



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

SECOND SECTION

CASE OF DUĞAN v. TÜRKİYE

(Application no. 84543/17)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Unjustified short-term detention at a police station of applicant, a transgender person, for disrupting traffic

Art 14 (+ Art 5) • Discrimination • Applicant's failure to produce *prima facie* evidence that she was taken to the police station because she was transgender

STRASBOURG

7 February 2023

FINAL

26/06/2023

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

In the case of Duğan v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 84543/17) against the Republic of Türkiye 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 Cemal Duğan (“the applicant”), on 8 December 2017;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the alleged breach of Article 14 taken together with Article 5 of the Convention and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted jointly by Transgender Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and the International Committee on the Rights of Sex Workers in Europe (ICRSE), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 17 January 2023,

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

INTRODUCTION

1. The application concerns the applicant’s being taken to a police station for disrupting traffic. The applicant alleged that this infringed her right to liberty and her right not to be discriminated against, respectively under Articles 5 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1980 and lives in Bursa. The applicant is a transgender person who, at the time the application was lodged, was recognised in civil law as male. However, the Court will use the feminine form in referring to the applicant, to reflect her preferred gender identity.

3. She was represented by Mr M. Özdemir, a lawyer practising in Bursa.

4. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. According to the report of 12 March 2014, drawn up by the police officers from the Morality Section of Bursa (*Ahlak Büro Amirliği*):

- they were informed that the applicant was disrupting the traffic and endangering its safety by attempting to stop moving vehicles at a crossroad to solicit for prostitution;

- upon arrival, they questioned the applicant about the purpose of her actions, and she replied that she was attracting attention in order to find clients;

- she was taken to the police station at 1.45 a.m. for necessary official procedures to be carried out;

- at the police station, a search was made on UYAP (*Ulusal Yargı Ağı Bilişim Sistemi* – the judicial system’s national network information system) to determine whether the applicant was wanted by the police, and it was established that she was not;

- an administrative fine of 80 Turkish Liras (approximately 26 euros) was imposed on her for disrupting traffic, and she was then released.

7. According to the Bursa Security Directorate’s Police Information System (POLNET) records, the administrative fine report was issued on 12 March 2014 at 2.39 a.m.

8. On 27 March 2014 the applicant filed an objection against the administrative fine in the 3rd Bursa Magistrates’ Court (“Magistrates’ Court”), arguing that the said sanction was imposed on her because of her transgender identity. The applicant indicated in her petition that she was reserving her legal rights to lodge a complaint against the police officers who took her to the police station and imposed the administrative fine.

9. On 9 April 2014 the Magistrates’ Court requested the documents setting out the basis of the administrative fine from the Bursa Security Directorate. In its reply of 6 May 2014, the Bursa Security Directorate informed the Magistrates’ Court that the fine in question was imposed on the applicant on the basis of section 68/1(c) of the Road Traffic Act (Law no. 2918) as she had disrupted the traffic by standing in front of moving vehicles for the purpose of stopping them.

10. On 16 October 2014 the Magistrates’ Court dismissed the applicant’s case on the grounds that the disputed sanction was imposed in compliance with the law.

11. On 10 December 2014 the applicant lodged an individual application with the Constitutional Court, arguing that she was arbitrarily detained at the police station because of her sexual orientation. She alleged that her right not

to be subjected to discrimination, as well as her rights to liberty and security and respect for private life, had been infringed.

12. On 15 February 2017 the Constitutional Court rejected the applicant's individual application holding that no concrete information or findings had been presented to substantiate the allegation that the applicant had been discriminated against because of her transgender identity.

13. In his dissenting opinion, the president of the section noted that detention at the police station to make a UYAP search and to issue an administrative fine was not a common practice and that in the applicant's case these could have been easily accomplished at the scene of the incident. He emphasised that no action had been brought against the applicant as regards the allegation of prostitution and that the administrative sanction report contained no relevant information. He also stated that taking the applicant to the police station for a simple UYAP search and imposition of an administrative fine should be considered as proof of discrimination based on sexual orientation. He concluded that the applicant's deprivation of liberty was not necessary in a democratic society and constituted a violation of the right not to be discriminated against in conjunction with the right to liberty.

RELEVANT LEGAL FRAMEWORK

14. The relevant passages of Article 10 of the Constitution, entitled "Equality before the law" reads as follows:

"Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

(...)

State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings."

15. The relevant passages of Article 19 of the Constitution, entitled "Personal liberty and security" reads as follows:

"Everyone has the right to personal liberty and security.

No one shall be deprived of his/her liberty except in the following cases where procedure and conditions are prescribed by law:

Execution of sentences restricting liberty and the implementation of security measures decided by courts; arrest or detention of an individual in line with a court ruling or an obligation upon her designated by law; (...)"

16. Section 68/1 (c) of Law no. 2918 as in force at the material time provided as follows:

"It is forbidden for pedestrians on pedestrian ways, crossings, or, where compulsory, on the roadways to behave in such a way as to obstruct or endanger traffic or to use them disrespectfully.

The pedestrians not complying with these provisions shall be sentenced to a fine of TRY (...).”

17. Section 11 of Law on the Duties and Powers of the Police (Law no. 2559) provides that the police have the duty to prevent, terminate and prohibit the actions of those who behave in a manner that is contrary to public morality and social order.

18. Section 40 of the Misdemeanours Act (Law no. 5326) stipulates that a person who refuses to give information or makes false declarations about his or her identity to an officer on duty must be detained.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION TAKEN ALONE OR IN CONJUNCTION WITH ARTICLE 14

19. Relying on Article 5 in conjunction with Article 14 of the Convention, the applicant complained that the authorities had arbitrarily deprived her of her liberty because of her sexual orientation. She argued that the allegations against her of disrupting traffic should have been treated as a misdemeanour and that there was no reason to detain her at the police station.

Article 5 reads as follows in so far as relevant:

Article 5 (Right to liberty and security)

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

1. *The parties’ submissions*

20. The Government submitted that the applicant had not exhausted all available domestic remedies as she had failed to bring an action for a full remedy (*tam yargı davası*) before the administrative courts. A full-remedy action could have provided the applicant with sufficient compensation for the damage resulting from her allegedly unlawful detention at the police station. The Government further submitted that the complaint was inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They explained that the alleged restriction on her rights had lasted for only an hour. In conclusion, they asked the Court to declare the application manifestly ill-founded.

21. The applicant insisted that she had complied with the admissibility criteria. She argued that she was a victim of *de facto* detention as there was no official record of her arrest or detention. She emphasised that, consequently, she could not have recourse to the administrative courts to claim compensation for her illegal detention at the police station. She also argued that she suffered a significant disadvantage as she had been deprived of liberty by force for an invalid reason.

2. *The Court’s assessment*

22. As to the Government’s assertion that the applicant had failed to exhaust domestic remedies available to her, the Court reiterates that under Article 35 § 1 of the Convention an applicant should normally have recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112).

23. In the present case, the Court notes that the applicant made submissions relating to her complaints under Article 5 of the Convention in the context of her individual application to the Constitutional Court. The Constitutional Court examined the merits of these complaints and declared them inadmissible as manifestly ill-founded in its decision of 15 February 2017 (see paragraphs 11-13 above).

The Court considers that, in view of the ranking and authority of the Constitutional Court in the Turkish judicial system, and in view of the

conclusion reached by such a high court about those complaints, an action for a full remedy had, and still has, no chance of succeeding (see, *Akgün v. Turkey*, no. 19699/18, §§ 115-116, 20 July 2021). Consequently, the Court considers that the applicant was not obliged to exhaust this remedy.

24. In the light of the foregoing, the Court dismisses the Government's plea of non-exhaustion of domestic remedies.

25. As to the Government's plea of inadmissibility on account of a lack of significant disadvantage, the Court notes that, following the entry into force of Protocol No. 15 to the Convention on 1 August 2021, it has considered the rule contained in Article 35 § 3 (b) of the Convention to consist of two criteria: firstly, whether the applicant has suffered a "significant disadvantage"; and secondly, whether respect for human rights compels the Court to examine the case (see *Bartolo v. Malta* (dec.), no. 40761/19, § 22, 7 September 2019).

26. The first question, whether the applicant has suffered any "significant disadvantage", represents the main element. Inspired by the general principle *de minimis non curat praetor*, this first criterion of the rule rests on the premise that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see, among other authorities, *Biržietis v. Lithuania*, no. 49304/09, § 36, 14 June 2016). In other words, the absence of any "significant disadvantage" can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. However, the applicant's subjective perception cannot alone suffice to conclude that he or she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see *C.P. v. the United Kingdom* (dec.), no. 300/11, § 42, 6 September 2016, with further references).

27. Turning to the facts of the present cases, the Court takes into account the fact that the present case concerns a matter of principle for the applicant, namely her right under Article 5 § 1 of the Convention not to be deprived of her liberty. The Court has reiterated on many occasions the importance of personal liberty in a democratic society (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 120, ECHR 2012; *Storck v. Germany*, no. 61603/00, § 102, ECHR 2005-V; and *Hebat Aslan and Firas Aslan v. Turkey*, no. 15048/09, §§ 74-82, 28 October 2014).

28. Under these circumstances, the Court considers that the applicant suffered a disadvantage which cannot be considered insignificant. Accordingly, the Court dismisses the Government's objection.

29. The Court notes that the application 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

1. The parties' submissions

30. The applicant maintained that her detention at the police station was arbitrary as the administrative fine imposed on her and the UYAP inquiry could have been dealt with at the scene of the incident. She asserts that she was taken to the police station only because she was a transgender person. In support of her allegations and in an aim to demonstrate that transgender people are regularly discriminated against in Türkiye, she argued that more than thirty people were arrested in Istanbul during the 2017 LGBT pride parade and that the Ankara governorate banned an LGBT film festival in the same year.

31. The Government argued that the requirements of Article 5 § 1 of the Convention were met in the present case. They argued that the applicant's detention consisted of a short waiting period for the completion of routine official procedures and that the applicant was not held in a detention cell during this period. They submitted that the police officers took the applicant to the police station to stop her endangering the traffic. They further submitted that the police have a duty to prevent, terminate and prohibit behaviours that breach the rules of public morality. They also contended that the applicant's detention complied with subparagraph (b) of Article 5 § 1 of the Convention as she was released immediately after the completion of the official procedures.

32. In their observations, the Government referred to several judgments and decisions of the Court. First, they maintained that in the case of *Başbakkal Kara v. Turkey* ((dec.), no. 49752/07, 17 October 2017), the Court considered that the detention of the applicant at the police station for approximately two hours complied with the provisions of Article 5 § 1 (b) of the Convention, as she had failed to cooperate with the police when she was asked to submit her identity during a demonstration. They also mentioned that, in the case of *Ostendorf v. Germany* (no. 15598/08, 7 March 2013), the Court held that the detention of the applicant at the police station for four hours to prevent him from organising an altercation between hooligans before a football game fell within the scope of Article 5 § 1 of the Convention. The Government also noted that in its judgment in the said case, the Court emphasised that the applicant did not comply with police orders to stay with the group being escorted to the football stadium by the police.

33. As to the applicant's allegations that she had been discriminated against because of her sexual orientation, the Government asserted that the applicant could not demonstrate that she was subjected to different treatment from others. They emphasised that the applicant's sexual orientation did not

play a role in the administrative fine imposed on her or in her detention at the police station.

2. *Third-party observations*

34. The third parties, Transgender Europe, ILGA-Europe and ICRSE, referred to studies and reports by several human rights and international organisations and submitted that a considerable number of transgender sex workers in Türkiye experience physical violence and verbal assault from the police. They added that, as street prostitution is illegal in Türkiye, transgender sex workers are regularly subjected to fines, detention, extortion, and brutality by the police. They also noted the difficulties of proving police profiling suffered by transgender sex workers as, in many cases, the arrest of transgender sex workers was not correctly recorded in police registers. They maintained that the contextual evidence they submitted in their observations could shift the burden of proof to the Government to justify that Article 14 was not violated in the present case.

3. *The Court's assessment*

(a) **Article 5 § 1**

35. The Court notes, firstly, that the length of time during which the applicant was held at the police station did not exceed two hours. It therefore considers that the first issue to be determined is whether the applicant was “deprived of his liberty” within the meaning of Article 5 of the Convention.

36. The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting-point must be the existing situation of the individual concerned and account must be taken of a whole range of factors arising in the particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of and a restriction upon liberty is merely one of degree or intensity and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task, in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the evaluation upon which the applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, §§ 92 and 93, and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX). Article 5 of the Convention may apply to a deprivation of liberty of even of a very short length (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010-... (extracts), where the applicants were stopped for a search which did not exceed 30 minutes; see also *X. v. Austria*, no. 8278/78, Commission decision of 3 December 1979; and *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008).

37. Turning to the circumstances of the present case, the Court notes that the Government did not contest the applicability of Article 5 to the applicant's situation. The applicant was taken to the police station against her will and she was not free to leave the premises without the authorisation of the police officers. The Court considers that there was an element of coercion which, notwithstanding the short duration of the detention, was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Gillan and Quinton*, cited above, § 57, and *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008). In these circumstances the Court finds that the applicant was deprived of her liberty within the meaning of Article 5 § 1.

38. The Court must next ascertain whether the applicant's deprivation of liberty complied with the requirements of Article 5 § 1. It reiterates in this connection that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see, among many others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, Reports of Judgments and Decisions 1997-IV).

39. The Court notes that the applicant's deprivation of liberty clearly did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 of Article 5. The Court will therefore examine if the applicant's deprivation of liberty fell under subparagraphs (b) or (c).

40. The Court notes that, in their observations, the Government asserted that the detention of the applicant was justified in respect of Article 5 § 1 (b) of the Convention (see paragraph 17 above). They maintained that according to Section 11 of Law no. 2559, the police officers had the duty to put an end to the applicant's behaviour that was endangering traffic safety. They also stated that the applicant's detention had ended immediately after the completion of the official procedures at the police station.

41. The Court points out that detention is authorised under the second limb of sub-paragraph (b) of Article 5 § 1 to "secure the fulfilment of any obligation prescribed by law". It concerns cases where the law permits the detention of a person to compel him or her to fulfil a real and specific obligation already incumbent on him or her, and which he or she has until then failed to satisfy (see *Epplé v. Germany*, no. 77909/01, § 37, 24 March 2005). The arrest and detention must be for the purpose of securing the fulfilment of the obligation and not punitive in character (see *Gatt v. Malta*, no. 28221/08, § 46, ECHR 2010). As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist (see *Vasileva v. Denmark*, no. 52792/99, § 36, 25 September 2003, and *Epplé*, cited above, § 37).

42. The Court observes that, according to the police report, the police officers had taken the applicant to the police station in order to ascertain on UYAP whether she was among those who were wanted by the police and to

issue her with an administrative fine for disrupting traffic. However, the Court notes that the parties do not disagree that, in practice, UYAP verifications and the issuance of administrative fines are normally performed at the place of the incident without taking the person concerned to the police station. Besides, the Government have not argued that this was impossible in the circumstances of the case and no obstacles to conducting a UYAP verification and issuing the administrative fine at the place of incident can be discerned from the documents in the case file or from any domestic decision.

43. The Court notes that the case file does not contain any information showing that the police officers had asked the applicant to stop disrupting the traffic before taking her to the police station. Moreover, the case file does not reveal that taking the applicant to the police station was the only possible way of preventing her from disrupting the traffic.

44. In addition to the foregoing, the Court also notes that neither the police reports nor the decision of the Magistrates' Court indicates that the applicant had refused to give information about her identity or to cooperate with the police officers (see paragraph 18 above). On this specific point the present case differs from the Court's case-law cited by the Government (see paragraph 32 above). In *Başbakkal Kara* and *Ostendorf* (both cited above), the applicants had refused either to cooperate with the police or to obey their orders. In the first case, the applicant had participated in a demonstration and refused to show her identification documents to the police. In the latter case, the applicant, a football supporter, tried to evade police surveillance. However, before his arrest he had been ordered to stay with the group of football supporters with whom he had travelled and was made aware of the fact that the police intended to avert altercations amongst hooligans and that he was under a specific obligation to refrain from arranging and/or participating in such altercations (§§ 95-96).

45. In the light of the circumstances of the present case, the Court disagrees with the Government's assertion that the applicant was arrested in order to "secure the fulfilment of an obligation prescribed by law". It follows that taking the applicant to the police station was not justified under the second limb of Article 5 § 1 (b).

46. It thus remains to be determined whether the applicant's deprivation of liberty fell within the ambit of sub-paragraph (c). As already noted above, the applicant was taken to the police station for a UYAP verification and notification of an administrative fine for disrupting traffic. The Government have not sought to argue that disruption of traffic is a criminal offence or that the applicant had committed or was about to commit any other criminal act. The Court also notes that in the present case no criminal proceedings had been initiated against the applicant, nor had the public prosecutor been informed about the incident (compare *Şengül v. Turkey* ((dec.), no. 59557/08, 4 December 2018).

47. In the light of the foregoing, the Court considers that the applicant's detention for preventive purposes was not justified under any sub-paragraphs of Article 5 § 1.

48. There has accordingly been a violation of Article 5 § 1 of the Convention.

(b) Article 14

49. The Court reiterates that Article 14 of the Convention affords protection against discrimination, that is, treating persons in relevantly similar situations differently without an objective and reasonable justification (*Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV) – “direct discrimination”.

50. A difference in treatment may also take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group. Such a situation may amount to “indirect discrimination”, which does not necessarily require a discriminatory intent (see *Biao v. Denmark* [GC], no. 38590/10, §§ 91 and 103, 24 May 2016).

51. The Court has repeatedly stated that, when examining the cases before it in terms of evidence, it usually applies the principle *affirmanti incumbit probatio* (the applicant has to prove his or her allegation). It is only once an applicant has shown a difference in treatment that the burden of proof shifts to the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV). According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention rights at stake (see *D.H. and Others*, cited above, § 178).

52. In the present case, the applicant argues that she was taken to the police station while the police officers could have accomplished the necessary official procedures at the scene of the incident. She maintains that she was taken to the police station because of her sexual identity.

53. While understanding the applicant's distress at her detention at the police station without an adequate legal basis, the Court considers that, this cannot be taken as an indication *per se* of any discriminative behaviour on account of the national authorities. On the other hand, the fact that the official documents drawn up by the police officers and the decision of the Magistrates' Court do not contain any statement indicating the presence of any discriminatory motives which may be attributed to the national authorities, is not sufficient to consider the applicant's complaint as ill founded.

54. The Court recalls that the applicant is required to produce *prima facie* evidence that the impugned measure had a discriminatory intent or effect (see, for instance, *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 45, ECHR 2012). It notes that the applicant's complaint was also accompanied with some information aimed at proving that transgender people are regularly discriminated against by the Turkish national authorities (see paragraph 30 above). As the Court has already held, such information needs to appear to be reliable and significant on critical examination in order to be considered sufficient to constitute the *prima facie* evidence the applicant is required to produce (*D.H. and Others*, cited above, § 188). It is true that a number of organisations, including intergovernmental bodies, indicated that transgender people were regularly subjected to fines and detention in Türkiye (see paragraph 34 above). However, although the Court is conscious of the fact that the applicants may have difficulty in proving discriminatory treatment in certain circumstances (*ibidem*, § 186), the Court observes that in the present case, the applicant has not succeeded in showing any surrounding circumstances which could suggest that the police had taken her to the police station because of her sexual identity, or which could give rise to the presumption required to reverse the burden of proof at the domestic level as to the existence of any discriminative motivation. The Court therefore sees no reason to depart from the Constitutional Court's conclusion that the applicant failed to present information or findings to substantiate her allegation of discriminatory treatment (see paragraph 12 above).

55. The Court also finds it necessary to note that the applicant did not complain before the Constitutional Court and in her application to the Court that the domestic authorities had failed to make an effective investigation into her allegations under Article 14 of the Convention. It also notes that the applicant did not bring a civil or administrative action nor a criminal complaint against the police officers who had taken her to the police station. Before the domestic authorities, she only requested the annulment of the administrative fine obviously without making use of any other legal action. Besides, the applicant does not argue that such legal actions were bound to fail. Nor does she claim that there were any obstacles to her using them. In these circumstances, the Court is unable to make an examination as to whether the domestic authorities carried out an effective investigation in this regard (compare to *Basu v. Germany*, no. 215/19, §§ 31-39, 18 October 2022^[1] where the Court found a violation of Article 14 of the Convention taken in conjunction with Article 8, considering that the authorities had failed to investigate sufficiently the applicant's allegations of racial profiling; see also *Muhammad v. Spain*, no. 34085/17, §§ 63-76, 18 October 2022^[2]).

^[1] Judgment not yet final.

^[2] Judgment not yet final.

56. In sum, having assessed all the relevant elements, the Court does not consider that it has been established that the applicant's sexual identity played a role in her taking to the police station. It concludes that the applicant failed to demonstrate that she had suffered a difference in treatment on the grounds of her sexual identity.

57. It follows that there has been no violation of Article 14 of the Convention, read in conjunction with Article 5.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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.”

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 14, in conjunction with Article 5 of the Convention.

Done in English, and notified in writing on 7 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President