



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

SECOND SECTION

CASE OF MUHAMMET ŞAHİN v. TURKEY

(Application no. 7928/02)

JUDGMENT

STRASBOURG

25 September 2007

FINAL

25/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Muhammet Şahin v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI, *judges*,

and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 7928/02) 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 Muhammet Şahin (“the applicant”), on 19 October 2001.

2. The applicant was represented by Mr A. Tatlıpınar, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 21 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1975 and lives in Turkey.

5. The applicant was wanted by the police on suspicion of membership of the illegal organisation, the DHKP-C (*Devrimci Halk Kurtuluş Partisi-Cephesi*; the Revolutionary People's Liberation Party-Front).

6. According to the applicant, on 2 August 1996 he was taken into police custody by plain clothes police officers, who kicked and punched him during the arrest. They then handcuffed the applicant, put him in a taxi and

took him to the headquarters of the Anti-Terrorism Branch of the Istanbul Security Directorate in the Aksaray District.

7. The arrest report, dated 2 August 1996 and signed by the applicant, stated, that the police had received information that the applicant would meet with another member of the DHKP-C at an address in the Kadıköy District of Istanbul. Four police officers from the Anti-Terrorism Branch waited for him at that address. When they saw the applicant, they identified themselves as police officers. The applicant tried to run away and the officers had to use force to arrest him.

8. At the headquarters of the Anti-Terrorism Branch of the Istanbul Security Directorate, the applicant was allegedly subjected to ill-treatment. In particular, he was allegedly stripped naked, blindfolded and subjected to Palestinian hanging and *falaka*. Electric cables were attached to his sexual organs and his toes, and electric shocks were administered to him. His testicles were squeezed and a firearm was inserted into his anus. The applicant was also hosed down with cold water.

9. On 12 August 1996 the applicant was examined by a doctor who noted the following marks on his body: a completely-healed 5 cm abrasion on the side of the left wrist, three grazes of 1 x 4 - 5 cm on the right wrist, a completely-healed 5 cm long graze on the left shoulder, two abrasions of 1 cm in diameter under the right knee. The doctor further opined that the injuries rendered the applicant unfit for work for two days.

10. On 15 August 1996 the applicant was taken before the public prosecutor at the Istanbul State Security Court. He contended that he had been subjected to ill-treatment during his custody period and that his statements had been taken under duress. The public prosecutor at the Istanbul State Security Court referred the applicant to the Forensic Medicine Institute for a medical examination. The applicant was examined by a forensic medical expert who noted the same marks on the applicant's body as the doctor who had examined him on 12 August.

11. The Istanbul State Security Court subsequently ordered the applicant's detention on remand.

12. On an unspecified date, the Fatih public prosecutor initiated an investigation into the allegations of ill-treatment of the applicant.

13. On 7 and 25 November 1996, 9 December 1996 and 13 August 1998 the Fatih public prosecutor took statements from four police officers who were on duty at the headquarters of the Anti-Terrorism Branch of the Istanbul Security Directorate at the relevant time and were involved in taking the applicant's police statement.

14. On 31 December 1998 the Fatih public prosecutor sent a report to the Istanbul public prosecutor and summarised the facts and complaints concerning the investigation. The Fatih public prosecutor requested the Istanbul public prosecutor to file a bill of indictment with the Istanbul

Assize Court, charging the four police officers with inflicting torture under Article 243 § 1 of the Criminal Code.

15. On 14 January 1999 the Istanbul public prosecutor did so.

16. Between 25 January 1999 and 16 February 2000, the Istanbul Assize Court held seven hearings and heard three of the police officers. The fourth police officer and the applicant made statements before the Aydın Assize Court and the Sakarya Assize Court respectively on commission, which were then sent to the Istanbul Assize Court. The applicant maintained before the court that he had been subjected to torture in police custody. The police officers denied the allegations against them.

17. On 16 February 2000 the Istanbul Assize Court acquitted the accused police officers. In its judgment, the first-instance court noted that the applicant could not identify the accused police officers and that therefore, there was insufficient evidence to convict them. The court further considered that the injuries on the applicant's body could have occurred during the arrest.

18. On 6 August 2001 the judgment of 16 February 2000 was served on the applicant, who was detained in Kırklareli E-type prison.

19. On 7 August 2001 the applicant filed an appeal against the judgment of the Istanbul Assize Court.

20. On 8 October 2001 the first-instance court dismissed the applicant's appeal, holding that the applicant could not lodge an appeal since he had not intervened as a civil party to the criminal proceedings.

21. The judgment of the Istanbul Assize Court became final as neither the public prosecutor nor the accused appealed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicant complained that he had been subjected to ill-treatment during his arrest and his police custody. In respect of his complaints, the applicant invoked Article 3 of the Convention, which reads as follows:

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

23. The Government contested these arguments.

A. The Government's preliminary objection

24. The Government asked the Court to dismiss the application for failure to comply with the requirement of exhaustion of domestic remedies

under Article 35 § 1 of the Convention. They argued that the applicant could have sought reparation for the harm which he had allegedly suffered by instituting an action in the administrative courts.

25. The Court reiterates that it has already examined and rejected the Government's preliminary objection in similar cases (see, in particular, *Karayığit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application.

26. Consequently, it rejects the Government's preliminary objection.

B. Alleged ill-treatment of the applicant

1. During his police custody

27. The applicant maintained that he had been subjected to various forms of ill-treatment during his police custody at the Istanbul Security Directorate Building. In this respect, he maintained that he had been stripped naked, punched, subjected to *falaka*, electric shocks and Palestinian hanging, and hosed with pressurised water. He also stated that a firearm had been inserted into his anus and his testicles had been squeezed.

28. The Government denied these allegations.

29. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and 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 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

30. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (*Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII, extracts; *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 (*Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

31. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under

Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32; *Avşar*, cited above, § 283).

32. Turning to the facts of the present case, the Court notes that any ill-treatment inflicted in the way alleged by the applicant would have left marks on his body, in particular, *falaka* and electric shocks. These marks would have been observed by the doctor who had examined him at the end of his police custody (see *Yüksektepe v. Turkey*, no. 62227/00, § 26, 24 October 2006). The Court observes that the medical report dated 12 August 1996 indicated the presence of abrasions and grazes. However these findings are insufficient to substantiate the severe ill-treatment described by the applicant as occurring during his detention in police custody. There is also no material in the case file which would call into question the findings in the medical report dated 12 August 1996 or add probative weight to the applicant's allegations. In particular, there is no indication in the case file that the applicant requested, or had been refused permission, to see another doctor at the end of his police custody.

33. In view of the above, the Court concludes that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to ill-treatment as alleged while he was held in police custody.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. During his arrest

35. The Court considers that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

36. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it adopts the standard of proof “beyond reasonable doubt”, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Labita*, cited above, § 121). The Court has held on many occasions that, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (*Matko v. Slovenia*, no. 43393/98, § 99, 2 November 2006; *Bakbak v. Turkey*, no. 39812/98, § 47, 1 July 2004). It is incumbent on the State to provide a plausible explanation of how the

injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni*, cited above, § 87; *Ribitsch*, cited above, § 34).

37. The Court notes that, in the instant case, the applicant was not medically examined at the beginning of his detention before he was taken into police custody. However the medical certificate dated 12 August 1996, which was taken on the tenth day of his custody, indicated the presence of a completely-healed 5 cm abrasion on the side of the left wrist, three grazes of 1 x 4 - 5 cm on the right wrist, a completely-healed 5 cm graze on the left shoulder and two abrasions of 1 cm in diameter under the right knee. It was further certified that the applicant was unfit for work for two days. Furthermore, the arrest report dated 2 August 1996, which was signed by the applicant, stated that he had tried to run away during his arrest and the officers had used force to catch him. It is also stated in the judgment of the Istanbul Assize Court, dated 16 February 2000, that the injuries on the applicant's body could have occurred during the arrest. The Government did not dispute the medical findings in the report of 12 August 1996, or put forward a different version as to the cause of the injuries.

38. The Court further notes that in his application form the applicant gave a detailed description of the circumstances of his arrest. In its view, the injuries on the applicant's body appear to be consistent with his allegation that he was beaten by four police officers during his arrest. At this point, the Court would like to emphasize that in similar situations, it is crucial to determine whether the injuries had been sustained in the course of the arrest and whether the arresting officers had used excessive force. However, in the present case, it notes with concern that the applicant was not medically examined upon his arrest. Such an examination would have been the appropriate step for the authorities to have taken as, in their observations and in the domestic proceedings, they admitted that the police officers had resorted to force during the arrest. A report could have then clarified the cause and extent of any injuries existing at that time. Furthermore, it is also understood from the incident report that the police officers had received an intelligence report that the applicant would be at that address. As a result, the officers had the opportunity to secure the area to ensure his arrest and it cannot be said that the police officers were called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII).

39. Considering the circumstances of the case as a whole, and in particular, in the absence of a medical examination on the first day of the applicant's arrest, the Court concludes that the applicant's injuries, which are corroborated by a medical report, were the result of treatment for which the State bore responsibility.

40. It follows that there has been a substantive violation of Article 3 of the Convention in this respect.

C. The alleged lack of effective investigation

41. The applicant further maintained, under Article 3, that the authorities had not conducted an adequate investigation into his complaints of ill-treatment.

42. The Government denied the allegations. They stated that the domestic authorities had conducted a serious investigation into the applicant's complaints.

43. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Asenov and Others*, cited above, § 102; *Labita*, cited above, § 131). The minimum standards as to effectiveness defined by the Court's case-law also 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, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

44. In the present case, the Court notes that the applicant raised his allegation of ill-treatment before the national authorities. Subsequently the İstanbul Public Prosecutor initiated criminal proceedings against four police officers who had been involved in taking the applicant's police statement at the Security Directorate. However, it is not persuaded that this investigation was conducted diligently or, in other words, that it was "effective".

45. The Court observes that, during the domestic proceedings, the applicant's statement was taken on commission by the Sakarya Assize Court and thus he was not provided with the opportunity to confront the accused police officers with a view to identifying them. It further observes with concern that the criminal proceedings in question were brought solely against the police officers who had been involved in taking the applicant's statement at the Security Directorate Building. In the Court's view, it is remarkable that, although the İstanbul Assize Court concluded in its judgment that the injuries on the applicant's body could have been caused

during his arrest, at no stage of the domestic proceedings were statements taken from the four officers who had arrested the applicant allegedly by using force. Furthermore, no statement was taken from the doctor who had drawn up the medical report dated 12 August 1996 in order to provide an explanation as to the origin of the injuries observed on the applicant's body.

46. In the light of the above, the Court concludes that the applicant's claim that he was ill-treated was not subject to an effective investigation by the domestic authorities as required by Article 3 of the Convention.

47. There has therefore been a procedural violation of Article 3 in this regard.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

48. In his reply to the Government's observations, the applicant submitted further complaints. He maintained that the length of his police custody constituted a breach of Article 5 § 3. He also complained, under Article 5 § 4, about his inability to challenge the lawfulness of his police custody.

49. 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". 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 United Kingdom* (dec.), no. 48539/99, 28 August 2001).

50. In the present case, the six-month time-limit in respect of the applicant's Article 5 complaints started to run on 15 August 1996 when his period in police custody ended. The Court notes that these complaints were not mentioned in any communication prior to 25 August 2006.

51. 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

52. 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. Damage

53. The applicant claimed 20,000 US Dollars (USD) (approximately 14,800 euros (EUR)) in respect of non-pecuniary damage.

54. The Government contested this claim.

55. Ruling on an equitable basis, the Court awards EUR 5,000 to the applicant in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed USD 6,000 (approximately EUR 4,400) for the costs and expenses incurred before the Court.

57. The Government contested the claims.

58. The Court notes that the applicant submitted a legal fee agreement which referred to the Istanbul Bar Association's scale of fees. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering all heads.

C. Default interest

59. The Court considers it appropriate that the default interest 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 complaints concerning the alleged ill-treatment of the applicant during his arrest and the failure of the authorities to conduct an effective investigation into his allegation of ill-treatment admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of the ill-treatment to which the applicant was subjected during his arrest;
3. *Holds* that there has been a procedural violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegation that he was ill-treated by the police;
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, the following amounts to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 25 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President