European Court of Human Rights

Third Section

Case of D. and Others v. Turkey

(Application Number 24245/03)

JUDGMENT

STRASBOURG
22 June 2006

This ruling becomes definitive in the conditions defined by article 44 § 2 of the Convention. It can undergo changes of form.

In the case of D. and Others versus Turkey,

The European Court of Human Rights (third section), presided over by a chamber composed of:

Mr.. B.M. ZUPANČIČ, *président*,
J. HEDIGAN,
L. CAFLISCH,
R. TÜRMEN,
C. BÎRSAN,
V. ZAGREBELSKY,
Ms.me A. GYULUMYAN, *judges*,

et de M. V. BERGER, *greffier de section*,

After deliberations in the chambers of council the 1st of June 2006

The below ruling was rendered on this date:

PROCEDURE:

1. The case began with application number 24245/03 brought before the Republic of Turkey by three Iranian nationals who came before the court 4 August 2003, regarding article 34 of the Convention of Protection of Human Rights and Basic Liberties ("the Convention").
   The President of the chamber accepted the request for the concealment of the applicant's identity (article 47§3 of the law) including A.D., his wife P.S. and their daughter P.D. ("the applicants").

2. The applicants, who had received legal assistance, are represented by Ms. Abadi (director of the Iranian Refugee Alliance Inc. in New York) authorized to this end by article 36 §1 of the law of the court. The Turkish government ("the Government") has not designated an agent for these proceedings.

3. The applicants have specifically alleged that their eventual deportation to Iran would be a violation of article 3 of the Convention, either taken alone or in addition to either articles 13 (right to an effective remedy) and/or 14 (prohibition of discrimination).

4. The inquiry has been assigned to the third section of the court (article 15 § 1). Further, the panel charged to examine this case has been composed conforming to article 26 § 1.

5. By a decision on 30 June 2005, the panel has declared this case open to be heard.

6. Such that the applicants [sic]* that the government deposed additional written documentation.

7. 1 November 2004, the Court modified the compositions of its sections (article 25 §1). The current case has been assigned to the third section as required (article 52 §1).

THE FACTS

I. THE FACTS OF THE CASE

8. The applicants, A.D. of Kurdish origin, born in 1969, and his wife P.S., of Azerian origin born in 1976, are Sunni and Shia respectively. Their daughter, P.D. was born in 1997. At the current time the family resides in Kastamonu (Turkey) on a temporary residency permit.

A. The Applicant's version of the origins of the Case

9. 31 November 1994 [sic]*, persecuted by Iranian authorities for his involvement with the Democratic Party of Kurdistan of Iran ("PDKI"), A.D. illegally entered into Turkey where he obtained a three-week temporary residency permit.

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* *In this unofficial translation, [sic]* is used to indicate passages where the original French is unclear in meaning.*

5 December 1994, he appealed to the United Nation's High Commission for Refugees ("UNHCR") for his entitlement to this status.

10. However, while his appeal was still being processed before the HCR, he believes, his temporary residency permit having expired, the applicant was subpoenaed to appear before the correctional tribunal of Yuksekova in Ankara along with three other Iranian asylum seekers.
28 April 1995, the tribunal sentenced the applicant to a fine for the violation of the law on the movement of foreigners and ruled on his deportation to Iran.

11. Upon his return to Iran on 4 June 1995, the applicant brought himself to the police, hoping, in vain, to benefit from clemency promised to the repentant by Ayatollah Khomeiny. He was arrested and forcefully interrogated by the Iranian Intelligence Service of Naghadeh.
7 October 1995, the applicant finally obtained a certificate of pardon and thus regained his freedom on the condition that he stay in Naghadeh. He learned later that he had been prohibited access to the University and to all lucrative activities because of his legal file. As a result, he became a door-to-door vendor.

12. In 1996, the applicant met P.S. They decided to marry. However, P.S.'s father and brother, members of the Iranian Intelligence Service, strongly opposed the marriage. 11 September 1996 P.S. left her home and moved in with the applicant. 26 September 1996, they married according to Sunni custom without the prior permission of P.S.'s father, therefore in violation of Shiite Sharia law. Two days later the couple was arrested. Shiite tradition demanded that P.S. submit to a forced virginity test and she was then freed.

13. 30 September 1996 a judge of the Islamic tribunal of Naghadeh declared the marriage null and void and fined each of the applicants 300,000 rials. At the hearing, the judge convinced the father of P.S. to consent to a Shiite marriage. He followed the judge's wishes and the couple was remarried. The parties were subsequently informed that they had had also been sentenced to 100 lashings for fornication ("zina-e qir mohseneh"),

following article 88 of the Islamic Criminal Code "CPI", This sentencing, known as *haad,* could not be appealed.

14. Some months later, the applicants were ordered to appear before a Shiite Judge for the execution of the sentences.
12 April 1997, A.D. received 100 lashings. His wife's punishment was postponed because she was pregnant until just after the birth of her child on 28 August 1997, and then until 11 October 1999, due to the state of her physical and mental health. At this later date, it was nevertheless decided that there would be no more postponements of the penalty and that the punishment would be carried in two parts, 50 lashings each time. The pertinent passage of the record reads:
"regarding opinion number 02/15/7083-17.7.8 of the medical-legal institute, the request on the part of P.S., consulting opinion number 7/5112 of the Justice Department, and also article 94 of the Islamic criminal code "CPI", it was decided that the penalty of lashings under conviction number 556-09.07.75 would be administered at two separate times…"

15. Upon this, the family decided to leave Iran to avoid P.S.'s lashings and also because A.D. feared the police would discover that he had encouraged his cousin and two of his friends to rejoin the local branch of the PDKI in Northern Iraq.

16. 22 November 1999, P.S., accompanied by her daughter, entered Turkey with a valid passport, at the Salmas border. A.D., however, had to enter clandestinely via Serro, with the help of smugglers.
The parties reunited in Van.

B. The Sequence of Events of the Case in Turkey

17. 23 November 1999, the applicants applied to the local office of the UNHCR which directed them to the immigration authorities in Van where they were registered as asylum seekers.

18. 17 January 2000, a person at UNHCR heard only the case of A.D., as the other members of the family were considered his dependants. P.S. was not consulted except to verify specific points of his story. At this time, the person from UNHCR filled out of a questionnaire in P.S.'s name so that a psychologist at the civil hospital in Van could examine her.

19. 24 April 2000, Immigration Services interrogated the applicants in the presence of an asylum seeker who played the role of interpreter. Following, A.D. and P.S. were invited to resume, in writing, the explanation of their situation which they did the 27 April 2000. The unofficial translation from Persian in to English contained the following passages:

    A.D.:

    "My wife was condemned to 100 lashes in Iran because she is a Shia Muslim and her father was not willing to let his daughter get married to me (…) My wife suffered serious kidney problems and depression and since specialized physicians, including the forensic organization, stated that lashing [would have] fatal consequences for my wife, we fled to Turkey to protect my wife's life and our family's honor and dignity.(…)" [sic]*

    P.S.:

    "(…) I was sentenced to 100 lashes (…) I escaped home and married my husband. After we exhausted all possible reprieves, we decided to go to UNHCR (…)" [sic]*

20. In May 2000, the applicants were given the benefit of the provisional status of "asylum seeker" as non-Europeans susceptible to encountering the risk of persecution in their country of origin. As a result, the family was given a residency permit, temporarily by renewable, and the help of 100 US dollars.
    They stayed in Kastamonu where they had to give an additional 100 US dollars to the local police force.

21. However, on 6 November 2000, UNHCR rejected A.D.'s demand of asylum with little reason. The request by P.S. to have her case examined separately was not approved either.

The applicant formed his appeal.

22. 20 September 2001, UNHCR informed the applicant that this path of recourse was no longer viable and that his dossier could no longer be considered unless new and decisive facts were introduced.
31 December 2001, the applicant sought a reopening of his case. In June 2002 the UNHCR informed him that nothing in his file warranted a reexamination and that his case was closed.

23. As a result, 21 November 2002 the Turkish Immigration Services refused to renew the residency permit he had been living on until that time.

24. 27 January 2003, the Iranian Refugees' Alliance wrote in vain to UNHCR to do what it could for the applicant [sic]*.
19 March 2003, referring to the case classified by the UNHCR, the Ministry of Foreign Affairs wrote to the Ministry of the Interior in the opinion that, regarding regulation number 94/6169 and the Geneva Convention, the arguments invoked by the interested party and his demand for asylum were not pertinent.

25. 22 April 2003, the applicants were notified by a ministry document that as failed asylum seekers they were free to return to Iran or to go to a third country of their choice although they risked forced expulsion.
This decision was open to appeal before the Ministry of the Interior within 15 days.

26. To this end, 6 May 2003, the applicant gave a substantial account of his situation accompanied by all the documents in his possession.

C. The Current Situation

27. 12 August 2005, the applicant's appeal was still under examination by the Ministry of the Interior. At that time, no actual order of expulsion existed against the applicants, who continued to reside in Kastamonu on

renewable temporary residence permits, waiting for the closure of their case.

28. 9 September 2005, the Ministry of Foreign Affairs asked the UNHCR to provide the following information concerning the motives that UNHCR used to classify the applicants case:

> " (...) The asylum claim of Mr [D.] and Mrs [S.] was based on the risk of physical punishment to Mrs [S.], on the grounds of illicit relationship with Mr [D.] (...). Mr [D.] and Mrs [S.]'s claim was rejected by the UNHCR Office in Ankara in the first instance and in the appeal, owing to lack of well-founded fear of persecution. A review of the case was not successful. Mrs [S.] claims that they left Iran for fear of implementation of the sentence of one hundred lashes (...). However, documents presented to UNHCR attest to the fact that due to Mrs [P.S.]'s medical condition the punishment was not administered for several years, and in 1999 reduced to a punishment according to Article 94 of the Islamic Punishment Law of Iran. According to information available, Article 94 involves the symbolic application of the sentence bearing in mind the individual's state of health. After the issuance of the reduced sentence, the applicant was also able to obtain a passport, and to depart Iran legally, a strong indication that neither husband nor wife [were (...)] in conflict with the Iranian justice system at the time of departure. Therefore, the office concluded that there were insufficient indications that Mrs [S.] could fear punishment that would amount to persecution. (...)"

II. THE RELEVANT LAW AND PRECEDENT

A. Turkey

29. For the legislation and practice of the Turkish judicial authorities regarding asylum seekers, see *Jabari* c. *Turkey* (n° 40035/98, §§ 22-30,

CEDH 2000-VIII) and *Muslim* c. *Turkey* (n° 53566/99, §§ 42-47, 26 April 2005).

B. Iran

30. The second chapter of the CPI covers *hodoud* the plural of *haad*, known as "a sanction of form, severity and nature" and defined by Sharia law (article 13 CPI). *Qazf* signifies a charge of fornication punishable under article 88 of the CPI and which, in principle, carries a penalty of 100 lashings (article 139 of the CPI). In the case of an adulterous woman, the execution of the sentence of *haad* can by suspended due to pregnancy and again if the newborn would be in danger in the absence of its primary caregiver (article 19 of the CPI). If the lashing of a pregnant woman would put the life of the fetus or newborn at risk, the execution of the sentence can be postponed until that risk has dissipated (article 92 of the CPI).

31. Following the ruling of September 2003 on procedure for executing corporal punishment, a sentence of lashing is inflicted publicly with the help of a whip made of several woven ropes of leather, each a meter long. The arms and the legs of the individual are fastened so as to impede movement and such that the "prohibited zones" such as the head, the face and the genitals are not touched inadvertently. In the case of adultery, the lashing is executed in a more intense manner than is required, in the case of, for example, drunkenness.
Women are lashed in a seated position with the body clothed.

32. Accordingly, the practice that seems to have come into force in Iran, takes a particular form when it concerns a person afflicted with a fatal illness and when intolerance for lashing is confirmed by an Iranian medical-legal organization. In that case, accounted for by article 94 of the CPI, one blow is administered with a special whip made of woven strips equal to the number of blows which were fixed by the presiding judge - for example a whip with 100 woven strips would be used for an initial penalty of 100 blows. The strength of the blow is totally dependant on the person administering it, as there is no official or precise legal instruction on the

matter. It is noted that the intensity of the blow is greater when it is executed in the context of a *haad.*
In the case of people with curable diseases, the execution is suspended until the person has recovered.

C. The reports of Amnesty International

33. In 2003, Amnesty International counted 197 cases of punishment by lashings in Iran. In its 2005 annual report, Amnesty International denounced at least 36 sentences of lashings, including, notably, the case of Moshen Mofidi, who died on February 5 in Tehran after having been beaten. He is not excluded so that this number is less than the reality [sic]*. In the most recent case, on January 11, 2005, the organization announced its fears of the execution of a sentence of lashing against Leyla Mafi, condemned to death at age 19 for "immoral acts" (see also *Jabari,* cited above, §§ 31 and 32).

THE LAW

I. On the alleged violation of article 3 of the Convention, by itself, and in conjunction with article 13 and 14.

34. The applicants maintain, in the first place, that if they are returned to Iran, they risk treatment and penalties contrary to article 3 of the Convention as it states:
"No one can be submitted to torture or to inhuman or degrading penalties or treatments."

A. Argument of concerned parties

1. The Government

35. The Government recalls first that in light of the geographic reserve option that it invokes as a contracting party of the Geneva Convention, Turkey does not have the obligation to accord non-Europeans either the status of refugee or the right of residence. However, in the current affair, the

national authorities went to the limit of the legal possibilities offered in this domain and welcomed the applicants for humanitarian reasons so that they could return to their own country or go to a third country of their choice.
It does not exist, elsewhere, at this point, any executed decision against interested parties: the procedure engaged by the opposition formed by those opposed to the 22 April 2003 order of expulsion is ongoing, and even if this attempt fails finally, the interested parties will always have the possibility to take up administrative justice and seek a legal recourse.

36. As it is, the Government expresses doubts about the foundations of the applicants' fears. Taking all the information that the UNHCR recently provided (paragraph 28 above), the Government takes special note of the fact that the family entered Turkey in 1999 after having lived in Iran for 4 years. However, nothing explains why A.D. did not attempt to leave the country earlier if he had faced a real risk of persecution.

37. On top of this, the Government affirms that the applicants were not able to duly support their demand for asylum to the Turkish authorities and UNHCR.
In the case of P.S., the Government maintains that the information concerning her state of health would very certainly have been examined at an earlier stage and given to UNHCR if she had made an effort in good time to make a demand of asylum independently of her husband. On this point, referring to UNHCR's explicit letter, dated 9 September 2005, (paragraph 28 above), the Government noted that the penalty of lashings inflicted on the applicant, the execution of which was suspended several years, and was finally commuted to a "symbolic" penalty because of her health. In any case, it is estimated that the at different stages of the asylum procedure, the authorities were not lacking in their evaluation of her situation, including the Ministry of the Interior, which has continued, in fact, to renew the residency permit for the family.

38. In addition, the Government estimates that in reality, the responsibility of Turkey would not be engaged as such with regard to article 3 of the Convention, such that its authorities, guided by humanitarian

considerations, acted in all independence and in strict accord with international commitments.

2. The Applicants

39. The applicants replied that in Iran, extra judiciary executions and barbarous penalties, such as lashings, lapidation and amputation, are common practice. Once deported to Iran, P.S. could not escape the punishment she had been sentenced to for fornication, and A.D. could not escape persecution, if not death, because of his previous political activities.

40. On these points, the applicants relate that in Iran, the members and sympathizers of the PDKI are arbitrarily under surveillance, imprisoned, tortured, sometimes murdered, as in the case of K. Tujali et Kl Shogi, the two founders of the party, who were judged in an expedited manner and sentenced to death after they were expelled back to Iran.
They invoked, in addition, the reports of Amnesty International and the fears of execution, torture or imminent lashing, expressed by that organization on behalf of Esmail Mohammadi, Abu Baker Mirza'i Qaderi, Othman Mirza'i Qaderi, Qader Ahmadi and Jahangir Badouzadeh, condemned for their crimes against the Islamic regime, and also the case of Moshen Mofidi, condemned for moral crimes and killed by a lashing.
In addition, the applicants referred to a report published on 8 August 2005 by a correspondent in Iran entitled "Protests Erupt in the Kurdish Areas of Iran", as well as an international call to attention by Amnesty International, 5 August 2002, on the Iranian authorities' violent campaigns against Kurdish activists. The applicants also recall a memorandum from the PDKI, from 29 October 2995, entitled "Deteriorating Human Rights Situations under Ahmadinejad's Watch;" this document is accompanied by a list of the names of numerous Iranians of Kurdish origin killed or imprisoned for dissident political activities.

41. Returning to the facts of the case, the applicants recall that when they were refused asylum, the Turkish authorities never evaluated their case independently of UNHCR, nor did they issue minimal guarantees of due

process in accord with international law, and it was understood that the ultimate recourse, before the Council of State, would not include any profound examination of their allegations.

42. As a result, the applicants set forth that the Government, in their observation, was not prepared to respond clearly to the questions addressed it by the court in order to understand the situation, nor was it even prepared to produce copies of the files for the different asylum seekers. This same omission goes against the law inscribed in article 34 of the Convention and the jurisprudence of the court [sic]* (*Orhan c. Turkey* n° 25656/94, § 266,18 June 2002 and *Tanrikulu v. Turkey* [GC] n° 23763/94, § 70, ECHR 1999–IV).

43. The applicants hold that, in the present affair, the Government was content to remain in the shadow of UNHCR, who, in their explanations, vainly attempts to justify itself by referring to certain "information", that, apparently, was not available except to themselves and, as it appears, turned out to be erroneous.
According to the applicants, in a letter from 9 September 2005, UNHCR made its first mistake in calling the crime that the couple had been convicted of an "illicit" relationship, or *rabeteh namasru*, a crime that does not fall into the category of the *hodoud*, when in reality, in the present case, the condemnation was for a much more serious crime of *zina-e qir mohseneh*, or fornication.
The UNHCR is also mistaken when it qualified the penalty P.S. was sentenced to as "symbolic". In the first place, article 94 of the CPI that UNHCR invokes in the context of this penalty has no mention of any symbolic penalty: the reference that is made to this penalty in the condemning judgment does not go beyond reaffirming the discretionary power of the Islamic judge on the subject of fixing the penalty and does not change the fact that the applicant must finally submit to 100 lashings in two sittings (see paragraph 14 above).
In the same letter, the UNHCR notes that if P.S. was able to leave Iran legally, the family was not in conflict with the Iranian law. This suggestion is erroneous on two accounts: first, concerning A.D., who

entered Iran illegally, and second, in the case of P.S., because there never existed a practice of forbidding leaving the country for people under sentence in Iran. The applicants cite the case of several Iranians whom despite open criminal proceedings against them, had been able to freely travel with the help of a guarantor and in addition, several asylum seekers, holding valid passports, who had sought refuge in Turkey.

44. Finally, A.D. holds that he did not attempt to go to Turkey before 1999 not because he was not unhappy in Iran, but simply because of the animosity that he faced during his first trip in 1995.

B. View of the Court

1. With Regard to P.S.

45. The prohibition set forth in Article 3 is also absolute in matters of deportation. The Court must insist on the fact that recourse to sentences, including corporal punishment, that are contrary to this disposition is never permissible. As such, when there are serious reasons to believe that a person runs a real risk, in the country of destination, of being subjected to such treatment, the responsibility of the contracting State is triggered in the case of deportation. (see, *mutatis mutandis*, *Müslim*, précité, § 66, *Vilvarajah et autres c. Royaume-Uni*, arrêt du 30 octobre 1991, série A n° 215, p. 34, § 103, *Chahal c. Royaume-Uni*, arrêt du 15 novembre 1996, *Recueil des arrêts et décisions* 1996-V, p. 1855, § 80, et *Tyrer c. Royaume-Uni*, arrêt du 25 April 1978, série A n° 26, pp. 15-16, § 31 et 33).

46. In reality, the Court has taken note of the arguments of the parties in addition to the information available about the legal situation in Iran (paragraphs 30-33 above). Noting with priority the circumstances of the legal situation, which the Turkish authorities have, or must have had knowledge of at the moment they were contacted by the applicants, the Court observes that in Iran, corporal punishment was institutionalized and

in cases concerning certain crimes considered immoral, such as adultery and fornication, such penalties were written into the law, followed by the judicial establishment and carried out by agents of the state.
Compared with the moment when the Court itself looked into the situation, (*Chahal,* previously cited, p. 1856 § 86), the Court is not persuaded that the situation in that country has changed since that time.

47. In this way it considered the current case comparable with the case of *Jabari v. Turkey*, where it was charged with verifying if the Turkish authorities had made a serious evaluation of the "defensible" nature of the allegation by Mrs. Jabari, who held that that she had been forced to leave Iran before a legal process could be brought against her for adultery, a crime punishable by a penalty of lashing (previous citation §§ 18 et 34). However, P.S.'s situation is clearly different from Mrs. Jabari's in the sense that she did not flee the risk of being sentenced to corporal punishment, but rather the actual execution of a sentence, imminent and certain, of 100 lashings, because she had been definitively convicted of fornication. (see paragraph 14 above).

48. Further, the Government did not seek to contest this point, or to question the authenticity of the judgment relating to this conviction, a document that was known to the concerned authorities for a long time.
In this way, the opinion of the Court, more than to understand if the Turkish authorities evaluated all the ins and outs of the applicant's case with the diligence required (see *Jabari,* previously cited § 39), attempts to simply examine, at this point in time, if the authorities duly understood the nature of the penalty in question.

49. As the Court has already stated, corporal punishment is understood to be incompatible with the right to dignity and physical integrity of a person, rights protected by article 3 of the Convention. For a penalty to be considered "degrading" and infringing on these rights, the humiliation or the denigration
that accompanies it must reach a particular level and be different in all cases from the normal level of humiliation inherent in a punishment. In

expressly forbidding "inhuman" and "degrading" punishments, article 3 implies a distinction between these penalties and punishments in general. Reaching this minimum level of seriousness depends on the sum of the facts of the case. It is necessary to consider the factors of the nature and context of the penalty, the means of execution, its length, its mental and physical effects, and it follows, in some cases, the age, sex and state of health of the victim (see *Costello-Roberts c. Royaume-Uni*, arrêt du 25 March 1993, série A n° 247-C, p. 59, § 30, and the references that are made there).

50. On this subject, the court refers to the non-contested information on the modes of execution of lashing penalties (see paragraphs 31-32 above). That it is permissible that a human being can, in the aforementioned conditions, deliver such a physical violence to one of his fellow human beings, and in addition, in public, is sufficient to qualify the punishment of the applicant as "inhuman" in itself.
It is certain that Iranian law offers certain guarantees, and in a certain measure, the applicant benefited from them: the execution of the penalty was postponed several times because she was pregnant, and it was decided finally that conforming with the opinion of medical-legal Institute, the lashing would take place in two sessions, with 50 blows per session (see paragraph 14 above).
Any similar attenuation would by no means take away from the severity of the penalty's "inhuman" nature.

51. However, the Government, at the suggestion of the UNHCR, affirms that in light of article 94 of the CPI that P.S.'s penalty would have been reduced to such an extent because of health reasons that it would no more than "symbolic" in nature.
However, this assertion is not pertinent, firstly because it does not rest on any guarantee obtained from the Iranian authorities, according to official channels (see *Bader et autres c. Suède*, n° 13284/04, § 45, CEDH 2005-..., and the references that are made there) and, secondly because nothing in the file demonstrates that the applicant suffered from an illness as fatal as that required by article 94 of the CPI (see paragraph 32 above).

Even to suppose the contrary, the Court underlines that an eventual execution of even one blow by a whip composed of 100 lashes does not reduce the nature of the penalty in question to "symbolic" nor does it change its qualification as "inhumane" (see paragraph 32 above). Under this hypothesis, even if the applicant was spared more serious injury, it does not take away from her punishment, which still consists of public treatment at the hands of the state power, and would have affected that which article 3 principally protects: the dignity and integrity both physical and psychic of the person (see *mutatis mutandis*, *Tyrer*, previously cited, p. 16, § 3).

52. With regard to the proceeding considerations, the Court judges that it turns out that there is a real risk that the applicant would be forced to submit to an "inhuman" penalty in violation of the rights accorded by to article 3, if she had been sent back to Iran.

53. The remaining question, however, raised by the Government, is whether all internal channels of appeal were exhausted at the stage of receiving the complaint, and which the Government examined thoroughly.

54. The Court notes with satisfaction that, to date, the Government has not gone ahead with the forced deportation of the applicants, while awaiting the outcome of the opposition procedure instituted on 6 May 2003. Nothing indicates that this procedure could result in an expedited decision, without an appropriate examination of the applicant's statement regarding what she would face in Iran, it being agreed that the Turkish administrative authorities now have sufficient elements to avoid or rectify their alleged violation (see *mutatis mutandis*, *Van Oosterwijck c. Belgique*, judgment of 6 November 1980, série A n° 40, p. 16, § 33). However, for the same reasons indicated in the case of *Jabari* v. *Turkey* and in the absence of arguments justifying that we depart from the solution adopted in that case, the Court is not convinced that the applicant could in fact contest the legality of an eventual deportation order before the administrative tribunals, as such recourse would lead neither to a stay of execution of the order nor a reconsideration on the merits of the interested party's allegations (*Jabari*, previously cited, §§ 49 et 50).

2. **With Regard to A.D. and P.D.**

55. In light of the circumstances of this case, the Court has so reason to delay on the allegations, the rest of which are not supported, of A.D, which concern an eventual risk of ill treatment or persecution due to his political alliances (see paragraphs 9, 15, and 40- for a similar situation see *Müslim*, previously cited, § 61).
The Court does not see it useful (*Handyside c. Royaume-Uni*, arrêt du 7 December 1976, série A n° 24, pp. 19-20, § 4) either to bring up article 8 of the Convention, in addition to article 3, although the particularities of the case authorize it to do so (see, among many others, *Johansen c. Norvège*, arrêt du 7 août 1996, *Recueil* 1996-III, pp. 1001-1002, § 52, and for pertinent reasoning see *Cılız c. Pays-Bas*, n° 29192/95, §§ 61-72, CEDH 2000-VIII).

56. In effect, it is sufficient to declare that the situation of A.D. and P.D. is not in the least bit different from the applicants in the *Bader and other v. Sweden* aforementioned, where, Mr. K.B.M. Kurdi, his wife H.A.M. Kanbor and their two small children, claimed, with notable regard for articles 2 and 3 of the Convention, an imminent risk of the death penalty inflicted to the first applicant if he had been expelled to Syria (see arrêt previously cited, §§ 1 et 34).
For the same reasons as in that example, the Court considers that an P.S.'s eventual expulsion would carry an equal violation of article 3 in the cases of A.D. and P.S. (see *Bader et autres*, previously cited, §§ 1, 34, 47 *in fine* et 48).

3. Conclusion

57. With regard to the proceeding statements, the Court rejects the Government's exception of not following all the internal paths of recourse and concludes that if it had been followed through, the decision the expel P.S. to Iran would have violated article 3 of the Convention in the case of all three applicants.

58. This conclusion disposes the Court to not examine this affair further in the context of articles 13 and 14 as they are currently invoked (see paragraph 3 above).

II. On the Application of Article 41 of the Convention

59. In the terms of article 41 of the Convention
"If the court declares that there was a violation of the Convention or any of its Protocols, and if the internal law of the contracting High Party does not permit the removal of the consequences of this violation, the Court gives the wronged Party, if it is necessary, an equal satisfaction.

A. Damage

1. Material Loss

60. The applicants claim reparations corresponding to the loss of revenues sustained during their six years in Turkey, without an exact amount. In this regard, they submit a letter dated 3 April 2002, from the immigration service in Kastamonu, informing A.D. that in Turkey, foreigners cannot work without the preauthorization of the concerned ministry. They still deplore the absence, during that period, of any financial or medical aid. They also produced a second letter from the aforementioned immigration service, in response to A.D.'s demand on 31 August 2005, that holds that only people benefiting from the status of refugee or someone who has asylum can profit from free medical coverage, but not 'foreigners seeking asylum".

    In addition, A.D., to meet the needs of his family, was obliged to accept precarious, painful, and dangerous employment, in order to earn the equivalent of only $7USD per day, working 12-14 hours, until such time as the minimum wage in Turkey was raised to 423,000,000 Old Turkish Pounds.

61. The Government invites the Court to reject this demand because it is neither documented nor enumerated.

62. The court does not perceive any causal linkage between potential violation of Article 3 and the alleged loss of revenue, which, in effect, rests on no verifiable evidence. Consequently, nothing justifies the granting of unspecified amount in this nature.

2. Moral Damages

63. The applicants state that they suffered, and continue to suffer, moral damages with regard to the uncertainty in their life. They ask the wisdom of the Court for an equitable compensation in this regard.

64. The Government does not hold forth precisely on this point, leaving it to the reality that the interested parties do not know how to formulate a clear and fixed demand.

65. The Court considers that, with regard to the circumstances of the present case, the potential violation of Article 3 of the Convention constitutes in itself an equitable satisfaction sufficient for all moral damages that could have been suffered by the applicants (see *mutatis mutandis*, *Jabari*, previously cited, § 54).

66. For their legal fees and other related expenses, the applicants can claim an amount of $15,500 USD, doled out in the following amounts:
-$380 USD for postal charges, communication, and photocopying of documents
-$920 USD for translation services
-$14,250 USD for the fee corresponding to 95 hours of work at a rate of $150 USD per hour.

They submit, in this regard, two postal receipts, for $56.20 USD, a telephone receipt of $23.14 USD, as well as a detailed phone bill of 11 calls to Iran and one call to Turkey.

67. The Government remarks that the bills presented do not match any demand made by the applicants.

68. For that which concerns the reimbursements and related expenses, the Court recognizes the justifications and notably, a receipt of fees produced by the representative. The Court judges the administrative fees submitted as reasonable, but estimates the amount of hourly fees to be excessive, even recognizing the seriousness of the work done towards the end of the procedure in Strasbourg.

    All considered, in light of the principles taken from jurisprudence (see citation), the Court awards the applicants 5,000 Euros, plus any amount that might be due in taxes, minus 857 Euros already taken for legal fees by the European Council.

C. Interest on Arrears

69. The Court judges it appropriate to lower the interest on arrears to the marginal rate of the European Central Bank, plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the preliminary exception of the Government,
2. Affirms that there would be, in the chief applicant, a violation of article 3 of the convention if the decision to expel P.S. to Iran had been carried out,
3. Affirms that no distinct question is raised under the reach of articles 13 and 14 of the Convention, combined with article 3,
4. Affirms that the a potential violation furnishes unto itself sufficient evidence of the moral wrongdoing sustained by the applicants;
5. Affirms,
    a. That the state defense must turn over to the applicants, in three months counted from the definitive day conforming to article 44 § 2 of the Convention, 5,000 euros for costs and expenses, plus all taxable amounts, less 857 euros already taken by the European Council in legal fees;
    b. That these amounts will be converted to Turkish pounds at the applicable rate at the date of the ruling and accounting for the

expiration of the aforementioned time period of three months and until the transfer, they will appreciate at a simple interest at a rate equal to the marginal lending rate of the Central European Bank applicable during this period plus three 3 percentage points.

6. Rejects the request for equal fulfillment of the surplus.

Written in French, and then communicated by writing on 22 June 2006 in application of the article 77 §§ 2 and 3 of the ruling.

Vincent BERGER	Boštjan M. ZUPANČIČ
Greffier	Président

Translation for RSDWatch.org by Alexandra Hartman