



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

SECOND SECTION

DECISION

Applications nos. 1157/08, 1165/08, 1174/08, 1175/08 and 21383/08
by Fathi MEHRDAD and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 9 February 2010 as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having regard to the above applications lodged on 8 January and 2 May 2008,

Having regard to the decision to grant priority to the above applications under Rule 41 of the Rules of Court,

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 applicants, Mr Fathi Mehrdad, Mr Mehdi Barjasteh Garmroodi, Mr Esfandiar Bakhshi, Mr Saeid Jamali and Mr Mehrard Abdolvand, are Iranian nationals who were born in 1967, 1955, 1967, 1955 and 1973 respectively. The first applicant lives in France. The second and fourth

applicants live in Switzerland. The third and fifth applicants reside in the Netherlands.

The first four applicants are represented before the Court by Mrs D. Abadi, the director of Iranian Refugees Alliance Inc., a non-governmental organisation in New York, United States of America. The fifth applicant is represented by J. Pauw, S. Hopman and V. Essenburg, lawyers practising in Amsterdam. The Turkish Government (“the Government”) are represented by their Agent.

On 10 January 2008 the President of the Chamber to which the first four 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 until 23 January 2008. On the latter date the President of the Chamber decided to extend the interim measure indicated under Rule 39 of the Rules of Court until the Court comes to a conclusion regarding the applications. Similar decisions were taken in the fifth application on 5 and 28 May 2008.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants joined the People's Mojahedin Organisation in Iran (“the PMOI”, also known as the “Mojahedin-e-Khalq Organization”), but left it as they came to disagree with the PMOI's goals and methods. They went to Iraq where they were housed by the Temporary Interview and Protection Facility (“TIPF”), a camp created by the United States forces in Iraq. This facility was subsequently named the Ashraf Refugee Camp (“ARC”) and held other ex- PMOI members.

On 5 and 6 May and 8 August 2006, the applicants were recognised as refugees under the mandate of the Office of the United Nations High Commissioner for Refugees during their stay at the ARC, in Iraq.

In January, March and April 2008, the applicants arrived in Turkey where they were arrested for illegal entry or the absence of identity documents. Subsequently, the first four applicants were released and allowed to reside in a hotel in Silopi subject to police supervision. The fifth applicant was allowed to reside in Bursa.

On 13 March 2008 the Government informed the Court that on 16 February 2008 the first four applicants had left their residence and disappeared. The domestic authorities issued a search warrant for them. On 8 September 2008 these applicants' representative informed the Court that they had left Turkey and lived in France, Switzerland and the Netherlands.

On 23 October 2008 the Government informed the Court that the fifth applicant disappeared after having been authorised to go to Ankara. On 10 December 2008 the fifth applicant's representatives informed the Court that he had left Turkey and lived in the Netherlands, where he had requested asylum.

COMPLAINTS

The applicants complained under Articles 2, 3, 5 and 13 of the Convention of their proposed removal to Iran or Iraq by the Turkish authorities, of an alleged absence of domestic remedies and of the nature and lawfulness of their detention in Turkey.

THE LAW

Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

The applicants, who now live in France, Switzerland and the Netherlands, maintained their complaints and claimed that they had arguable claims under Articles 2, 3, 5 and 13 of the Convention at the time of their intended removal to Iran or Iraq which should be examined on their merits by the Court.

The Court recalls that Article 37 § 1 c) of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead it to conclude that “it is no longer justified to continue the examination of the application.”

In the instant case, the Court observes that the applicants are no longer at risk of being deported to Iran or to Iraq by the Turkish authorities and the related fears which they harboured about their forced return to these countries have been dissipated (see, *mutatis mutandis*, *A. Sh. and Others v. Turkey* (dec.), no. 41396/98, 28 May 2002; *Mohamed Youssouf Barakat Saleh v. the Netherlands* (dec.), no. 15243/04, 3 June 2008). The Court considers, therefore, that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

The Court further points out that in its judgment in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, ECHR 2009-... (extracts)), it has already set out the relevant principles under Article 3 of the Convention in respect of a possible deportation of former members of the PMOI to Iran and Iraq. In the same judgment, the Court also ruled on the responsibility of the respondent Government under Article 13 of the Convention to provide an effective domestic remedy in such matters, as well as specifying the nature and extent of the Government's obligations under Article 5 §§ 1, 2 and 4 of the Convention within the immigration context. Therefore, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the cases in accordance with Article 37 § 1 *in fine*.

In view of the above, it is appropriate to strike the cases out of the list.

For these reasons, the Court unanimously

Decides to join the applications;

Decides to strike the applications out of its list of cases.

Sally Dollé
Registrar

Françoise Tulkens
President