



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

1959 · 50 · 2009

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32598/06
by Jamil Jaafar FATHI
against Turkey

The European Court of Human Rights (Second Section), sitting on 30 June 2009 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 regard to the above application lodged on 11 August 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jamil Jaafar Fathi, is an Iranian national who was born in 1977 and lives in Alsemberg, Belgium.

The facts of the case may be summarised as follows.

In 2002 the applicant, who had previously taken refuge in Iraq for political reasons, fled to Turkey illegally. He was then recognised as a

refugee by the UNHCR as part of a group of 1,204 asylum seekers (“the 1,204 group”) who had similarly fled Iran to Turkey in 2001. Following an agreement between the Turkish authorities and the United Nations High Commissioner for Refugees (UNHCR), the applicant was granted a temporary residence permit in Turkey to reside at a place to be determined by the Ministry of the Interior. The applicant, however, was not recognised as a “refugee” proper, within the meaning of the 1951 Geneva Convention, but was merely given “alien” status under Law no. 5683 on “the Residence and Travel of Aliens in Turkey”. He was also notified by the Ministry of the Interior that the terms of his residence in Turkey did not involve an eventual resettlement in a third country.

On 15 December 2006 the President of the Chamber notified the respondent Government of the introduction of the application under Rule 40 of the Rules of Court.

According to the information provided by the respondent Government in their observations, the applicant has been issued a temporary residence permit.

On 22 September 2008 the applicant informed the Court that he had fled Turkey to Belgium, where he sought asylum.

On 14 November 2008 the respondent Government informed the Court that despite his valid permit to reside in the city of Kahramanmaraş, the applicant had left the city without permission and that they had no information as to his whereabouts.

COMPLAINTS

Without specifying any provisions of the Convention, the applicant complained that his deportation to Iran would subject him to torture, and would even pose a risk to his life.

The applicant further complained that the Turkish authorities had not allowed him to leave Turkey to resettle in a third country.

THE LAW

1. The applicant complained that he would be exposed to torture or killed if were to be returned to Iran. The Court notes that the applicant currently appears to be in Belgium. In these circumstances, the Court considers that the applicant can no longer claim to be a victim of a violation of the Convention, within the meaning of Article 34, in so far as his complaints were brought against the Government of Turkey (see *Mohammedi v. Turkey*

(dec.), no. 3373/06, 30 August 2007, and *Ayashi v. Turkey* (dec.), no. 3083/07, 18 November 2008).

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

2. The applicant complained that he had been prevented from resettling in a third country. The Court notes that the applicant has failed to substantiate in what way the conduct of the Turkish authorities has violated any of his rights protected by the Convention and its Protocols, particularly bearing in mind that Turkey has not ratified Protocol No. 4 to the Convention, Article 2 of which safeguards freedom of movement.

In these circumstances, the Court considers that this part of the application should be rejected as being incompatible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Sally Dollé
Registrar

Françoise Tulkens
President