CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF SEVTAP VEZNEDAROĞLU v. TURKEY

(Application no. 32357/96)

JUDGMENT

STRASBOURG

11 April 2000

FINAL

18/10/2000

In the case of Sevtap Veznedaroğlu v. Turkey,

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

Mr C.L. ROZAKIS, *President,*
Mr M. FISCHBACH,
Mr G. BONELLO,
Mr P. LORENZEN,
Mr A.B. BAKA,
Mr E. LEVITS, *Judges,*
Mr F. GÖLCÜKLÜ, *ad hoc Judge*,
and Mr E. FRIBERGH, *Section Registrar,*

Having deliberated in private on 30 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 32357/96) against Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mrs Sevtap Veznedaroğlu ("the applicant"), on 6 April 1996.

2. The applicant was represented by Mr Sezgin Tanrıkulu, a lawyer practising in Diyarbakır (Turkey). The Turkish Government ("the Government") were represented by their Agent, Mr Alev Kılıç, Ambassador Extraordinary and Plenipotentiary Permanent Representative of Turkey to the Council of Europe.

3. The applicant alleged that she had been tortured while in police custody in violation of Article 3 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 31 August 1999, the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The facts of the case as submitted by the applicant are summarised below. The Government dispute the applicant's account.

9. The applicant was at the relevant time a research student in public law at Diyarbakır University and married to a lawyer who had been the provincial president of the Diyarbakır Human Rights Association in 1990. According to the applicant she was constantly followed by the police on account of her husband's position.

10. On 4 July 1994, at about 3 p.m., the applicant was arrested by 8 policemen at her home on suspicion of membership of the Kurdistan Workers Party ("PKK"), an illegal organisation.

11. The applicant was taken to the forensic doctor to be examined. Following the doctor's examination she was blindfolded and taken to an unknown destination where she was placed in a cell. After a certain period of time, she was again blindfolded and taken to another room to be interrogated.

12. The applicant was interrogated by approximately 15 policemen and accused of forming links with and of working for the PKK abroad. She was then undressed and hung by her arms. She was given electric shocks to her mouth and sexual organs. After half an hour she was taken down as she had fainted. The interrogators, while threatening her with death and rape, told her not to work on human rights matters. She was then taken to her cell. The next day she was again tortured and threatened with death and rape. The torture continued for four days. During the first two days of her custody the applicant was not given anything to eat. Thereafter she was only given a piece of bread and a few olives.

13. During her detention the applicant was requested to sign some documents. She was told that she would be tortured and raped if she did not agree to sign them. The applicant signed the documents. In the documents, by way of explanation for the marks of torture on her body, it was stated that the applicant had fallen while indicating a place used by the PKK. The policemen applied cream to the applicant's injuries.

14. On 13 July 1994 the police officers brought her to the forensic doctor who drew up a report which stated: "Upon the examination of Sevtap Veznedaroğlu, violet-coloured bruises were identified on the left upper arm 1 by 1 cm and on the right tibia 3 by 1 cm".

15. On 15 July 1994 the applicant, accompanied by police officers, was taken to the Diyarbakır State Hospital where she was examined by a forensic doctor. In his report dated 15 July 1994 the doctor noted the presence of the same bruising on the applicant's arm and leg as indicated in the earlier report of 13 July 1994. The report concluded that the applicant's health was not at risk and that she was fit to work.

16. On 15 July 1994 the applicant was brought before the public prosecutor at the Diyarbakır State Security Court. Her file contained the medical reports dated 4, 13 and 15 July 1994. The applicant maintained before the public prosecutor that she had signed the confession statement under pressure and as a result of being tortured while in detention. The public prosecutor recorded in the file that the applicant did not acknowledge the statement which she gave to the police.

17. On the same day the applicant appeared before a substitute judge attached to the Diyarbakır State Security Court. The applicant repeated to the judge that she did not acknowledge the statement taken from her by the police "since she had been tortured and held under duress for many days ... and that the police had held her wrist and forced her to sign the police statement". The applicant's statement was recorded in the minutes of the hearing before the judge. The judge directed that the applicant be released from custody. The public prosecutor for his part ordered that the applicant stand trial before the Diyarbakır State Security Court on a charge of being a member of the PKK.

18. On 18 July 1994 the applicant was given a certificate by the Medical Faculty Hospital of Dicle University indicating that she was unable to work for 20 days. According to the medical report the applicant was suffering from bronchopneumonia.

19. On 30 October 1995 the applicant was acquitted by the Diyarbakır State Security Court on the ground of lack of evidence. The applicant was not in court on that day. In its ruling the court noted as follows the declarations made by the applicant during a court hearing held on 13 October 1994 and which was recorded in the minutes.

> "Although the accused admitted to the offence with which she was charged in her statements to the police, at a later stage during the proceedings before the judicial organs she claimed that she had made them under duress and even torture and had signed them without having read them."

II. RELEVANT DOMESTIC LAW

20. The Turkish Criminal Code makes it a criminal offence to subject an individual to torture or ill-treatment (Articles 243 and 245 respectively, the latter provision applying to allegations made against civil servants).

21. Complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate criminal offences reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

22. If the alleged author of a criminal offence is a State official or civil servant, permission to prosecute must be obtained from the local administrative council (the Executive Committee of the Provincial Assembly). The decision of a local council may be appealed to the Council of State; a refusal to prosecute is subject to an automatic appeal of this kind.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant alleged that she had been tortured in violation of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

24. The applicant maintained that she was held in custody between 4 and 15 July 1994 and tortured and ill-treated during that time. In her submission her statements to the authorities to this effect coupled with the medical certificate drawn up by the Medical Faculty of Dicle University bear out the truth of her allegations.

25. The Government repudiated the applicant's claim. They stressed that following the communication of the applicant's complaint an investigation was conducted into the authenticity of the medical certificate allegedly drawn up by the Dicle University Medical Faculty granting her 20 days' sick leave. That investigation revealed that there was good reason to suggest that the figure "20" had been falsified, all the more so since it was difficult to understand why such a long period of sick leave would be granted on the strength of two bruises. Significantly, the applicant had been authorised to take sick leave on the grounds that she was suffering from pneumonia. Furthermore, the investigation also established that there was no record in

the hospital of the certificate having been issued to the applicant. The Government asserted that it must be concluded that the medical certificate, the only concrete evidence submitted by the applicant, was falsified and should therefore be discounted.

26. For the Government, the applicant only made a bare allegation about having been tortured. She failed to substantiate the complaint in any way and there was no evidence whatsoever which confirmed that she had been given electric shocks and hung up by the arms as alleged. In the absence of any corroborating evidence, the public prosecutor cannot be faulted for not investigating the complaint.

27. The applicant disputed the Government's accusation that the medical certificate had been falsified. She referred to a letter dated 12 January 1998 in which the President of the Department of Internal Medicine informed the Head of the Dicle University Medical Faculty that the applicant had been examined on 18 July 1994 standing up and for that reason no medical record had been kept of her examination. A copy of that letter was sent to the Diyarbakır State Security Court and to the responsible Ministry on their request following the communication of her application to the respondent Government.

28. The Court recalls that Article 3 of the Convention enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 62).

29. The Court also recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517–18, §§ 52 and 53).

30. The Court notes that the Government do not deny that the applicant sustained bruising to her person during her time in custody. However, they point to the minor nature of these injuries and stress that they are at variance with the severity of the treatment allegedly suffered. The Court for its part finds it impossible to establish on the basis of the evidence before it whether

or not the applicant's injuries were caused by the police or whether she was tortured to the extent claimed. It is not persuaded either that the hearing of witnesses by the Court would clarify the facts of the case or make it possible to conclude, beyond reasonable doubt (see the Aydın v. Turkey judgment of 25 September 1997, *Reports* 1997-VI, p. 1189, § 73), that the applicant's allegations are substantiated.

31. However it would observe at the same time that the difficulty in determining whether there was a plausible explanation for the bruising found on her body or whether there was any substance to her allegations on the nature of the treatment she allegedly endured rests with the failure of the authorities to investigate her complaints.

32. In this latter connection the Court reiterates that, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in … [the] Convention", requires by implication that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see the Assenov v. Bulgaria judgment of 28 September 1998, *Reports* 1998-VII, p. 3290 § 102). If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (*ibid*.)

33. The Court notes that, on 15 July 1994, the applicant alleged before the public prosecutor and the substitute judge attached to the Diyarbakır State Security Court that she had been tortured (see paragraphs 16 and 17 above). The file presented to the public prosecutor contained the results of the medical examinations carried out on the applicant on 4, 13 and 15 July 1994. The medical reports dated 13 and 15 July 1994 indicated fresh bruising to the applicant's arm and leg. The substitute judge noted in the minutes of the hearing the applicant's statement that she had been tortured in custody.

34. In the opinion of the Court the applicant's insistence on her complaint of torture taken with the medical evidence in the file should have been sufficient to alert the public prosecutor to the need to investigate the substance of the complaint, all the more so since she had been held in custody between 4 July 1994 and 15 July 1994. However, no steps were taken either to obtain further details from the applicant or to question the police officers at her place of detention about her allegations. The substitute judge also dismissed her allegations without further enquiry (see paragraph 16 above).

35. The Court considers that in the circumstances the applicant had laid the basis of an arguable claim that she had been tortured. It is to be noted also that the applicant persisted in her allegations right up to the stage of trial (see paragraph 19 above). The inertia displayed by the authorities in response to her allegations was inconsistent with the procedural obligation which devolves on them under Article 3 of the Convention. In consequence, the Court finds that there has been a violation of that Article on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of torture.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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."

A. Damages

37. The applicant claimed the sum of USD 100,000 by way of compensation for non-pecuniary damage, having regard to the suffering she endured during a lengthy period of custody, the resultant psychological problems and the damage to her academic career and standing caused by the criminal charges brought against her.

38. The Government did not make any submissions on this claim.

39. The Court observes that it has found the authorities of the respondent State to be in breach of Article 3 on account of their failure to investigate the applicant's allegations. It has reached no conclusion on the substance of that complaint. The Court considers that a finding of a breach of Article 3 under its procedural head cannot be said in the circumstances to constitute in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. In its view, the applicant must be taken to have suffered some degree of frustration and anguish in regard to the lack of concern displayed by the authorities with respect to her complaint. Making an assessment on an equitable basis, it awards the applicant the sum of USD 2,000.

B. Costs and expenses

40. The applicant claimed the sum of TRL 221,000,000 to compensate her for the expenses incurred in bringing her case before the Convention institutions. She stated that this amount comprised post, fax and translation

costs. As to her legal fees, the applicant claimed that her lawyer had worked seventy hours on her case. Basing herself on the minimum rate scales of the Istanbul Bar she assessed his fees at USD 7,000.

41. The Government did not make any submissions on this claim.

42. The Court notes that the applicant has not provided any proof of the costs and expenses claimed to enable it to determine whether they have been actually and necessarily incurred. As to legal fees the Court considers the claim to be excessive. Deciding on an equitable basis, it awards the applicant the sum of USD 1,000 together with any VAT that may be payable.

C. Default interest

43. The Court considers it appropriate to provide for payment of default interest at the annual rate of 6% since the sums have been awarded in US dollars.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of torture;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums to be converted into Turkish liras at the rate applicable at the date of payment:
      (i) 2,000 (two thousand) US dollars as compensation for non-pecuniary damage;
      (ii) 1,000 (one thousand) US dollars for legal fees together with any value-added tax that may be chargeable;
   (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 11 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH Registrar	Christos ROZAKIS President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Bonello is annexed to this judgment.

C. R.
E. F.

PARTLY DISSENTING OPINION OF MR BONELLO

1. The Court has unanimously found a violation of Article 3 on account of the failure by the Turkish authorities to investigate the applicant's complaint of torture, but has held that it is "impossible to establish on the basis of the evidence before it, whether or not the applicant's injuries were caused by the police or whether she was tortured to the extent claimed".[1] In other words, the Court dismissed the applicant's claim and was not satisfied, on the 'evidence' that she had suffered torture or inhuman treatment. I disagree.

2. Before the applicant's interrogation by policemen in an undisclosed station, she was examined by a forensic doctor, and there is no allegation that her body showed any trace of trauma.[2]

3. The applicant claims that, during interrogation, she was undressed, hung up by her arms, given electric shocks in her mouth and genitals, threatened with death and rape. This routine was repeated on the following three days. During the first two days she was left without any food at all.[3]

4. The applicant further alleged that, under threat of death and rape, she signed a 'confession' admitting membership of an outlawed organisation, the PKK. The statement which the applicant signed also included a disclaimer to the effect that the bruises on her body had been caused by a fall.[4]

5. Two doctors examined the applicant separately over a week after the interrogation ended, but when still in police custody; they found violet coloured bruises on her upper arm and on her right tibia.[5]

6. The applicant complained both to the public prosecutor and to the State Security Court, before being released from detention, that she had been tortured by the police and that the 'confession' had been extracted under torture.[6]

7. The applicant was tried on a charge of being a member of the PKK. Despite her signed confession, the State Security Court acquitted her on the ground of lack of evidence, having noted the applicant's claim that the confession had been obtained by duress and torture.[7]

8. I believe that the majority, concluding that the applicant had not proved that she had been tortured and that the injuries to her person were caused by the police, disregarded several basic and vital elements of the rules of evidence that should inspire any court.

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[1] Para 30.
[2] Para 11.
[3] Para 12.
[4] Para 13.
[5] Para 14.
[6] Paras 16 and 17.
[7] Para 19.

9. Firstly, this Court has repeatedly held that: "Where an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention".[1] This plainly posits that, in the presence of injuries which were not there at the time of arrest, it is *not* for the applicant to substantiate her allegations of torture or inhuman treatment. The onus of proof shifts to the State to provide a 'plausible explanation' of those injuries. In the present case the State has done nothing by way of explanation. The shift in the onus of proof is the first evidential norm neglected in the judgment.

10. Secondly, a cardinal requirement relating to the standard of proof was similarly discounted. In the present case the Court did not expressly assert that the applicant had an obligation to prove her allegations of torture "beyond reasonable doubt". But *that* is the standard of proof hitherto ordained by the Court in allegations of torture and inhuman treatment; it is evident that, in the wake of this evidentiary imperative, the Court expected the applicant to prove her allegations "beyond reasonable doubt".[2]

11. Independently of the failure by the majority to apply the rule that it was incumbent on the State to discharge the burden of evidence (v. § 9), I find the standard of proof - beyond reasonable doubt - required by the Court in torture cases to be legally untenable and, in practice, unachievable.

12. Proof "beyond reasonable doubt" reflects a maximum standard relevant and desirable to establish *criminal* culpability. No person shall be judicially deprived of liberty, or otherwise penally censured, unless his guilt is manifest "beyond reasonable doubt". I subscribe to that stringent standard without hesitation. But in other fields of judicial enquiry, the standard of proof should be proportionate to the aim which the search for truth pursues: the highest degree of certainty, in criminal matters; a workable degree of probability in others.

13. Confronted by conflicting versions, the Court is under an obligation to establish (1) on whom the law places the burden of proof, (2) whether any legal presumptions militate in favour of one of the opposing accounts, and (3) "on a balance of probabilities", which of the conflicting versions appears to be more plausible and credible. Proof "beyond reasonable doubt" can, in my view, only claim a spurious standing in 'civil' litigation, like the adversarial proceedings before this Court. In fact, to the best of my

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[1] *Selmouni v. France*, 28 July, 1999 § 87 (to be published); *Ribitsch v. Austria*, 4 December 1995, A 336, § 34; *Tomasi v. France*, 27 August 1992, A 241-A, §§ 108-111.

[2] First enunciated in *Ireland v. U.K.*, 18 January 1978, A 25 § 162, followed up in *Labita v. Italy*, 6 April 2000, § 121 (to be published). For the inadequacy of the 'beyond reasonable doubt' standard of proof in Article 3 cases, *vide* Loukis. G. Loucaides, *Essays on the Developing Law of Human Rights*, Martinus Nijhoff, p. 158.

knowledge, the Court is the only tribunal in Europe that requires proof "beyond reasonable doubt" in non-criminal matters.

14. Expecting those who claim to be victims of torture to prove their allegations "beyond reasonable doubt" places on them a burden that is as impossible to meet as it is unfair to request. Independent observers are not, to my knowledge, usually invited to witness the rack, nor is a transcript of proceedings in triplicate handed over at the end of each session of torture; its victims cower alone in oppressive and painful solitude, while the team of interrogators has almost unlimited means at its disposal to deny the happening of, or their participation in, the gruesome pageant. The solitary victim's complaint is almost invariably confronted with the negation "corroborated" by many.

15. For the Court to expect from torture victims any 'hard' evidence, beyond the eloquence of their injuries, is to reward and invigorate the 'inequality of arms' inherent in most torture scenarios.

16. Thirdly, the Court has, in my view, side-tracked the key question of credibility. I ask if, relying on its memory in handling so many cases of torture, the Court has compelling reasons to award more faith and credit to security forces which have an unenviable track-record to live down, rather than to those who claim to be their victims. No allegation has been made against the personal integrity and uprightness of the applicant, other than the damning circumstance that she was the wife of a human rights activist. The test, in the event, should have been: on a balance of credibility, who is likelier to have provided the court with a more reliable version of the incidents? The security forces?

17. Fourthly, it is difficult to envisage what "proof" the Court expected from the applicant in order to substantiate her claim that she was repeatedly tortured by being forcibly undressed, suspended, threatened with death and rape and deprived of food. These amusements are particularly ungenerous with those tangible signs dear to forensic experts. So, again, the only reasonable test ought to have been: on a balance of credibility, which of the two parties rests more convincingly on the side of truth?

18. Personally, I would have little hesitation with the answer. The majority seem to have thought otherwise. And its conclusion is unassailable - if you start your assessment of credibility from the premise that the applicant, (whose personal integrity and honour are not in dispute), is neither to be trusted nor believed, while the security forces, repeatedly found guilty by this Court of killings, torture and inhuman behaviour, are.

19. Finally, the Court has unanimously affirmed that the respondent State breached Article 3 in that it failed to investigate the applicant's complaints of torture. In other words, the Court has held the respondent State guilty of defaulting in its obligation to unearth evidence by means of a determined fact-finding exercise. But then, after having established that the dearth of evidence is the defendant's fault, the Court visited the

consequences of this failure on the applicant. She has been penalised for not coming up with evidence that the Convention *obliges* the State to procure. Hard as I try, I cannot see this as a consequent technique of decision-making.