



Alimov v. Turkey

Application no. 14344/13

Country: Turkey

Region: Europe

Year: 2016

Court: The European Court of Human Rights

Health Topics: Prisons, Water, sanitation and hygiene

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to liberty and security of person, Right to water and sanitation

Facts

This case relates to the lawfulness and material conditions of the detention of an Uzbek refugee in Turkish holding facilities.

The applicant and his family sought refuge in Turkey. The applicant was refused entry. He was placed in a detention facility at the airport pending his repatriation. The applicant's new asylum request was rejected, to which the applicant lodged an objection. Pending a decision, the applicant was accommodated at the airport detention facility. After two months, the applicant was moved to Kumkap? Foreigners' Removal Centre in Istanbul. One month later he was granted a temporary residence permit.

The applicant was at the airport detention facility for a total of 68 days. Whilst there he was kept in a windowless room of approximately 20 square metres, with up to 15 other people. The room had no furniture on which to sleep and was intended only for short term detention. The applicant maintained he was not allowed to leave the room or have any contact with the outside world, including to speak to a lawyer.

Whilst at the Kumkap? Removal Centre, the applicant shared a dormitory of 35 square metres with approximately 30 to 45 other people. The room had only 15 bunk beds, and was filled with smoke. The holding conditions were highly unhygienic; the dormitory was infested with insects, which had caused frequent outbreaks of illness. The quality and quantity of food provided was also very poor and the applicant was granted no opportunity for outdoor exercise.

The applicant alleged violations under Article 5, regarding the lawfulness of his detention, and Article 3 and 13 of the Convention, pertaining to the material conditions of his detention.

Decision and Reasoning

The Court held that the applicant's detention contravened Articles 3, 5 and 13 of the Convention. The Court held that contrary to Article 5(1)(2)(4) and (5), there had been no basis in domestic law for detaining the applicant, he had not been given sufficient notice of the reasons for his detention and he had no access to an adequate remedy in domestic law to challenge the lawfulness of his detention at the time.

In holding that the applicant's detention conditions violated Article 3 of the Convention, the Court determined that, as it was difficult for the applicant to provide proof of the material conditions under which he was detained, it was appropriate to shift the burden of proof onto the Government, who would have better access to information capable of refuting the allegations. The Court held that the government had not sufficiently corroborated the statements they used to refute the applicant's allegations. Consequently, the Court inferred that the applicant's account of the detention conditions was true.

The Court found that these conditions amounted to degrading treatment, under Article 3 of the Convention. The main factors compelling the Court to reach this decision were the lack of access to outdoor exercise and the severely overcrowded conditions, compounded by the fact the applicant had no indication of when he might be released and his suffering would end. Whilst overcrowding could be compensated for by permitting the applicant to move around within the facility, there was no evidence to suggest this had been allowed.

The Court also held that there had been a violation of Article 13 of the Convention in conjunction with Article 3, given the absence of effective remedies available to the applicant to complain about the material

conditions of his detention. Moreover, the applicant had no access to legal assistance whilst he was detained, which would have prevented him from making use of any effective legal remedies, had they existed.

Decision Excerpts

“[U]nder Article 3 of the Convention, the State must ensure that a person is detained in conditions which are consistent with respect for human dignity and that the manner and method of executing the detention measure in question do not cause that individual to suffer distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.” (para. 71)

“[I]n practice it may be very difficult for a detainee to collect evidence concerning the material conditions of his detention and it may thus be permissible, under certain circumstances, to shift the burden of proof from the applicant to the Government in question, especially where the Government alone have access to information capable of corroborating or refuting allegations” (para. 74)

“[A]ccess to outdoor exercise is a fundamental component of the protection afforded to persons deprived of their liberty under Article 3 and as such it cannot be left to the discretion of the authorities; according to the CPT, all detainees – even those confined to their cells as a punishment – have a right to at least one hour of exercise in the open air every day, regardless of how good the material conditions might be in their cells.” (para. 83)

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