



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

SECOND SECTION

CASE OF TARKAN YAVAŞ v. TURKEY

(Application no. 58210/08)

JUDGMENT

STRASBOURG

18 September 2012

FINAL

18/12/2012

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

In the case of Tarkan Yavaş 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 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 58210/08) 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 Tarkan Yavaş (“the applicant”), on 23 October 2008.

2. The applicant was represented by Mr C. Gökdoğan, a lawyer practising in Istanbul. 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. He also argued that the investigation against the police officers concerned was ineffective in that the criminal proceedings against them were still pending. Relying upon Article 5 §§ 1 and 3 of the Convention, the applicant submitted that he had been arrested without a legal basis and had been kept in police custody for a lengthy period. Invoking Article 6 § 1 of the Convention, he also complained that the criminal proceedings against him had been excessively long.

4. On 20 January 2011 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

5. The applicant was born in 1968 and lives in Istanbul.

6. On 12 November 1999 he was arrested on suspicion of setting up a criminal organisation, namely the Bilim Araştırma Vakfı (*Foundation for Science and Research*). On the same day he went through a medical examination at the Haseki Research Hospital. The medical report drafted following that examination noted that there was no sign of ill-treatment on his body.

7. During his time at police custody, on 15 November 1999, the applicant was examined once more, this time at the Şişli Etfal Research Hospital. The second report drawn up there also indicated that there existed no sign of ill-treatment on his body.

8. The applicant was released on 17 November 1999. Immediately after his release, he went through two more medical examinations at two different institutions, namely the Vakıf Gureba Hospital and the Forensic Medicine Institute. The reports drawn up after each examination indicated once again the lack of any sign of ill-treatment on his body.

9. The first three medical reports were issued in respect of the applicant together with some other persons, who were also arrested on suspicion of having committed the same offence.

A. Criminal proceedings against the applicant

10. On 11 January 2000 the public prosecutor at the Istanbul State Security Court filed an indictment with that court, accusing the applicant, together with several others, of setting up and running a criminal organisation. Subsequently, on 14 February 2000 the applicant was placed in pre-trial detention. The next day, on 15 February 2000 he was heard by the Bakırköy Criminal Magistrates' Court and released pending trial.

11. In 2004, following a constitutional amendment, state security courts were abolished and the case was transferred to the Istanbul Assize Court.

12. On 9 May 2008 the Istanbul Assize Court discontinued the proceedings as the statutory time-limit for prosecuting the offence of setting up a criminal organisation had expired.

13. On 28 December 2009 the Court of Cassation upheld the judgment of the Istanbul Assize Court.

B. Criminal proceedings against the police officers

14. On an unspecified date in 2000 the applicant filed a complaint, together with the others, against several police officers, claiming that he had been subjected to ill-treatment during his time in police custody. According to his submissions, his testicles had been squeezed and he had been beaten, handcuffed to a chair and insulted.

15. On 26 October 2001 the Beyoğlu public prosecutor issued a decision not to prosecute.

16. On 21 November 2002 the Beyoğlu Assize Court rejected the applicant's objection to the public prosecutor's decision.

17. Nevertheless, on 5 March 2004, following an objection filed by one of the other complainants, the same court decided to extend the scope of the investigation and requested medical reports from the Forensic Medical Institute.

18. Subsequently, on 13 April 2005, although the medical reports had not yet been submitted, the court annulled the decision of the Beyoğlu public prosecutor and held that criminal proceedings would be brought against the police officers involved.

19. Accordingly, on 22 June 2005 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court, accusing the police officers of torture pursuant to Article 243 § 1 of the former Penal Code (Law no. 765) as he considered that provision to be more favourable for the accused.

20. During the course of the proceedings against the police officers, the Head of the Istanbul University Forensic Medicine Department examined the applicant. In her report dated 29 March 2007 she noted that the applicant had complained that, during his police custody in November 1999 and his pre-trial detention in February 2000, his testicles had been squeezed and he had been beaten, insulted and forced to perform physical activities which would overstrain his body. After examining the medical reports which had been issued in respect of the applicant in November 1999, she reported that although those reports had indicated no sign of ill-treatment on the applicant's body, none of them had been drafted in compliance with the general principles of forensic medicine set forth by the Ministry of Health. In this connection, she stated that each report had been issued in respect of several individuals and it was not clear whether the patients had been under psychological duress at the time or what kind of examinations had been conducted by the doctors. She concluded, therefore, that the reports issued immediately after the applicant's release from police custody could not be accepted as proof against his allegation of ill-treatment.

21. On 4 August 2010 the Forensic Medicine Institute submitted a report to the Istanbul Assize Court upon the request of the latter. That report maintained that some lesions and problems in the applicant's meniscus had been found in 2003. It added also that he appeared to be suffering from

post-traumatic stress disorder. The report noted however that it was not possible to conclude that those conditions resulted from the alleged ill-treatment inflicted on the applicant in 1999.

22. On 25 March 2011 the Forensic Medicine Institute drafted another report following the court's request. According to that report, the first four medical reports, which stated that there was no sign on the applicant's body, were unclear as each of them had been drawn up in respect of several individuals.

23. The Istanbul Assize Court conducted more than thirty hearings during which it heard the statements of the complainants, the accused and the witnesses. It also evaluated medical reports in respect of each complainant as well as the above-mentioned expert reports. The proceedings are still pending before that court.

II. RELEVANT DOMESTIC LAW

24. Article 243 § 1 of the former Penal Code (Law no. 765) which regulated torture committed by civil servants read as follows:

Article 243

"Any public official who, in order to extract a confession of guilt in respect of a criminal offence, tortures or ill-treats a person, engages in inhuman conduct or violates human dignity, shall be punished by up to five years' imprisonment and disqualified from holding public office temporarily or for life."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. Without giving any specific details, the applicant complained that he had been subjected to ill-treatment during his time in police custody. He further maintained that the criminal proceedings against the police officers concerned had lasted too long so as to render the investigation against them ineffective. 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."

A. Admissibility

26. The Government argued that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention in that the criminal proceedings against the police officers were still pending before the domestic court. In this connection, they requested the Court to suspend the examination of the case until the end of the said proceedings.

27. The Court notes that in the present case criminal proceedings were brought against the police officers complained of by the applicant. However, those proceedings are still pending more than twelve years and six months after the applicant's release from police custody. It reiterates that the question whether the criminal proceedings pending against the officers can be regarded as effective under the Convention is closely linked to the substance of the applicant's complaint. It therefore joins the Government's objection on this point to the merits (see *Veli Tosun and Others v. Turkey*, no.62312/00, §§ 39-40, 16 January 2007, and *Firat Can v. Turkey*, no. 6644/08, §§ 33-35, 24 May 2011).

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

B. Merits

1. The substantive aspect of Article 3

29. The Court recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). 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, strong presumptions of fact will arise in respect of injuries occurring during such control (see, *mutatis mutandis*, *Maslova and Nalbandov v. Russia*, no. 839/02, § 99, 24 January 2008).

30. In the instant case, the applicant went through four medical examinations, which were conducted on the day he was arrested, during his police custody and following his release, respectively. According to the reports drawn up after these examinations, the applicant did not bear any indication of ill-treatment on his body. In this connection, the Court has regard to the fact that each of these four medical reports was drafted by a different doctor. Two other reports, submitted to the Istanbul Assize Court

during the proceedings against the police officers involved in the alleged acts, stated that the above-mentioned reports had not complied with the general principles of forensic medicine. Nevertheless, the Court observes that these latter reports were drafted in 2007 and 2011 respectively, years after the applicant's release, and therefore could not substantiate his claim except for dwelling upon the accuracy of the reports drawn up in November 1999. Consequently, there is no decisive evidence in the case file which could call into question the findings in the first four reports or add probative weight to the applicant's allegation.

31. In the light of the foregoing and having regard to the applicant's failure to describe the alleged acts in detail, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to ill-treatment during his time at police custody (see, among many others, *Erişen and Others v. Turkey*, no. 7067/06, § 41, 3 April 2012).

32. It follows that there has been no violation of Article 3 of the Convention under its substantive aspect.

2. The procedural aspect of Article 3

33. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see, in particular, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, *Reports of Judgments and Decisions* 1998-VIII).

34. In the present case, the Court has not found it proved, on account of lack of evidence, that the applicant was ill-treated, as alleged. Nevertheless, as it has held in previous cases, that does not preclude this complaint in relation to Article 3 from being "arguable" for the purposes of the State's positive obligation to investigate (see, *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009). In reaching this conclusion, the Court has had particular regard to the pending criminal proceedings against the police officers who are accused of torture pursuant to Article 243 of the former Penal Code (Law no. 765).

35. The Court recalls that the minimum standards as to the effectiveness of an investigation 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).

36. Turning to the facts of the present case, the Court notes that an investigation into the applicant's allegation of ill-treatment was started by the Beyoğlu public prosecutor, who later issued a decision not to prosecute the police officers involved in the alleged acts. Although this decision was upheld by the Beyoğlu Assize Court on 21 November 2002, the same court annulled it more than two years later, on 13 April 2005, following an

objection filed by one of the other individuals who claimed to have been ill-treated. The Court observes that an indictment against the police officers was issued by the Istanbul public prosecutor only then, on 22 June 2005, more than five years after the applicant's complaint to that effect. Besides that rather long period of time that had elapsed until criminal proceedings were brought against the officers, the Court also has regard to the fact that those proceedings are still pending before the Istanbul Assize Court after almost seven more years.

37. Consequently, the Court considers that the applicant's allegation of ill-treatment was not investigated either diligently or promptly and the investigation cannot therefore be considered as effective (see, in particular, *Firat Can v. Turkey*, cited above, §§ 43-50, and *Aysu v. Turkey*, no. 44021/07, §§ 39-42, 13 March 2012). In the light of the foregoing, the Court also dismisses the Government's objection that the applicant failed to exhaust domestic remedies in view of the pending criminal proceedings against the police officers concerned (see *Veli Tosun and Others v. Turkey*, cited above, § 60; and *Firat Can v. Turkey*, cited above, § 49).

38. It follows that there has been a violation of Article 3 of the Convention under its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

39. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been incompatible with the "reasonable time" requirement.

40. The Government contested that argument, claiming that the length of the impugned proceedings had been in compliance with Article 6 § 1 of the Convention, taking account of the complexity of the case, the number of the accused and the difficulties in collecting evidence.

41. The Court notes that the impugned criminal proceedings, where the applicant was tried with several others, began on 12 November 1999, when the applicant was arrested and ended on 28 December 2009, when the Court of Cassation upheld the judgment of the Istanbul Assize Court discontinuing the case. They therefore lasted for a period of over ten years and one month.

42. The Court observes that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among others, *Er v. Turkey*, no. 21377/04, § 23, 27 October 2009; *Şahap Doğan v. Turkey*, no. 29361/07, § 39, 27 May 2010; and *Firat Can v. Turkey*, cited above, § 74; see also, *mutatis mutandis*, *Frydlender v. France* [GC], no. 30979/96, §§ 42-46, ECHR 2000-VII, and *Daneshpayeh v. Turkey*, no. 21086/04, §§ 26-29, 16 July 2009). Having examined all the material submitted to it, it considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having

regard to its case-law on the subject, the Court finds that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

43. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of the excessive length of the criminal proceedings against the applicant.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

44. The applicant further complained under Article 5 §§ 1 and 3 about the alleged unlawfulness and the excessive length of his police custody, which had lasted for a period of five days.

45. The Court notes that the applicant was released from custody on 17 November 1999. Following the initiation of criminal proceedings against him, on 14 February 2000 he was placed in detention on remand. Nevertheless, he was released pending trial the next day, on 15 February 2000, that is more than eight years before he lodged the application with the Court.

46. Accordingly, the Court holds that the complaint is inadmissible for non-compliance with the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He did not submit any claim for costs and expenses.

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

49. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. Having regard to the nature of the violations found and ruling on an equitable basis, it awards the applicant EUR 16,250 in respect of non-pecuniary damage.

50. 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. *Joins* the Government's preliminary objection on the issue of exhaustion of domestic remedies in respect of Article 3 to the merits and *dismisses* it;
2. *Declares* the complaints concerning Articles 3 and 6 § 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive aspect;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural aspect;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the excessive length of the criminal proceedings against the applicant;
6. *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 16,250 (sixteen thousand two hundred fifty euros) 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President