. There are only small windows at the ceiling level and these are made of glass so are useless in terms of air circulation and cooling. There is only one window fan and one other fan at the end of the room. Although the larger of the two rooms has an exit that leads to the courtyard that could theoretically be used to provide fresh air and exercise, in fact, except for those interviewed by Human Rights Watch, none of the detainees had ever been allowed into the yard. The smaller of the two rooms doesn't even have a door that leads to the yard.

…

The strongest first impressions of Edirne are the overcrowding, the desperation, the stench and the grime. ..."

THE LAW

I. JURISDICTION OF THE COURT

53. The Court notes that the applicant in application no. 41626/08 initially informed the Court that he wished to withdraw his application and

then requested to be deported to Iran where he stated his life would be in danger. The Court further takes note of the discrepancy between the psychological status report submitted by the applicant's representative, which indicated that the applicant needed treatment, and the brief psychiatric report submitted by the Government, which stated that the applicant did not suffer from a psychotic illness but that further diagnosis could not be carried out due the applicant's lack of co-operation (see paragraph 20 above).

54. Recalling Article 37 of the Convention which reads as follows, the Court however holds that it has jurisdiction to examine the case for the reasons stated below:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

55. While under Article 34 of the Convention the existence of a "victim of a violation", that is to say, an individual applicant who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the whole proceedings *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX. As a rule, and in particular in cases which primarily involve a risk to the applicant's life or physical well-being, the ensuing existence of the applicant's wish to pursue his application cannot be the only criterion. The fact that it might no longer be possible to remedy a breach of Articles 2 or 3 of the Convention must be taken into account when considering whether the examination of an application should be continued.

56. The Court notes that one of the applicant's allegations concerns the possible risk of death or ill-treatment if he were to be returned to Iran. Without prejudice to further examination of this complaint, accepting the applicant's wish to withdraw his application and striking the case out of its list would lift the protection afforded by the Court on a subject as important as the right to life and physical well-being of an individual. The Court attaches particular importance to the existing doubt in the present

application about the applicant's mental state and to the discrepancy of the medical reports submitted by the parties.

57. In these particular circumstances, the Court finds that respect for human rights as defined in the Convention and the Protocols thereto requires a continuation of the examination of the application no 41626/08 (Article 37 § 1 *in fine* of the Convention). The Court therefore dismisses the applicant's withdrawal request and decides to continue examining the application.

II. JOINDER

58. Given the similarity of the applications, both as regards fact and law, the Court deems it appropriate to join them.

III. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION IN RELATION TO THE DEPORTATION PROCEEDINGS

59. The applicants complained under Articles 2 and 3 of the Convention that their removal to Iran or Iraq would expose them to a real risk of death or ill-treatment. They further maintained under Article 13 of the Convention that they did not have an effective domestic remedy whereby they could raise their allegations under Articles 2 and 3 of the Convention.

60. The Court finds it is more appropriate to examine the applicants' Articles 2 and 3 complaints from the standpoint of Article 3 of the Convention alone (see *Abdolkhani and Karimnia,* cited above, § 62, and *NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008).

A. Admissibility

61. The Government maintained that the applicants had failed to exhaust the domestic remedies available to them pursuant to Article 35 § 1 of the Convention. They argued that foreigners who are to be deported may apply to the administrative courts and request the annulment of deportation proceedings.

62. The Court reiterates that, under Turkish law, seeking the annulment of a deportation order does not have automatic suspensive effect and, therefore, applicants were not required to apply to the administrative courts in order to exhaust domestic remedies as understood by Article 35 § 1 of the Convention (see *Abdolkhani and Karimnia*, cited above, § 59). The Court accordingly dismisses the Government's objections.

63. The Court observes that this part of the applications 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

64. Reiterating Turkey's geographical limitation to the Convention Relating to the Status of Refugees and the 1967 Protocol thereto, the Government maintained that the applicants had been members of the PMOI, designated as a terrorist organisation by the United States of America and the European Union. Therefore, allowing members of this organisation, including the applicants, to stay in Turkey would create a risk to national security, public safety and order.

65. The Court reiterates the general principles concerning Article 3 of the Convention as well as the country information on Iran and Iraq outlined in the case of *Abdolkhani and Karimnia* (cited above, §§ 72-76, 46-51 respectively). The Court points out that the present applications raise similar issues to the above-mentioned case, in which the Court found there would be a violation of Article 3 of the Convention were the applicants to be removed to Iran or to Iraq. The Court also held in the aforementioned judgment that there had been a violation of Article 13 of the Convention on the grounds that the applicants' asylum claims had not been examined by the national authorities and a request for the annulment of a deportation order did not have automatic suspensive effect.

66. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present cases. In respect of Article 3 of the Convention, the Court notes in particular that the applicants were ex-members of the PMOI acknowledged as refugees by the UNHCR, and that the situation in Iran or Iraq has not changed since the Court's above-cited *Abdolkhani and Karimnia,* judgment. Concerning Article 13 of the Convention, the Court notes that it is not clear from the submissions of the parties whether and, if so, to what extent the national authorities examined the applicants' fear of persecution. In any event, the Court repeats that the judicial review of deportation cases in Turkey, as currently practised, cannot be regarded as an effective remedy, since an application for the annulment of a deportation order does not have automatic suspensive effect (see *Abdolkhani and Karimnia,* cited above, § 116, and *Jabari v. Turkey*, no. 40035/98, § 50, ECHR 2000-VIII).

67. Against this background and case-law, the Court concludes that there would be a violation of Article 3 of the Convention if the applicants were to be removed to Iran or to Iraq. The Court further holds that there has been a violation of Article 13 of the Convention due to the lack of an automatic suspensive effect in the Turkish asylum procedure.

IV. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

68. Relying on Article 5 §§ 1 and 4 of the Convention, the applicants complained that they had been unlawfully detained without the possibility of challenging the lawfulness of their detention. The Government contested these arguments.

A. Admissibility

69. 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. Article 5 § 1

70. The Court reiterates that it has already examined the same grievances in the case of *Abdolkhani and Karimnia*, cited above, §§ 125-135). It found in that case that the placement of the applicants in the Kırklareli Accommodation Centre constituted a deprivation of liberty. The Court 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 had been subjected was not "lawful" for the purposes of Article 5 § 1 of the Convention.

71. The Court notes that in the present three cases the applicants have been placed in the Didim, Tunca and Kırklareli Accommodation Centres on the same grounds as the placement of the applicants in the case of *Abdolkhani and Karimnia* (cited above, §§102-124). The applicants in 32940/08 and 41626/08 continue to be held at the Kırklareli facility. The Court therefore holds that keeping the applicants in such centres constitutes a deprivation of their liberty.

72. The Court further observes that in the three present applications there are no arrest records which indicate where and when the national authorities first took the applicants into custody. In application no. 32940/08 there is conflicting information regarding the exact date of the applicant's arrest (see paragraphs 8 and 9 above). In application no. 41626/08, it is not clear whether the person listed as "Perviz Muhammed", age sixty-six, is indeed the applicant in the present case. Additionally, two separate dates are noted for his arrest and there is conflicting information as to where the applicant was held for ten days, before he was actually transferred to the

Didim Accommodation Centre on 14 August 2008 (see paragraph 16 above). In respect of the applicants in application no. 43616/08, a list drawn up by officials states that sixty-seven foreigners, including the applicants, were arrested on 11 September 2008 and could not be questioned due to the lack of a translator. However, there is no information as to when, where and how the applicants were arrested or where they were held until 17 September 2008. Subsequent statement forms drawn up on 17 September 2008 indicate that the applicants were prosecuted in the meantime for illegal entry into Turkey but, again, there is no information in the case file regarding the outcome of that procedure (see paragraph 24 above).

73. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion from the *Abdolkhani and Karimnia* judgment in the present cases. In particular, given the above-mentioned shortcomings concerning the arrest and detention of the applicants, as well as the absence of clear legal provisions regarding their deprivation of liberty, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

2. Article 5 § 4

74. The Government submitted that a certain A.A., an Iranian who had entered Turkey illegally and who had been detained in the Kırklareli Accommodation Centre, had successfully challenged his detention and possible deportation before the administrative courts. He was consequently given a temporary residence permit. Therefore, according to the Government, administrative proceedings constituted an effective remedy for the purposes of Article 5 § 4 of the Convention.

75. The applicants noted that it had taken almost two months for the administrative courts to decide the case brought by A.A., a delay which did not meet the "speedy judicial review" required by Article 5 § 4. His release had also been delayed; this person had been detained for a period of one month following the administrative court's decision to release him.

76. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to 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 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).

77. The Court observes that A.A. first applied to the Ministry of the Interior for release on 14 July 2008. He then brought an action with the Ankara Administrative Court on 6 August 2008. The court decided to suspend the implementation of the decision for A.A.'s detention and ordered his release on 17 September 2008. A.A. was released from the accommodation centre on 17 October 2008. The review by the administrative court thus lasted forty-two days and A.A. was released seventy-two days after he had challenged the lawfulness of his detention before the administrative court.

78. Against this background, and referring to its case-law on the speed requirement (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 138, 27 January 2009, and *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found periods of thirty-eight and seventeen days, respectively, to examine an appeal against detention to be too long), the Court considers that the judicial review in the case of A.A. cannot be regarded as a speedy reply to A.A.'s request, not to mention that the administrative authorities continued to hold A.A. for another thirty days despite the court ruling regarding his release.

79. The Court further observes that the Government have not provided the Court with any other example where administrative courts have speedily examined and ordered the release of an asylum seeker on grounds of unlawfulness. In this connection the Court notes that the applicants in application no. 43616/08 were released approximately five months after their request. The Court therefore concludes that the Turkish legal system did not provide the applicants with a remedy whereby they could speedily obtain judicial review of the lawfulness of their detention within the meaning of Article 5 § 4 of the Convention.

80. In the light of the above, the Court holds that there has been a violation of Article 5 § 4 of the Convention in the present cases.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION WITHIN THE CONTEXT OF THE APPLICANTS' DETENTION CONDITIONS

81. Relying on Article 3 of the Convention the applicants complained about the conditions of their detention in Didim (see paragraphs 43-45 above), Tunca (see paragraphs 29-34) and Kırklareli (see paragraphs 38-41 above). The Government contested these arguments (see paragraphs 46-47 above for Didim, 35-37 for Tunca and 42 for Kırklareli).

A. Admissibility

82. 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.

B. General principles

83. The Court has already emphasised in previous cases that a detained person does not, by the mere fact of his incarceration, lose the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the individual's health and well-being are adequately secured. (See *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

84. In its previous cases concerning detention conditions where applicants had at their disposal less than 3 square metres of personal space, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, *Lind v. Russia*, no. 25664/05, § 59, 6 December; *Kantyrev v. Russia*, no. 37213/02, § 50-51, 21 June 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005). Accordingly, an extreme lack of space in prison cells weighs heavily as an aspect to be taken into account for the purpose of establishing whether detention conditions were "degrading" from the point of view of Article 3 (see *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-... (extracts)).

85. The Court recalls its finding above that the applicants have been deprived of their liberty (see paragraph 71 above). Given the fact that they have been held in accommodation centres under State supervision and against their own will, the physical conditions in such centres must comply with the requirements of Article 3 of the Convention. In this connection an extreme lack of space remains one of the main criteria for the establishment of compliance with Article 3 of the Convention.

1. The Didim Accommodation Centre (in respect of application no. 41626/08)

86. The Court notes that the documents provided by the Government for application no 41623/08 show that the applicant was arrested on either 4 or 5 August 2008 and then transferred from the gendarmerie headquarters to the Didim Accommodation Centre on 14 August 2008.

87. The Government maintained that the applicant had been transferred to the Didim Accommodation Centre following his arrest but failed to provide any information regarding the place where he had been held before 14 August 2008. The Court observes that the applicant also failed to provide sufficient information as regards the conditions of where he was held. His submissions are of a general nature and not supported by any evidence to substantiate his claims.

88. As for the physical conditions at the Didim Accommodation Centre, the Court observes that, in addition to similar allegations of a general nature regarding the overall living standards at the accommodation centre, the applicant asserted that he had been held in a dormitory with seven beds and six other people, which had completely deprived him of privacy.

89. In the light of the detailed information as well as the photographs provided by the Government (see paragraphs 46-47 above) the Court notes that the applicant has failed to substantiate his claims regarding the conditions at the Didim Accommodation Centre. Furthermore it does not appear that the suffering which he might have experienced was sufficient to amount to inhuman and degrading treatment contrary to Article 3 of the Convention.

90. For these reasons, the Court finds that the applicant's complaints regarding the physical conditions before his transfer to and at the Didim Accommodation Centre must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The Tunca Accommodation Centre (in respect of applications nos. 32940/08 and 43616/08)

91. On the basis of the parties' submissions, the Court observes that the Tunca Accommodation Centre consisted of two buildings, with units rather than cells. The submissions of the parties regarding the physical conditions, in particular the number of occupants in the units and their size, are conflicting.

92. The Court observes that the Government presented only one photograph of the inside of a room at the Tunca Accommodation Centre, where there were a number of bunk beds placed closely next to each other with unused mattresses still in their plastic coverings and no sheets or blankets. The photographs presented by the applicants, however, show an uncountable number of men lying on the floor within touching distance of each other or sitting on blankets. Similarly the meal-time photograph shows men sitting elbow to elbow on the floor of the same unit while having their meal, while the others queue to receive theirs. The overall image depicted in the photographs of the accommodation centre is of excessive crowding as well as a consequent lack of general orderliness and hygiene.

93. The Court notes the Government's explanation that the photographs presented by the applicants must have been taken during a two-hour period

when the newcomers were gathered for pre-interview, interview and medical screening stages, following which they would have been settled in their rooms. Even assuming that this is the case, the Court agrees with the Human Rights Watch Report (see paragraph 52 above) that conditions such as those reflected in these photos, in particular excessive overcrowding, a lack of orderliness and hygiene, are unfit for human habitation, even for a duration as short as two hours, and fall within the severity threshold of Article 3 of the Convention.

94. Irrespective of the varying figures submitted by the applicants on the size and capacity of the Tunca Accommodation Centre, the above factors are sufficient for the Court to conclude, without exploring other aspects of the complaint, that physical conditions in the Tunca Accommodation Centre amounted to a violation of Article 3 of the Convention.

3. The Kırklareli Accommodation Centre (in respect of all three applications)

95. The Court notes that it has examined similar complaints regarding the physical conditions at the Kırklareli Accommodation Centre in its recent judgment of *Z.N.S. v. Turkey* (cited above, §§ 79-87) and found that there has been no violation of Article 3 of the Convention on account of the detention conditions there.

96. Having examined all the material submitted to it, the Court considers that the applicants have not put forward any new argument capable of persuading it to reach a different conclusion in the present case. The Court notes in particular that, in addition to the photographs submitted in the case of *Z.N.S. v. Turkey* (cited above, §§ 28 and 31), the Government presented other photographs in the present case regarding daily life and the living conditions at the Kırklareli Accommodation Centre (see paragraph 42 above). These new photographs also indicate that physical conditions at the Kırklareli Accommodation Centre did not exceed the minimum level of severity required under the Convention.

97. In view of the above considerations, the Court concludes that there has been no violation of Article 3 of the Convention in the present cases at the Kırklareli Accommodation Centre.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH THE ARTICLE 3 COMPLAINT REGARDING DETENTION CONDITIONS

98. In their initial application forms the applicants relied on Article 3 of the Convention and complained about the conditions at the three accommodation centres. In their replies to the Government's observations following the communication stage of the application, they further invoked

Article 13 in conjunction with Article 3 of the Convention and maintained that they had no effective remedy in respect of their complaints regarding the poor conditions of detention at the accommodation centres in which they had been held. The Government did not reply to these subsequent complaints which had not been communicated to them at the initial stage.

99. Having regard to the above and its finding of a violation under Article 3 of the Convention regarding the applicants' complaints about the physical conditions in the Tunca Accommodation Centre, the Court considers that it is not necessary to make a separate examination of the admissibility and merits of these belated complaints under Article 13 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

100. All applicants complained under Article 5 § 2 of the Convention that they had not been informed promptly of the reasons for their detention. The applicant in application no. 41626/08 further complained under Article 8 of the Convention that his possible removal to Iran or Iraq, along with the refusal of the authorities to allow his exit from Turkey to join his family in Finland, constituted an unjustified interference with his right to respect for his private and family life.

101. Having regard to the facts of the cases, the submissions of the parties and its finding of violations of Articles 3, 13 and 5 § 1 of the Convention above, the Court considers that it has examined the main legal questions raised in the present applications. It concludes therefore that there is no need to give a separate ruling on the applicants' remaining complaints under the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Çelik v. Turkey (no. 1)*, no. 39324/02, § 44, 20 January 2009; *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008; *Getiren v. Turkey*, no. 10301/03, § 132, 22 July 2008; *Mehmet Eren v. Turkey*, no. 32347/02, § 59, 14 October 2008).

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage, costs and expenses

102. The applicants did not make any submissions with regard to pecuniary damage. As for non-pecuniary damage, they claimed 20,000 euros (EUR) each in respect of the damage they had suffered as a result of violations of their rights concerning their possible deportation. In addition to this amount they requested EUR 100 for each day they had spent in unlawful detention, EUR 150 for each day spent in the second building of the Tunca Accommodation Centre and the “warehouse” in Didim, EUR 100

per day at the first building in the Tunca Accommodation Centre and EUR 25 per day at the Kırklareli Accommodation Centre.

103. The applicants also requested the Government to waive any residence fees or late fines which they would be required to pay as a precondition to leaving Turkey lawfully. Finally, for their costs and expenses incurred before the Court, the applicants claimed EUR 6,920 in respect of application no. 32940/08, EUR 5,775 in respect of application no. 41626/08 and EUR 6,925 in respect of application no. 43616/08. In this connection they submitted a time sheet indicating the amount of legal work carried out by their legal representative and a table of costs and expenses.

104. The Government contested these claims, stating that they were excessive and only costs actually incurred could be reimbursed.

105. The Court considers that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations, the length and location of detention and to equitable considerations, it awards the applicant in application no. 32940/08 EUR 26,000, the applicant in application no. 41626/08 EUR 20,000 and each of the applicants in application no. 43616/08 EUR 21,000 under this head. As to the applicants' request concerning the waiver of fees or fines, the Court holds that this matter does not fall within the scope of Article 41 of the Convention; it therefore rejects the claim.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 3,500 for each application in respect of their costs and expenses . EUR 850 granted by way of legal aid under the Council of Europe's legal aid scheme should be deducted from the latter sum.

107. The Court considers, having regard to the particular circumstances of the case, to its finding of a violation of Article 5 § 1 of the Convention and to the urgent need to put an end to that violation, that the respondent State must secure, at the earliest possible date, the release of the two applicants (applications nos. 32940/08 and 41626/08) who are still held at the Kırklareli Accommodation Centre and that the State should not re-detain the other two applicants (application no. 43616/08) who were previously released (see *Assanidze v. Georgia* [GC], no. 71503/01, §§ 201-203).

B. Default interest

108. 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

1. *Dismisses* the applicant's withdrawal request and decides to continue examining the application no. 41626/08 unanimously;

2. *Decides* to join the applications unanimously;

3. *Declares* inadmissible the complaint under Article 3 of the Convention regarding the physical conditions of where the applicant in application no. 41626/08 was held at Didim, and the remainder of the complaints in all three applications admissible unanimously;

4. *Holds* unanimously that the applicants' deportation to Iran or Iraq would be in violation of Article 3 of the Convention;

5. *Holds* unanimously that there has been a violation of Article 13 of the Convention in conjunction with the applicants' complaints under Article 3 of the Convention regarding their possible deportation;

6. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the physical conditions at the Kırklareli Accommodation Centre;

7. *Holds* by 6 votes to 1 that there has been a violation of Article 3 of the Convention on account of the physical conditions at the Tunca Accommodation Centre (in respect of applications nos. 32940/08 and 43616/08);

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

9. *Holds* unanimously that it is not necessary to make a separate examination of the complaints made under Articles 5 § 2 and 8 of the Convention, as well as Article 13 of the Convention in conjunction with the complaints under Article 3 of the Convention regarding detention conditions;

10. *Holds* unanimously
(a) that the respondent State must secure the release of the two applicants (applications nos. 32940/08 and 41626/08) who are still held at the Kırklareli Accommodation Centre and should not re-detain the other two applicants who were previously released (application no. 43616/08);

(b) that the respondent State is to pay within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Turkish liras at the rate applicable on the date of settlement:

(i) EUR 26,000 (twenty-six thousand euros) to the applicant in application no. 32940/08, EUR 20,000 (twenty thousand euros) to the applicant in application no. 41626/08 and EUR 21,000 (twenty-one thousand euros) to each of the applicants in application no. 43616/08 in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 3,500 (three thousand five hundred euros) less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid, to each of the applicants in applications nos. 32940/08 and 41626/08, and the same amount to the applicants jointly in application no. 43616/08, in respect of costs and expenses, plus any tax that may be chargeable to any of them;

(c) 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;

11. *Dismisses* unanimously 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

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Sajó is annexed to this judgment.

F.T.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE SAJÓ

To my regret I could not follow the majority in finding that the applicants' conditions of detention at the Tunca Accommodation Centre amounted to degrading treatment.

The standard of proof generally applicable in individual applications is that of "beyond reasonable doubt". Thus, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries, death or disappearances occurring during such detention (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 182-183, 18 September 2009). In the present case, however, no such presumptions apply. The pictures submitted by the applicants substantiate their claims of overcrowding, but as to the specific alleged violation of Article 3 of the Convention within the context of the applicants' conditions of detention, the submissions of the parties are conflicting. The photographs submitted by the applicants indicate inappropriate conditions, while the Government argue that the photographs taken are not of the facilities used as living accommodation. In my view, the evidence produced does not provide sufficient information concerning the amount of personal space available, which is considered "one of the main criteria for the establishment of compliance with Article 3 of the Convention" (see paragraph 85 above). In such circumstances an on-site inspection would seem to be appropriate, especially in the absence of any conclusive finding by a Council of Europe body.