



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

SECOND SECTION

CASE OF PEKER v. TURKEY (No. 2)

(Application no. 42136/06)

JUDGMENT

STRASBOURG

12 April 2011

FINAL

12/07/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Peker v. Turkey (no. 2),

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Ireneu Cabral Barreto,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 22 March 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42136/06) 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 a Turkish national, Mr Nurettin Peker (“the applicant”), on 12 October 2006.

2. The applicant, who had been granted legal aid, was represented by Ms İpek Kadirhan and Ms Gülizar Tuncer, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that he had been shot in the leg and then beaten up by a number of gendarmes who had been carrying out an operation in the prison where he was being detained.

4. On 11 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

5. The applicant was born in 1966 and lives in Istanbul.

6. On 19 December 2000 security operations were conducted in a number of prisons in Turkey, during which scores of detainees were killed and hundreds injured (for details of these operations, see *İsmail Altun v. Turkey*, no. 22932/02, 21 September 2010; *Keser and Kömürcü v. Turkey*, no. 5981/03, 23 June 2009; and *Gülbahar and Others v. Turkey*, no. 5264/03, 21 October 2008).

7. The operation in Gebze prison, where the applicant was serving a prison sentence, started in the early hours of the day. As the remaining facts of the case are disputed between the parties, they will be set out separately.

B. The applicant's submission on the facts

8. At around 5.00 a.m. on 19 December 2000 a large number of gendarmes went into the prison by the main entrance and started firing without giving any warning. At that moment the applicant was in the corridor just outside his dormitory. He was hit in the leg by a bullet fired by the gendarmes. A doctor friend of the applicant who was a remand prisoner in the same prison provided first aid to the applicant.

9. When the inmates set up barricades to protect themselves, the gendarmes threw in explosives containing various gases and smoke. They also continued firing. Heavy machinery was used to make large holes in the prison roof, through which the gendarmes poured boiling water and sprayed gases.

10. At around 7.00 p.m. the same day the applicant and the other injured inmates were taken into the courtyard of the prison. There the applicant was handcuffed and dragged through a 100-metre-long human corridor formed by the gendarmes. While this was being done the gendarmes kept hitting the applicant until he passed out. While the prison governor and other civilian authorities were checking the inmates' identity documents, a gendarme dragged the applicant into a corner and beat him up there. He was subsequently taken to Gebze State Hospital but was brought back to the prison four days later, before his treatment was complete.

C. The Government's submissions on the facts

11. The operation, named "Return to Life", began at around 4.30 a.m. on 19 December 2000, when members of the security forces went into the prison through the main entrance. At that moment one of the inmates tried to close the door and told fellow inmates that the security forces were there. The inmates then locked and barricaded the second door of the main hall. The gendarmes heard a gunshot coming from the barricaded side where the inmates had gathered.

12. Despite a number of warnings given by the security forces, the inmates did not lift the barricades. The security forces overcame the

inmates' resistance and went into the cells. Seven inmates who were on hunger strike at the time and a further six who had been injured during the operation were taken to Gebze State Hospital. The applicant was wounded by a bullet and was among those who were taken to the hospital.

13. The operation ended at around 9.00 p.m. the same day. Materials used by the inmates as weapons, namely wooden sticks and iron bars, were found in the dormitories and confiscated by the security forces.

D. Documentary evidence submitted by the parties

14. The following information is disclosed by the documents submitted by the parties.

15. According to two reports drawn up by a prosecutor and gendarmerie personnel on 19 December 2000, the operation in the prison started at 4.30 a.m. the same day. The reason for the operation was to take a number of prisoners who were on hunger strike to a hospital. When the inmates refused to co-operate, force had to be used to remove them from the prison. According to these reports, a gunshot was heard from behind the barricades where the inmates were standing.

16. After the operation, a number of inmates who were on hunger strike were taken to hospital. Furthermore, the applicant and five other inmates who were injured in the operation were also taken to hospital. A doctor examined the applicant at Gebze hospital on 20 December 2000, noted a gunshot wound on his left foot and began treating it.

17. No firearms were found in the prison during the searches carried out in the immediate aftermath of the operation, or during the searches carried out on 12 January, 16 January, 18 January, 19 January, 23 March and 25 May 2001.

18. In an official complaint on 15 April 2001 the applicant asked the Gebze prosecutor to prosecute those responsible for the shooting and the ill-treatment. He alleged that the gendarmes had opened fire on the inmates.

19. On 16 May 2001 the Gebze prosecutor questioned the applicant about these complaints. The applicant maintained his complaints and informed the prosecutor that on his return from the hospital he had been beaten up again by the gendarmes. He added that according to information he had obtained subsequently, an officer named either "Abdullah" or "Abdurrahman" had shot him with his pistol. He also told the prosecutor that bullet marks were still visible in the ceiling of the prison.

20. An officer by the name of A.Y. who had taken part in the operation was questioned by the Gebze prosecutor on 17 July 2001. The officer told the prosecutor that he had heard a shot from the other side of the barricades, but added that he had not used his weapon during the operation. No bullets or spent bullet cases had been found after the operation.

21. In his indictment of 17 July 2001 the Gebze prosecutor indicted the applicant and over 200 of his fellow inmates. The inmates were accused of obstructing law-enforcement personnel in the execution of their duties and causing criminal damage.

22. During a search conducted at the prison on 29 August 2001 a pistol and seven bullets were found by the prison authorities.

23. On 6 December 2001 gendarme officer S.Y., who had been responsible for the security of the applicant's prison, was questioned by the Gebze prosecutor. Officer S.Y. informed the prosecutor that a total of three pistols had been found during searches conducted in the prison some months after the operation. It was possible that the applicant had been shot with one of those pistols by the inmates during the operation. Neither officer S.Y. nor any of the gendarmes under his command had fired shots during the operation.

24. Two more pistols and thirty-three bullets were found in the prison on 22 January 2002.

25. Three other gendarmerie personnel questioned by the prosecutor on 29 March 2002 stated that the gendarmes had not fired shots during the operation. They all considered that the applicant had probably been shot by his fellow inmates with one of the pistols found in the prison.

26. In a statement on 11 June 2002 the applicant repeated his allegations and gave the prosecutor the names of the four friends who had assisted him after he had been shot. In a large number of letters sent between 19 August 2002 and 21 February 2004 the Gebze prosecutor unsuccessfully requested the authorities to locate and question these four inmates.

27. On 24 February 2004 one of the above-mentioned four inmates was found and questioned by a prosecutor. He told the prosecutor that the gendarmes had opened fire on the inmates and that the applicant had been injured by a bullet fired by the gendarmes. Another inmate, questioned subsequently by the prosecutor, stated that he had not seen the applicant being shot.

28. In his letter of 27 May 2004 addressed to the Gebze governor the Gebze prosecutor requested permission to prosecute two gendarmerie officers allegedly responsible for the applicant's injury. The Gebze governor appointed a gendarmerie officer to investigate the allegations.

29. Two gendarmerie officers questioned by the investigator appointed by the Governor stated that they had not fired their weapons during the operation. One of them stated that a ballistic examination of their weapons would confirm the accuracy of their statements.

30. Having regard to the denials of the gendarmerie personnel, the investigating officer advised the governor on 19 October 2004 not to grant the authorisation sought by the prosecutor.

31. Acting on the investigator's advice the governor refused the request for authorisation on 21 October 2004.

32. On 15 June 2005 the Regional Administrative Court in Sakarya examined the objection lodged by the applicant against the governor's decision on 10 January 2005, and quashed the decision. It held that a judicial investigation should be carried out.

33. On 13 September 2005 the Gebze prosecutor wrote to the Gendarmerie Command in Gebze Prison and asked for the two officers to be sent to his office for further questioning. When the prosecutor received no responses to his letter, he repeated his request on 7 October 2005. On 15 November 2005 an officer informed the prosecutor that the two officers were no longer working at the prison.

34. On 18 November 2005 the prosecutor decided not to prosecute the two gendarmes alleged to have fired at the applicant. According to the prosecutor, there was insufficient evidence that the applicant had been injured by shots fired by the gendarmes. In his opinion the applicant had been shot with a bullet fired by inmates.

35. The applicant lodged an objection to the prosecutor's decision on 26 December 2005. He argued, *inter alia*, that the investigation had not been conducted in a timely manner or in an impartial and independent fashion. He also alleged that the prosecutor had failed to collect all available evidence, such as TV footage of the incident, statements by other eyewitnesses and medical reports.

36. The objection lodged by the applicant was dismissed by the Kartal Assize Court in Istanbul on 14 March 2006. The decision was communicated to the applicant on 21 April 2006.

37. On 12 March 2009 the case brought against the applicant and his fellow inmates (see paragraph 21 above), in so far as it concerned the offence of obstructing law-enforcement officials in the enforcement of their duties, was rejected as the period of limitation had already expired.

38. In the meantime, the applicant was released from the prison in 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3, 6 AND 13 OF THE CONVENTION

39. The applicant complained under Article 2 of the Convention that the gendarmes had acted in complete disregard of the right to life by using explosives and firearms and that it was only by pure chance that he had survived. Under Article 3 of the Convention the applicant further complained that, having been shot at, beaten up and exposed to tear gas, he had been subjected to inhuman and degrading treatment. Relying on Articles 6 and 13 of the Convention, the applicant submitted that his

allegations had not been investigated in an effective manner at the national level.

40. The Government contested those arguments.

41. The Court notes at the outset that the Government did not challenge the applicability of Article 2 of the Convention. In any event, the Court considers that the applicant's fortuitous survival does not prevent the Court from examining the complaint under Article 2 of the Convention, since the use of the firearm in a prison setting was potentially fatal and put his life at risk (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52 and 55, ECHR 2004-XI; *Osman v. the United Kingdom*, 28 October 1998, §§ 115-122, *Reports of Judgments and Decisions* 1998-VIII; and *Yaşa v. Turkey*, 2 September 1998, §§ 92-108, *Reports* 1998-VI).

42. Indeed, in a number of cases the Court has examined complaints under this provision where the alleged victim did not die as a result of the impugned conduct (see, *inter alia*, *Alkın v. Turkey*, no. 75588/01, § 29, 13 October 2009, and *Perişan and Others v. Turkey*, no. 12336/03, §§ 88-90, 20 May 2010).

43. In light of the above and having made a global assessment of the security operation, the Court deems it more appropriate to examine the applicant's complaints solely from the standpoint of Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

44. The Government argued that the applicant had failed to exhaust the domestic remedies available to him within the meaning of Article 35 § 1 of the Convention. In this connection they submitted that there were various civil and administrative remedies provided by domestic law in respect of persons claiming to be the victims of ill-treatment and that the applicant could have sought reparation for the harm he had allegedly suffered.

45. The applicant referred to the Court's case-law, and maintained that he had complied with the obligation to exhaust relevant domestic remedies.

In the opinion of the applicant the remedies referred to by the Government were not effective.

46. The Court reiterates that it has already examined and rejected similar preliminary objections made in similar cases (see, in particular, *Atalay v. Turkey*, no. 1249/03, § 29, 18 September 2008, and *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004). The Court reaffirms its earlier conclusions that the remedies referred to by the Government cannot be regarded as sufficient for a Contracting State's obligations under Article 2 or 3 of the Convention as they are aimed at awarding damages rather than identifying and punishing those responsible. In this connection the Court recalls that in cases of wilful ill-treatment or unlawful use of force resulting in death, the breach of Article 2 or 3 cannot be remedied exclusively through an award of compensation to the relatives of the victim (see *Leonidis v. Greece*, no. 43326/05, § 46, 8 January 2009). This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007 and the cases cited therein).

47. The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases. It therefore rejects the Government's objection.

48. The Court notes that the complaint under Article 2 of the Convention 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

49. The applicant maintained that he had been shot by one of the gendarmes and then beaten up during and after the operation. Furthermore, the investigation into his allegations had not been prompt or effective. In the opinion of the applicant, the allegation that he might have been shot by one of the pistols found in the prison some months after the operation (see paragraphs 22-24 above) sat ill with the official documents drawn up immediately after the operation, according to which no weapons had been found in the prison during or after the operation (see paragraph 17 above).

50. The Government denied that the applicant had been shot by the gendarmes, and argued that he had been shot by one of the inmates. They submitted that the gendarmes had used reasonable force to counter the

inmates' resistance. An effective investigation had been carried out by the judicial authorities, who concluded on the basis of the evidence in their possession that the applicant had not been shot by the gendarmes and had not been ill-treated.

51. The Court reiterates that, according to its established case-law, States bear the burden of providing plausible explanations for injuries and deaths which occur in custody, failing which a clear issue arises under Article 3 or 2 of the Convention (see, respectively, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000–VII). The underlying reason for this is that people in custody are in a vulnerable position and the authorities are under a duty to protect them. To the extent that the Government's submission that the gunshot had been heard from behind the barricades (see paragraph 11 above) is to be understood as meaning that the applicant was not in an area under their control, the Court reiterates that a failure to ensure the normal functioning of a prison cannot absolve States from their obligations towards the inmates (see, *mutatis mutandis*, *İsmail Altun*, cited above, § 70).

52. In order to establish whether the Government have satisfactorily discharged their burden of explaining the applicant's injury, regard must be had to the investigation carried out by the national authorities and the conclusions reached by them (see *Özcan and Others v. Turkey*, no. 18893/05, §§ 61 and 80, 20 April 2010, and *Beker v. Turkey*, no. 27866/03, § 44, 24 March 2009).

53. The Court will thus examine whether the investigation carried out by the domestic authorities was capable of establishing the true facts surrounding the applicant's injury and whether thus the Government have satisfactorily discharged their burden of explaining it (see, *mutatis mutandis*, *Beker*, cited above, § 53, and *Özcan and Others*, cited above, § 73).

54. The Court considers that the first and the most crucial step to be taken by the authorities, who had in their hands a prisoner with a gunshot wound, should have been to search for the evidence, such as the bullet, the weapon and the spent cartridge, and to locate all eyewitnesses to the incident immediately afterwards. However, the Court has not been provided with any information or documents to show that these most rudimentary steps were taken in the investigation.

55. The Court observes that the national authorities did not act promptly upon receiving the applicant's formal complaint on 15 April 2001 (see paragraph 18 above). Neither can it be said that the investigation was carried out with due diligence and expedition. A lengthy period, of almost five years, elapsed between the submission to the authorities of the applicant's complaint on 15 April 2001 and the closure of the investigation on 14 March 2006 (see paragraph 36 above). The excessive length of the investigation is particularly striking given the limited number of steps taken

during that time. The Court observes that, other than questioning a few gendarmerie personnel (see paragraphs 20, 23 and 25 above) and two of the applicant's fellow inmates (see paragraph 27 above), no meaningful steps were taken by the prosecutors.

56. As for the steps taken by the military investigator – which, in any event, were limited to questioning the two gendarme officers implicated in the events –, the Court reiterates that such investigations conducted by the superiors of the security force personnel implicated in the events cannot meet the independence and impartiality requirement of an effective investigation within the meaning of the Convention and the Court thus cannot attach any importance to them. Indeed, it has already held that the administrative procedure by which the prosecutor sought authorisation to prosecute the gendarmes could not be regarded as an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Ümit Gül v. Turkey*, no. 7880/02, §§ 53-57, 29 September 2009).

57. Furthermore, because of the lack of co-operation on the part of the various authorities, it took the Gebze prosecutor many letters and one and a half years to locate and question two of the four inmates who, according to the applicant, had witnessed the incident at first hand (see paragraph 26 above). No other steps were taken in the investigation during that period. Furthermore, after the Regional Court in Sakarya had referred the file to the prosecutor for an investigation to be carried out, the prosecutor made two unsuccessful attempts to find the two officers implicated in the applicant's shooting, but then decided, without questioning those officers or taking any further steps, to close the investigation (see paragraphs 33 and 34 above).

58. Additionally, although there were apparently a large number of inmates in the prison at the time (see paragraph 21 above), only two of them were questioned by the authorities. Even though the information given by one of them supported the applicant's version of the events (see paragraph 27 above), no weight appears to have been given to that information by the prosecutors.

59. In the light of the foregoing, the Court considers that the documents in its possession show that the investigation was not carried out in a thorough manner and thus failed to meet the requirements of an effective investigation within the meaning of the Convention. As a result, the investigation was not capable of establishing the true circumstances surrounding the applicant's shooting and the identity of the perpetrator. Thus, the Government have failed to meet their responsibility to provide a plausible explanation as to how the applicant suffered his injury while he was in the prison.

60. There has accordingly been a violation of Article 2 of the Convention.

61. Having regard to the above conclusion, the Court does not deem it necessary to examine the applicant's remaining allegations under Articles 3, 6 and 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

62. Lastly, relying on Article 14 of the Convention, the applicant complained that he had been subjected to ill-treatment on account of his political opinions, which did not fit in with the State's official policies.

63. The Government contested that argument.

64. The Court has examined the applicant's allegation in the light of the evidence submitted to it. It considers that there is insufficient basis in fact to substantiate this allegation. It therefore follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

66. The applicant claimed 95,000 euros (EUR) in respect of non-pecuniary damage.

67. The Government considered this sum to be excessive and unacceptable.

68. The Court awards the applicant EUR 18,000 in respect of non-pecuniary damage on account of the violation of Article 2 of the Convention found above.

B. Costs and expenses

69. The applicant also claimed the sum of EUR 6,760 for costs and expenses incurred before the Court. This sum included EUR 6,460 in respect of the fees of his legal representatives. In support of this claim the applicant submitted to the Court a time sheet showing that his legal representatives had spent a total of forty-five hours on the case; a fee agreement signed between the applicant and his legal representatives; and an official bill showing that the applicant had already paid his legal representatives approximately EUR 1,650 of the above-mentioned fees.

70. The remaining EUR 310 was claimed for translation, stationery and postal expenses in respect of which no documentary evidence was submitted.

71. The Government considered the claims to be vague, unsupported by documentary evidence and excessive.

72. 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 applicant the sum of EUR 3,500 covering costs under all heads, less the EUR 850 which the applicant received in legal aid from the Council of Europe (see paragraph 2 above).

C. Default interest

73. 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. *Declares* unanimously the complaint under Article 14 of the Convention inadmissible and the remainder of the application admissible;
2. *Holds* by 4 votes to 3 that there has been a violation of Article 2 of the Convention;
3. *Holds* by 4 votes to 3 that there is no need to examine the complaints under Article 3;
4. *Holds* unanimously that there is no need to examine the complaints under Articles 6 and 13 of the Convention;
5. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros), granted by way

of legal aid plus any tax that may be chargeable to the applicant, to be converted into Turkish liras at the rate applicable at the date of settlement;
(b) 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;

6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of Judges D. Jočienė, A. Sajó and G. Raimondi is annexed to this judgment:

F.T.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES JOČIENĖ,
SAJÓ AND RAIMONDI

There is no doubt in our minds that in the present case the applicant's rights under Article 3 of the Convention were violated. As an inmate he suffered injuries during a security operation in Gebze prison. Those injuries bear out his claim of inhuman and degrading treatment. Given the improprieties in the investigation following the applicant's injury, the Government could not be said to have satisfactorily discharged their burden of explaining the injuries. For this reason, we find that Article 3 was violated and we therefore voted with the majority on the question of non-pecuniary damage.

We could not, however, follow the majority in regard to its finding of a violation of Article 2. The facts of the case remain contested. The applicant was wounded in the foot. This is certainly not life-threatening, but the nature of the wound alone is not decisive for the applicability of Article 2 of the Convention. In fact, in a number of cases the Court has examined complaints under this provision where the alleged victim did not die as a result of the impugned conduct (see *Makaratzis v. Greece* [GC], no. 50385/99, § 49, ECHR 2004-XI, and *Alkin v. Turkey*, no. 75588/01, § 29, 13 October 2009). In such circumstances, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose pursued by that Article (see *Makaratzis*, cited above, § 51).

The Court has had the opportunity to consider the nature of security operations in Turkish prisons in the course of prison riots in a number of cases. Where the intervention resulted in killings, the Court considered the application under Article 2 (see *Gömi and Others v. Turkey*, no. 35962/97, 21 December 2006, and *Perişan and Others v. Turkey*, no. 12336/03, 20 May 2010); it did so even in a case where the applicant survived the injury to his pancreas (see *İsmail Altun v. Turkey*, no. 22932/02, 21 September 2010). However, in the case of *Perişan and Others*, the complaints under Article 2 of the Convention of those applicants who did not suffer life-threatening injuries were examined from the standpoint of Article 3 of the Convention.

In the absence of the use of firearms, not even the serious injuries of ten applicants resulted in an Article 2 review (see *Satık and Others v. Turkey*, no. 31866/96, 10 October 2000, see further *Kurnaz and Others v. Turkey*, no. 36672/97, 24 July 2007). In the present case, the applicant did not substantiate his claim that the other injured inmates had been shot or that firearms had been used on a large scale. The Court did not find established in the present case any facts which would allow us to conclude that the nature of the operations, including the use of force, was comparable to the security operations at Diyarbakır or Bayrampasa prisons. In the absence of an at least potentially lethal wound there is nothing in the case file, apart from the unsubstantiated allegations of the applicant, that would point to a degree and type of force or an intention or aim behind the use of force that would trigger the analysis of the facts under Article 2 on an exceptional basis. Therefore, as no clear issue arises under Article 2 in the present case, the State has no obligation to bear the burden of providing plausible explanations in regard to that Article.