



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

SECOND SECTION

CASE OF TAYLAN v. TURKEY

(Application no. 32051/09)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

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

In the case of Taylan v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 32051/09) 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 Tamer Taylan (“the applicant”), on 5 June 2009.

2. The applicant was represented by Ms G. Dede, a lawyer practising in Bursa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 December 2010 the application was communicated 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

4. The applicant was born in 1968 and lives in Bursa.

A. The arrest and alleged ill-treatment of the applicant in police custody

5. On 8 March 2000 the applicant was arrested on suspicion of establishing a criminal organisation and committing fraud, threats and

bribery. Approximately an hour after the arrest, he underwent a medical examination. The doctor who examined the applicant noted no sign of injury on his body.

6. On the same day, the applicant was taken to the Department of Organised Crime of the Bursa Directorate of Security, where he was allegedly subjected to ill-treatment. More specifically, he was stripped naked, beaten, subjected to electric shocks, hung by the arms, forced to sit naked on cold ground bare and hosed with water.

7. On 10 March 2000 the applicant's wife lodged a complaint with the Bursa Public Prosecutor, claiming that her husband was being tortured.

8. Subsequently, on the same day the Bursa Public Prosecutor initiated an investigation into the matter.

9. On 12 March 2000, upon the request of the Bursa Directorate of Security, the Bursa Magistrates' Court decided to prolong the applicant's detention in police custody for three days.

10. On 14 March 2000 the applicant was heard by the Bursa Public Prosecutor. He was then transferred to the Bursa Branch of the Forensic Medicine Institute to be examined. The forensic medical report noted the applicant's complaint as to his ill-treatment and indicated that he had two bruises measuring 8 x 3 cm and 8 x 1 cm on his left arm, a 6 x 5 cm light bruise in his right armpit, a blue-coloured bruise surrounding his left eye, several parallel scabbed lesions around his penis and a scratch measuring 2 x 1 cm below his right knee.

11. On the same day, following a request from the Department of Organised Crime, the applicant was examined once more by another doctor, who stated that the applicant had complained of headaches, dizziness and sensitivity at the tip of the big toe of his right foot. The report drawn up by that doctor indicated that the applicant's general health condition was good and that he was conscious. It noted that he had bruises and hyperemia on his left and right sides, further hyperemia on both his arms, scabbed lesions of 2 x 3 cm on his penis (which would probably heal in three days) and a bruise around his eye (to heal in five days). The report concluded that the injuries would not keep the applicant from daily work.

12. On 20 March 2000 the Bursa Public Prosecutor requested the Forensic Medicine Institute to indicate, on the basis of its medical report dated 14 March 2000, whether the applicant was fit for work. On the same day, the Institute issued another report, reiterating the findings of the initial one and stating that the applicant would be unfit for routine activities for a period of three days.

13. Following the applicant's detention on remand, the prison doctor transferred him to the Bursa State Hospital. On 22 March 2000 the applicant was diagnosed with acute lumbar strain and discopathy by a doctor at that hospital. The doctor also indicated that the applicant suffered from

spondylosis and sciatica on his right side. The applicant was discharged from the hospital on 27 March 2000.

14. On 28 March 2000 the Bursa Public Prosecutor heard the applicant's allegations of ill-treatment during his time in police custody. The applicant repeated before the Public Prosecutor that he had been stripped naked and subjected to electric shocks, hung by the arms, forced to sit on cold ground and hosed with cold water every one or two hours during the seven-day period of custody. He added that he had been blindfolded during his arrest and kept that way until he was brought before the Bursa Public Prosecutor for the first time.

15. The next day, on 29 March 2000, the Bursa Public Prosecutor requested the Bursa Directorate of Security to list the names of the police officers who had been on duty and who had had any contact with the applicant during the time he had been held at the Department of Organised Crime.

16. In the meantime, the issue was brought to the attention of the Ministry of Justice by one of the Members of Parliament representing Bursa.

17. Following this event and the coverage of the issue in a local newspaper, on 6 April 2000 the Bursa Public Prosecutor submitted an information document to the Directorate of Criminal Affairs attached to the Ministry of Justice, stating that the medical reports about the applicant corroborated the allegations of ill-treatment and that he had already commenced an investigation into the matter on 10 March 2000.

18. Subsequently, on 18 April 2000 the Bursa Directorate of Security informed the Bursa Public Prosecutor of the names of thirteen police officers on duty during the period when the alleged events took place.

B. Criminal proceedings against the police officers

19. On 26 April 2000 the Public Prosecutor filed an indictment with the Bursa Assize Court, accusing all thirteen police officers listed of torture, pursuant to Article 243 of the former Criminal Code (Law no. 765). He maintained that the complainants' accounts of the events and witness statements confirmed the findings of the medical reports and concluded that the seven complainants, including the applicant, had been subjected to ill-treatment in police custody.

20. At the first hearing on 29 June 2000, the Bursa Assize Court found that the investigation conducted by the Bursa Public Prosecutor had been inadequate. The court conducted a procedure whereby the complainants identified the police officers they had accused of torture. The applicant joined the proceedings as a civil party.

21. During the course of the ten hearings that followed, the court evaluated medical reports and documents from the Directorate of Security.

It also heard statements from the accused police officers, the complainants and several witnesses.

22. On 27 March 2003 the Bursa Assize Court acquitted ten of the officers, finding that none of the complainants, except for the applicant, had been ill-treated and that those ten officers had not been involved in the applicant's ill-treatment in police custody. The court found the other three officers, who had been identified by the applicant during the hearings, guilty as charged, having regard to the consistency of the applicant's account of events with the medical reports. It sentenced the said three officers to ten months' imprisonment and banned them from public service for a period of two months and fifteen days. The court finally deferred the execution of their sentences pursuant to Section 6 of Law No. 647 on the basis that the officers did not show any likelihood of reoffending.

23. On 14 June 2006 the Court of Cassation upheld the judgment of the first-instance court in so far as it concerned the acquittal. It quashed the part concerning the sentences, stating that the court should evaluate the case again in the light of the recent Criminal Code (Law no. 5237) and the Code of Criminal Procedure (Law no. 5271), both of which had entered into force in 2005.

24. On 1 February 2007 the Bursa Assize Court held that the former Criminal Code (Law no. 765) was more favourable for the accused police officers. The court once more sentenced them to ten months' imprisonment and two months and fifteen days' ban from public service. This time, the sentences were commuted into a fine of 900 Turkish liras¹ for each officer and were suspended again.

25. The Court of Cassation quashed that judgment on 2 July 2008, maintaining that the first-instance court should have considered whether the pronouncement of the judgment could have been suspended for a period of five years (*hükümün açıklanmasının geri bırakılması*), pursuant to Article 231 of the recent Code on Criminal Procedure (Law no. 5271).

26. On 5 November 2008 the Bursa Assize Court held that the officers concerned had beaten and cursed the applicant and administered electroshocks on him in order to extract a confession. The court sentenced the police officers once again to ten months' imprisonment and banned them from public service for two months and fifteen days, pursuant to Article 243 of the former Criminal Code (Law no. 765). Finally, it suspended the pronouncement of the judgment, having regard to the officers' lack of criminal records and finding it unlikely that they would reoffend.

27. The applicant objected to that decision. However, on 28 November 2008 Bursa Assize Court rejected his objection. The final decision was served on the applicant on 15 December 2008.

1. 493 euros at the time.

C. Disciplinary proceedings against the police officers

28. On 12 May 2000 the Bursa Governorship assigned a chief officer to conduct a disciplinary investigation about the allegations of ill-treatment concerning thirteen police officers.

29. The investigation began on 22 May 2000 and ended on 3 August 2000, on which date the superintendent officer drew up a report (*fezleke*). On the basis of two video recordings of the applicant during a search and when his statements were being taken and the statements of the police officers, the witnesses and the complainants, including the applicant, the superintendent indicated that the applicant seemed to be in good health and that the light ecchymoses indicated in the medical reports could have just as well been produced by the applicant himself. He concluded therefore that the police officers' acts did not require disciplinary action.

30. On 9 January 2002, having reiterated the findings of the chief officer, the Central Disciplinary Board of the Directorate of Security held that there was no ground to take disciplinary measures against the thirteen police officers.

II. RELEVANT DOMESTIC LAW

31. A description of the relevant domestic law and practice concerning prosecution for ill-treatment in force at the material time can be found in *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 96-98, ECHR 2004-IV (extracts).

32. The suspension of the pronouncement of the judgment is regulated by Article 231 of the Code on Criminal Procedure (Law no. 5271), the relevant paragraphs of which read as follows:

Article 231

...

(5) If the accused, who had been tried for the charges against him, was sentenced to a judicial fine or to imprisonment of less than two years, the court may decide to suspend the pronouncement of the judgment... The suspension of the pronouncement of the judgment entails that the judgment would not bear any legal consequences for the offender.

(6) Suspension of the pronouncement of the judgment may be decided provided that;

a) the offender has never been found guilty of a wilful offence,
b) the court is convinced, taking into account the offender's personal traits and his behaviour during the proceedings, that there is little risk of any further offence being committed,

c) the damage caused to the victim or to the society is repaired by way of restitution or compensation.

(8) If the pronouncement of the judgment is suspended, the offender will be kept under supervision for the following five years.

(10) If the offender does not commit another wilful offence and abides by the obligations of the supervision order, the judgment, the pronouncement of which had been suspended, will be cancelled and the case discontinued.

(11) If the offender commits another wilful offence or acts in violation of the obligations of the supervision order, the court imposes the sentence. Nevertheless, the court may evaluate the offender's situation and may decide that a certain part of the sentence, up to the half of the total sentence, will not be executed. If the conditions so permit, the court may as well suspend the execution of the imprisonment or commute it to other optional measures.

(12) An objection may be filed against the decision to suspend the pronouncement of the judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant alleged under Article 3 of the Convention that he had been subjected to torture while in police custody. He also complained about the length of the criminal proceedings against the police officers and the suspension of the pronouncement of the judgment, which in his view had resulted in impunity. The applicant relied upon Articles 3 and 6 of the Convention.

34. The Court considers that these complaints should be examined from the standpoint of Article 3 of the Convention, which reads:

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

A. Admissibility

35. The Court notes that the application 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

36. The Government did not challenge the applicant's allegations of ill-treatment and merely referred to the Bursa Assize Court's judgment dated 5 November 2008.

37. The Court recalls that where allegations are made under Article 3 of the Convention, it must apply a particularly thorough scrutiny. Where

domestic proceedings have taken place, however, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Gäfgen v. Germany* [GC], no. 22978/05, § 93, ECHR 2010-....).

38. The Court observes that, following the Court of Cassation's decision quashing its previous judgment and after acquainting itself with the evidence and examining the facts of the case, on 5 November 2008 the Bursa Assize Court found that the applicant had been intentionally ill-treated by three of the accused police officers during his time in police custody. The domestic court held that the officers concerned had beaten and cursed the applicant and had administered electroshocks on him in order to extract a confession. Accordingly, it found them guilty of inflicting torture, pursuant to Article 243 of the former Criminal Code (see paragraph 26 above). In the light of the foregoing, the Court concludes that the injuries observed on the applicant must be attributable to a form of ill-treatment for which the three police officers concerned bore responsibility.

39. As to the seriousness of the treatment in question, the Court reiterates that, under its case-law in this sphere (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 96-97, ECHR 1999-V), in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

40. In this connection, the Court considers that the treatment complained of by the applicant was inflicted intentionally by the police officers with the purpose of extracting a confession. As affirmed by the Bursa Assize Court's judgment, the applicant was beaten and subjected to electroshocks while in police custody. In these circumstances, the Court finds that these acts were particularly serious and cruel and capable of causing severe pain and suffering. It therefore concludes that the ill-treatment in the present case amounted to torture within the meaning of Article 3 of the Convention.

41. There has therefore been a substantive violation of Article 3 of the Convention.

2. The procedural aspect of Article 3

42. The Government argued that the suspension of the pronouncement of the judgment concerning the police officers was not in breach of Article 3 of the Convention and did not result in impunity for them as their sentences would be executed if they committed another wilful offence during the five-year period following the judgment. In this respect, the Government maintained that the police officers concerned had also been ordered to pay the legal costs and expenses incurred by the applicant during the

proceedings. Finally, in terms of promptness, they submitted that the said proceedings had met the requirements of the Convention in that additional reports and medical evidence had been collected and witness statements had been heard during the entire period.

43. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. Such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). According to the established case-law, this means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts), and *Derman v. Turkey*, no. 21789/02, § 27, 31 May 2011).

44. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may also generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bati and Others*, cited above, § 136).

45. The Court also recalls that when an agent of the State is accused of crimes that violate Article 3, any ensuing criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permissible. It further reiterates that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she should be suspended from duty during the investigation and trial, and should be dismissed if convicted (see, *mutatis mutandis*, *Abdişamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; and *Serdar Güzel v. Turkey*, no. 39414/06, § 42, 15 March 2011).

46. Turning to the facts of the present case, the Court observes that a prompt investigation was initiated into the applicant's allegations of ill-treatment, while the applicant was still being held in police custody. Nevertheless, although the Bursa Public Prosecutor filed an indictment with the Bursa Assize Court approximately one month after the applicant's initial complaint, the ensuing criminal proceedings against the police officers

concerned lasted for a period of eight years and six months, a delay that runs contrary to the promptness required to punish those responsible. There is no indication that the police officers were suspended from duty during that period, nor did the authorities take any disciplinary action against them (see paragraph 30 above). Furthermore, at the end of the criminal proceedings, the Bursa Assize Court suspended the pronouncement of the judgment whereby it had sentenced three police officers for the torture they had inflicted upon the applicant (see paragraph 26 above). According to the Court's case-law, suspension of such sentences undeniably falls into the category of the "measures" which are unacceptable, as its effect is to render convictions ineffective (see *Okkai*, cited above, §§ 73-78; and *Zeynep Özcan v. Turkey*, no. 45906/99, §§ 40-46, 20 February 2007). In this respect, the Court notes that the suspension of the pronouncement of the judgment, regulated by Article 231 of the Code on Criminal Procedure (Law no. 5271), has a more far-reaching effect than the deferral of the execution of a sentence and results in the impunity of the perpetrators. That is because the former's application removes the judgment with all its legal consequences, including the sentence, provided that the offender abides by the suspension order (see paragraph 32 above), whereas in the latter, neither the sentence nor the judgment ceases to exist. The Court considers therefore that the impugned court decision suggests that the judges exercised their discretion more in order to minimise the consequences of an extremely serious unlawful act than to show that such acts could in no way be tolerated.

47. There has accordingly been a procedural violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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."

49. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He did not submit any claim for costs and expenses.

50. The Government contested this claim, considering the requested amount excessive.

51. The Court finds that the applicant must have suffered pain and distress which cannot be compensated for solely by the Court's finding of a violation. Having regard to the nature of the violation found and ruling on an equitable basis, it awards the applicant EUR 45,500 in respect of non-pecuniary damage.

52. The Court considers it appropriate that the default interest rate 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 UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a substantive violation of Article 3 of the Convention;
3. *Holds* that there has been a procedural violation of Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 45,500 (forty five thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Stanley Naismith
Registrar

Françoise Tulkens
President