



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

SECOND SECTION

CASE OF EYLEM BAŞ v. TURKEY

(Application no. 11435/07)

JUDGMENT

STRASBOURG

16 October 2012

FINAL

16/01/2013

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

In the case of Eylem Baş v. Turkey,

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

Ineta Ziemele, *President*,

Danutė Jočienė,

Dragoljub Popović,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 25 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 11435/07) 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, Ms Eylem Baş (“the applicant”), on 12 March 2007.

2. The applicant was represented by Mr Hakverdi, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 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, who was born in 1980, is currently serving her prison sentence in the Gebze Prison.

5. On 8 June 2004 the applicant was arrested together with B.K. by policemen from the Anti-Terrorism Branch of the Kırıkkale Security Directorate. It transpires from the documents in the case file that B.K. was carrying a hidden Kalashnikov rifle which he proceeded to use against the police officers who had approached them to check their identity papers and

that, in the ensuing struggle, the applicant and one police officer were injured by gunshot wounds.

6. On the same day at 9.15 p.m., the applicant was examined at the Kırıkkale State Hospital by a doctor who noted two gunshot wounds on the applicant's left leg. Superficial grazes on her left shoulder blade and back were also indicated in the report. It was concluded that her injuries were not life-threatening. The applicant was subsequently placed in custody at the Kırıkkale Security Directorate, where she was allegedly ill-treated.

7. On 9 June 2004 the applicant was examined by a doctor at the Yüksek İhtisas Hospital. The report indicated that there was a bullet entry hole and an exit hole in her left leg. It was also indicated that there were two or three grazes on the applicant's back, measuring 3-4 cm.

8. On 10 June 2004 the applicant was once again examined at the Yüksek İhtisas Hospital. According to the report issued at the end of the medical examination, there was a bullet entry hole and an exit hole in the applicant's left leg, superficial grazes on her back and an old hyperemia, measuring 2 to 3 cm, on her left arm.

9. On the same day, the applicant was transferred to Tokat Gendarmerie Command for further investigation.

10. On 11 June 2004 at 00.35 a.m. the applicant was examined at the Tokat Cevdet Aykan State Hospital by a doctor, who noted a bruise of 0,5 x 1 cm on the applicant's nose dating back a couple of days, a number of scabbed scratches or bruises on her left shoulder blade, upper left arm and left wrist (dating back a couple of days), a couple of scratches on her lumbar vertebrae (dating back a couple of days), redness corresponding to an old burn wound on her left foot and fingers and two gunshot wounds in her lower left leg. The report indicated that the injuries were not life-threatening.

11. On 12 June 2004 the applicant was once again examined at the Tokat Cevdet Aykan State Hospital. No new physical marks other than those indicated above were observed on her body.

12. On the same day, the applicant was interrogated at the Tokat Gendarme Command, in the presence of her lawyer, and she used her right to remain silent. She was subsequently brought before the Tokat public prosecutor and the Tokat Magistrates' Court in Criminal Matters respectively. In the presence of her lawyer, she denied the accusations against her. Before the public prosecutor, the applicant further complained that she had been subjected to various forms of ill-treatment while she was held in custody at the Kırıkkale Security Directorate. In this connection, she maintained that she had been forced to walk bare-footed, deprived of sleep, sexually harassed, dragged by her hair, kicked, and that her head had been hit against the wall. The applicant requested the prosecution of those responsible. The court ordered her detention in remand.

A. The criminal proceedings against the applicant

13. On 9 June 2004 the Ankara public prosecutor filed an indictment against the applicant and accused her of being a member of the TKP/ML-TİKKO (Turkish Communist Party-Marxist Leninist, Turkish Workers and Peasants' Liberation Army), an armed illegal organisation, and of undermining the constitutional order of the State in breach of Article 146 of the Criminal Code.

14. On 2 March 2006 the Ankara Assize Court, after having examined the evidence in the case file, convicted her as charged and sentenced her to life imprisonment.

15. The applicant appealed, challenging various documentary and testimony evidence in the case file. In her appeal petition, she referred to her submissions before the investigating judge and the public prosecutor, maintaining that she had been ill-treated at the Kırıkkale Security Directorate.

16. On 26 September 2006 the Court of Cassation upheld the judgment of the first-instance court. This decision was served on the applicant on 5 December 2006.

B. The criminal proceedings against the accused police officers

17. Upon the applicant's submissions made before the Tokat Magistrates' Court on 12 June 2004, on an unspecified date, the Tokat public prosecutor initiated an investigation into her allegations of ill-treatment. The public prosecutor subsequently declared lack of jurisdiction and transferred the case file to the Kırıkkale public prosecutor's office, as the applicant alleged that she had been ill-treated during her custody in Kırıkkale. During his investigation, the Kırıkkale public prosecutor took statements from three police officers, who denied the accusations against them. On 14 July 2004 the public prosecutor issued a decision of non-prosecution. In his decision, the prosecutor referred to the applicant as a member of the armed illegal organisation, the TKP/ML - TİKKO, and stated that she had made this allegation to debase the police officers. The public prosecutor concluded by stating that a copy of the non-prosecution decision should be served on the applicant.

18. The non-prosecution decision of the Kırıkkale public prosecutor was served on the applicant on 18 April 2011. Subsequently, on 29 April 2011 the applicant filed an objection with the Ankara Assize Court. In her petition, she pointed out that the public prosecutor had acted with a preconceived idea that she was a member of an illegal organisation. In this connection, she drew the Assize Court's attention to the fact that, at that time, the trial against her had been pending and that she had not yet been convicted of being a member of an illegal organisation. The applicant

further repeated her allegations of ill-treatment and maintained that during her police custody she had been sexually harassed and beaten by police officers at the Kırıkkale Security Directorate.

19. After examining the merits of the case, on 18 May 2011 the Ankara Assize Court dismissed the applicant's appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant alleged that she had been ill-treated while in police custody at the Kırıkkale Security Directorate. She further complained that her ill-treatment complaint had not been examined effectively. In this connection, the applicant relied on Articles 3, 6 and 13 of the Convention.

21. The Government disputed the allegations.

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

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

A. Admissibility

23. The Government argued that this part of the application should be rejected for non-exhaustion of domestic remedies. In this connection, they stated that the applicant should have filed an appeal against the non-prosecution decision of 14 July 2004 issued by the Kırıkkale public prosecutor. In the alternative, they asked the Court to dismiss the applicant's ill-treatment complaint for non-compliance with the six-month time-limit. In this respect, they pointed out that the public prosecutor's decision had been delivered on 14 July 2004, whereas the application was lodged with the Court on 12 March 2007.

24. The Court reiterates that applicants are required, in principle, to exhaust the different domestic remedies available to them before applying to the Court. However, the last stage in the exhaustion of these remedies may be reached after the lodging of the application but before the Court is called upon to pronounce on the issue of admissibility (see, *Güler and Öngel v. Turkey*, nos. 29612/05 and 30668/05, § 19, 4 October 2011).

25. In the present case, the Court observes that the non-prosecution decision of the Kırıkkale public prosecutor, dated 14 July 2004, was not served on the applicant until 18 April 2011. Thereafter, on 29 April 2011, the applicant filed an objection against the non-prosecution decision of

14 July 2004. After examining the merits of the case, on 18 May 2011 the Ankara Asize Court dismissed the applicant's case.

26. In the light of the foregoing, the Court notes that the final decision in the prosecution of the accused police officers was delivered on 18 May 2011, which is before the Court had decided on the admissibility of the application. The Government's objection regarding non-exhaustion of domestic remedies should accordingly be dismissed.

27. As regards the Government's objection regarding the six-month time-limit, the Court concludes that since the proceedings against the accused police officers were terminated on 18 May 2011, and the application was lodged with the Court on 12 March 2007, the Government's objection cannot be upheld.

28. 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

29. The Government contested the applicant's allegations. In particular, they maintained that her allegations were unsubstantiated.

30. The Court reiterates the basic principles laid down in its judgments concerning the prohibition of ill-treatment under Article 3 of the Convention (see, *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Çelik and İmret v. Turkey*, no. 44093/98, § 39, 26 October 2004; *Hacı Özen v. Turkey*, no. 46286/99, §§ 46 and 47, 12 April 2007; and *Demirbaş and Others v. Turkey*, nos. 50973/06, 8672/07 and 8722/07, §§ 55 and 56, 9 December 2008). In particular, it recalls that States are responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them (see, *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004). The Court will examine the responsibility of the respondent State under the substantive limb of Article 3 in the light of these principles.

31. In the instant case, the applicant alleged that during her police custody at the Kırıkkale Security Directorate, she had been subjected to ill-treatment. In this connection, she maintained that she had been beaten and sexually harassed.

32. The Court firstly notes that it is not in dispute between the Parties that the applicant was wounded by gunshots during the scuffle that broke out at the time of her arrest. In this connection, it notes that the medical report drawn up immediately after her arrest indicated superficial grazes on the applicant's back and left shoulder blade, apart from the bullet entry and

exit holes in her left leg. The Court is aware of the lack of details in this medical report; however, it considers that these findings are consistent with the physical confrontation that took place at the time of applicant's arrest. The Court further notes that the subsequent medical report issued on the second day of the applicant's police custody, namely on 10 June 2004, further mentioned an old hyperaemia measuring 2 to 3 cm on her left arm. Moreover, following the applicant's transfer to Tokat, her examination at the Tokat State Hospital revealed several new injuries on her body, such as a bruise on her nose, a number of scratches and bruises on her back, arm and wrist. In this connection, the Court observes that the Government have not provided any explanation regarding these new injuries.

33. The Court considers that the new injuries noted in the medical report of 10 June 2004 appear to be consistent with the applicant's allegation. In the Court's opinion, if the applicant had sustained these injuries during the arrest, they should have appeared in the report drawn up on 8 June 2004. The Court particularly takes note of the fact that throughout the whole time, the applicant was under the control of the State authorities.

34. In the absence of a plausible explanation from the Government regarding the new injuries noted on the applicant's body on 10 June 2004 and bearing in mind the authorities' obligation to account for the injuries caused to persons under their control in custody, the Court considers that these injuries were the result of treatment for which the Government bore responsibility.

35. It follows that there has been a substantive violation of Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected.

2. The procedural aspect of Article 3

36. 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). It has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by the applicant. An effective investigation was therefore required.

37. The Court observes, at the outset, that a preliminary investigation was indeed conducted by the Kırıkkale public prosecutor. However, for the reasons explained below, it is not persuaded that the investigation was conducted effectively.

38. In this connection, the Court notes that, according to the documents in the case file, although the Kırıkkale public prosecutor initiated an investigation into the applicant's allegations, the only step taken by the prosecutor was to take statements from three police officers. It appears from

the documents that the applicant was never heard by the prosecutor and was not given an opportunity to confront the accused officers. The Court further notes that the public prosecutor did not take any statements from the doctors who had examined the applicant during her police custody or try to provide a plausible explanation as to the new injuries which appeared in the medical report of 10 June 2004, while the applicant was still under the control of the authorities. The Court further notes with concern that the public prosecutor ignored the fact that there were medical reports which indicated certain injuries on the applicant's body and acted with a preconceived idea that she had made the allegation of ill-treatment to debase the police officers. In this connection, it notes that none of the four medical reports was mentioned in the non-prosecution decision.

39. In the light of the foregoing, the Court considers that the applicant's allegation of ill-treatment was not investigated diligently and cannot therefore be considered as effective.

40. Having regard to all of these facts, the Court concludes that the authorities failed to conduct an effective investigation into the applicant's allegations of ill-treatment. There has therefore been a violation of the procedural aspect of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant complained under Articles 5 and 13 of the Convention about the length of her pre-trial detention and the lack of an effective remedy regarding her excessive pre-trial detention. Furthermore, in her reply to the Government's observations, submitted on 12 July 2011, the applicant further alleged a breach of Article 6 §§ 2 and 3 (a), (b) and (d) of the Convention.

42. The Court recalls that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter "within a period of six months from the date on which the final decision was taken". In so far as the applicant complains about her pre-trial detention, the Court observes that her pre-trial detention ended on 2 March 2006 with the judgment of the Ankara Assize Court, whereas the application was lodged with the Court on 12 March 2007, more than six months later. Regarding the new complaints of the applicant, mentioned in her observations in reply dated 12 July 2011, the Court reiterates that the running of the six months time-limit is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial application, the running of the six months time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ (see, *Allan v. the UK* (dec.), no. 48539/99, 28 August 2001; *Bayam v. Turkey*, no. 26896/02, § 32, 31 July 2007).

43. In the present case, the Court observes that the six months period in respect of the applicant's Article 6 complaints started to run on 5 December 2006, when the final decision of the Court of Cassation was notified to the applicant (see paragraph 16 above). The Court notes that these complaints were not mentioned in any communication prior to 12 July 2011.

44. Consequently, the Court concludes that this part of the application should be rejected for being introduced out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

45. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the claim.

47. 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 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

48. Referring to the İstanbul Bar Association's scale of fees, the applicant's representative claimed 22,500 Turkish liras (TRY), approximately EUR 9,900, in respect of legal fees and costs.

49. The Government contested the claim.

50. 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, the applicant has not substantiated that she has actually incurred the costs claimed. Accordingly, it makes no award under this head.

C. Default interest

51. 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 complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;
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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 16 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Ineta Ziemele
President