



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

SECOND SECTION

CASE OF MUSTAFA TAŞTAN v. TURKEY

(Application no. 41824/05)

JUDGMENT

STRASBOURG

26 June 2012

FINAL

26/09/2012

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

In the case of Mustafa Taştan v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 41824/05) 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 Mustafa Taştan (“the applicant”), on 23 November 2005.

2. The applicant was represented by Mr M. Hisar and Mr B. Aydın, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged under Article 3 of the Convention that he had been subjected to ill-treatment while in police custody. Relying upon Articles 5 and 6 of the Convention, he maintained that his detention had been lengthy and that the criminal proceedings against him had been unfair.

4. On 6 October 2009 the complaints raised under Articles 5 and 6 of the Convention were declared inadmissible and the complaint concerning the applicant’s alleged ill-treatment during police custody was communicated to the Government. It was also decided to rule on the admissibility and merits of the case at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. On 29 August 1999 the applicant was arrested and taken to the Ankara Security Headquarters on suspicion of carrying a gun without the required licence. It was also established that he was being sought for on suspicion of establishing a profit-making criminal organisation.

7. The following day, 30 August 1999 the applicant was brought before the Ankara public prosecutor. The public prosecutor ordered his release after having taken his statements.

8. However, on the same day, certain police officers brought the applicant back to the Security Headquarters. Immediately after that event, his lawyer filed a complaint with the Ankara public prosecutor, claiming that the applicant had been forcibly taken by the police officers despite the public prosecutor's decision and had been beaten. She indicated that she had been denied entry into the Headquarters.

9. The applicant claimed to have been released the next day.

10. Following his release, the applicant went to a private clinic where he was examined by a doctor who noted that there existed several oedemas and bruises on various parts of the applicant's body, caused by blows from a hard object. The doctor specified the places of the said oedemas and bruises as the right frontal area of the face, right cheekbone, left shoulder, left forearm, left leg and left gluteal area. He also maintained that there were cuts in the oral cavity caused by dental pressure. The doctor noted the date of the report as 30 August 1999 but did not write his name.

11. On an unspecified date the applicant filed a complaint against two police officers, alleging that they had inflicted ill-treatment on him.

12. On 13 January 2000 the Ankara Directorate of Security submitted an information note to the public prosecutor, stating that the applicant had gone to the Security Headquarters on 30 August 1999 of his own will and had stayed there for a brief period of thirty minutes. The note indicated that he had not been officially in custody during that period and had been allowed to see his lawyer. Subsequently, on 17 February 2000, the Directorate of Security further informed the public prosecutor that no record of the applicant's meeting with his lawyer had been made.

13. On 25 February 2000 the applicant maintained before the Ankara public prosecutor that he had been forced to stay at the Security Headquarters for one day following his release by the public prosecutor and had been denied access to his lawyer during that period. He reiterated his allegations of ill-treatment, arguing that two police officers had put him in a barrel full of cold water and had beaten him the whole day. He also submitted a medical report from a private clinic, which he had obtained following his release.

14. On 28 March 2000, upon a request from the Ankara public prosecutor to that effect, the Ankara Forensics Medicine Institute issued a final report, indicating the findings of the initial medical report and

concluding that those findings would keep the applicant from routine activities for a period of seven days.

15. The two police officers accused by the applicant of ill-treatment gave their statements before the Ankara public prosecutor on 3 April and 9 May 2000 respectively. They maintained, *inter alia*, that they had not ill-treated the applicant in any way and that the applicant had only stayed at the Department for fifteen minutes on the day the alleged events took place.

16. On 11 April 2000 the police informed the public prosecutor that the owner of the private clinic, who was a medical doctor, had stated that the initial medical report had not been issued in his clinic and that his name had been fraudulently used on it.

17. Subsequently, on 15 May 2000 the Ankara public prosecutor issued a decision not to prosecute the two police officers as he found that there was no evidence except the applicant's allegations to prove that they had committed the alleged acts.

1. Criminal proceedings against the applicant for forging an official document

18. On 15 May 2000, the public prosecutor instigated criminal proceedings against the applicant before the 21st Chamber of the Ankara Criminal Court of General Jurisdiction for forging an official document.

19. During the proceedings, the owner of the clinic stated before the court that he had actually examined the applicant and drafted the medical report in question.

20. On 13 February 2001, upon a request of the court, an expert submitted a report, concluding that the handwriting in the medical report in question did not show the same characteristics as that of the owner of the clinic.

21. Nevertheless, on 24 January 2002 the Gendarmerie Command submitted another expert report to the court, confirming that the handwriting on the medical report belonged to the owner of the clinic.

22. Having regard to the latter expert report and the doctor's statements, on 19 February 2002 the court acquitted the applicant of the charge against him.

2. Criminal proceedings against the police officers

23. On 30 December 2003 the Ankara public prosecutor filed an indictment with the 19th Chamber of the Ankara Criminal Court of General Jurisdiction, this time accusing the two police officers of illegal deprivation of liberty and ill-treatment pursuant to Article 181 of the former Penal Code (Law no. 765).

24. The applicant's lawyer gave her statements before the court on 24 May 2004. She indicated that the applicant had been dragged by certain police officers following his release by the Ankara public prosecutor and that she had not witnessed him being beaten at the Security Headquarters, where he must have stayed for approximately one hour.

25. On 5 July 2004 the owner of the private clinic, where the applicant had obtained the medical report, stated before the court that he had not examined the applicant. At the following hearing on 20 July 2004 another doctor, K.İ.Z., maintained that at the time of the events he had been working at the said clinic. He stated that he was the one who had examined the applicant and drawn up a medical report about his condition.

26. At a hearing on 20 December 2004 the 19th Chamber of the Ankara Criminal Court of General Jurisdiction heard a certain S.Z.A., the chief officer who had conducted the administrative investigation against the two police officers. According to S.Z.A.'s statements, although there had been two conflicting expert reports about the medical report during the proceedings before the 21st Chamber, later on, the Gendarmerie Command had conducted another analysis and found out that the handwriting actually corresponded to that of K.İ.Z.

27. The applicant joined the criminal proceedings against the officers as a civil party (*müdahil*) on 7 November 2005.

28. On 6 March 2006 the first-instance court acquitted the police officers of ill-treatment. The court noted that the medical report issued immediately after the impugned events could not be considered valid as K.İ.Z., who had admitted to having examined the applicant in the clinic, had not had the work permit to draw up such a report. It maintained moreover that the report issued by the Ankara Forensics Medicine Institute, which relied wholly on the initial report, was invalid as well. The court hence concluded that there was insufficient evidence to convict the accused police officers of inflicting ill-treatment on the applicant. It sentenced the officers to ten months' imprisonment for illegal deprivation of liberty and suspended that sentence.

29. On 20 March 2007 the Court of Cassation discontinued the case, finding that it was time-barred pursuant to Sections 102 and 104 of the former Penal Code (Law no. 765) and Section 223 of the Code on Criminal Procedure (Law no. 5271).

3. Disciplinary proceedings against the police officers

30. Meanwhile, following the Ankara public prosecutor's indictment of the two police officers, on 13 January 2004 the Ankara Governorship assigned a chief officer to conduct a disciplinary investigation into the allegations of illegal deprivation of liberty and ill-treatment concerning the officers.

31. During the disciplinary proceedings, on 13 April 2004 the Gendarmerie Command submitted a new expert report, this time concluding that the handwriting on the medical report issued in respect of the applicant actually belonged to K.İ.Z.

32. On 19 September 2004 the Central Disciplinary Board of the Directorate of Security held that in the absence of any valid evidence, there was no ground to take disciplinary measures against the two police officers. The Board further struck the case out as the statutory time-limit for the alleged offences had expired.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. The former Penal Code (Law no. 765) made it a criminal offence to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants).

34. The second paragraph of Article 181 regulated an aggravated sentence for cases where the accused civil servants threatened or inflicted ill-treatment on the individual concerned.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that he had been subjected to ill-treatment at the Security Headquarters on 30 August 1999 and that the investigation into his allegation had not been effective. He relied upon Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

36. The Government contested that argument.

A. Admissibility

37. The Government contended that the applicant had failed to exhaust the remedies available to him under domestic law in that he had not initiated compensation proceedings, either before the administrative or the civil courts, for the alleged damage he had suffered.

38. The Court reiterates that it has already examined and rejected the Government's similar preliminary objections in previous cases (see, in particular, *Atalay v. Turkey*, no. 1249/03, § 29, 18 September 2008). It

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 3 of the Convention. The Court therefore finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned applications. Consequently, it rejects the Government's preliminary objection.

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The substantive aspect of Article 3

40. The Government argued that the alleged ill-treatment did not fall within the ambit of Article 3 of the Convention as it had not attained a minimum level of severity. They further stated that the said treatment had not been proven beyond reasonable doubt as pointed out by the 19th Chamber of the Ankara Criminal Court of General Jurisdiction. In this connection, the Government maintained that the doctor who had examined the applicant had not had a work permit. They indicated that in any event, the applicant had stayed at the Security Headquarters merely for one hour and had not wanted to see his lawyer during that time.

41. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrıkulu and Others v. Turkey* (dec.), 45907/99, 22 October 2002). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 161, Series A no. 25). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

42. In that respect, where an individual is taken into custody in good health but is found to be injured by the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim's allegations,

particularly if those allegations were corroborated by medical reports, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, §§ 108-111, Series A no. 241-A; *Ribitsch v. Austria*, judgment of 4 December 1995, § 34, Series A no. 336; *Aksoy v. Turkey*, judgment of 18 December 1996, § 62, Reports of Judgments and Decisions 1996-VI and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

43. In the instant case, the Court notes that immediately after his release from the Security Headquarters on 30 August 1999, the applicant obtained a medical report indicating the injuries on his body, the validity but not the content of which was later disputed before two different chambers of the Ankara Criminal Court of General Jurisdiction and before the Central Disciplinary Board of the Directorate of Security. The 21st Chamber of the court, which tried the applicant for forging an official document, acquitted him of that charge, confirming the authenticity of the medical report on the basis of an expert report from the Gendarmerie Command and the concerned doctor's statements. However, the same doctor retracted his previous statements before the 19th Chamber of the same court. Meanwhile, the Gendarmerie Command had also issued a new expert report, which ran contrary to its previous findings. Consequently, the domestic court acquitted the two accused police officers of ill-treatment, concluding that the medical report was not valid. The Court observes nevertheless that the latter chamber did not indicate anything as to the content of the report and found it invalid merely as the doctor who had drawn it up had not had the required permit to work in Turkey.

44. According to the medical report in question, there were several oedemas and bruises on various parts of the applicant's body, which had been caused by blows from a hard object, and some cuts in his oral cavity caused by dental pressure (see paragraph 9 above). The Government did not contest those findings. Nor did they argue that the report had been forged by the applicant.

45. The Court considers that the above-mentioned findings of the medical report match at least the applicant's allegation of having been beaten. In the circumstances of the present case, and considering the absence of a plausible explanation from the Government as to the cause of the injuries sustained by the applicant, the Court finds that these injuries were the result of ill-treatment for which the Government bore responsibility.

46. It follows that there has been a substantive violation of Article 3 of the Convention.

2. *The procedural aspect of Article 3*

47. The Government argued that an effective investigation into the applicant's allegations of ill-treatment had been conducted by the domestic authorities in that the medical reports, witness statements and statements of the accused had been evaluated during the course of the proceedings against the two police officers. They further contended that the discontinuation of those proceedings for being time-barred had not run contrary to Article 3 of the Convention.

48. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see, in particular, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, *Reports of Judgments and Decisions* 1998-VIII). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, among others, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004 and *Hürriyet Yılmaz v. Turkey*, no. 17721/02, § 46, 5 June 2007).

49. Turning to the facts of the present case, the Court notes that an investigation into the applicant's allegations of ill-treatment was started by the Ankara public prosecutor shortly after the applicant's complaint to that effect. Nevertheless, it took the public prosecutor almost four years to issue an indictment against the police officers concerned, as a result of the ambiguity surrounding the validity of the medical report obtained by the applicant from a private clinic. At the end of both the disciplinary and the criminal proceedings against the two police officers, the above-mentioned medical report was found invalid. The two police officers did not receive any disciplinary sanction and the file was struck out by the Directorate of Security for being time-barred. In the meantime, the domestic court found the officers guilty of deprivation of liberty and acquitted them of ill-treatment. Finally, seven years and six months after the impugned act, the case against the officers was dropped by the Court of Cassation on the ground that the prosecution had become time-barred.

50. The Court finds that the four-year period preceding the indictment against the two police officers clearly indicates the authorities' failure to conduct an effective investigation into the applicant's allegation of ill-treatment in a prompt manner. It further notes that the dispute as to the validity of the medical report obtained by the applicant merely concerned

whether the doctor who had drafted the report had the required authorisation, delaying the procedure for a substantial time for a matter which did not go into the essence of the report's findings.

51. Accordingly, the Court finds that the domestic authorities, failing to carry out a diligent investigation into the alleged acts of ill-treatment, did not evaluate the possible reasons which might have caused the injuries on the applicant's body and whether the accused police officers might have been responsible of these, during either the criminal or the disciplinary proceedings against them.

52. In the light of the above, the Court concludes that the applicant's claim that he was ill-treated during the time he was unlawfully kept in police custody was not subject to an effective investigation by the domestic authorities as required by Article 3.

53. There has therefore been a procedural violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural aspects.

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President