



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

SECOND SECTION

CASE OF HASAN DÖNER v. TURKEY

(Application no. 53546/99)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Hasan Döner v. Turkey,

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

M^{me} F. TULKENS, *présidente*,

MM. I. CABRAL BARRETO,

R. TÜRMEEN,

M. UGREKHEDIDZE,

V. ZAGREBELSKY,

M^{me} A. MULARONI,

M. D. POPOVIĆ, *juges*,

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

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 53546/99) 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 Hasan Döner ("the applicant"), on 16 September 1999.

2. The applicant, who had been granted legal aid, was represented by Mr Y. Arslan, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. On 14 March 2005 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 Istanbul.

A. The detention in police custody and the medical certificates concerning the alleged ill-treatment of the applicant

5. On 7 March 1999 around 150-200 people demonstrated in Maraşal Çakmak street. 45 people were arrested, including the applicant, and taken into police custody.

6. According to the arrest protocol drafted by two police officers and signed by the applicant, the police officers received information that a Molotov cocktail had been thrown at a building. When they arrived at the scene of the incident they saw that a fire had been extinguished. The locals told them that two suspects had been chased in the direction of Karaoğlan Street. A few blocks further on, the police found the applicant on the floor being beaten up by a group of people.

7. According to the identification protocol, drawn up the same day at Yenibosna police station, the applicant was apprehended as he was being lynched by a mob. This protocol bears the signature of two police officers, the applicant and another person, Mr H.A. The names of four other people appear on the protocol without their signatures.

8. The applicant refused to give a statement to the police officers who wanted to interrogate him. The applicant's lawyer was present.

9. The applicant alleged that he was ill-treated during the arrest and throughout his detention in police custody. In his letter of 10 November 1999 to the Court, the applicant submitted that he was first apprehended by a group of people who stole his money, beat him up and ill-treated him, and later arrested by police officers who also ill-treated him while he was in custody.

10. On 7 March 1999, at around 9.30 p.m., the applicant was examined by a doctor at a State Hospital. The doctor noted that he had a graze of 2x1 cm on his left elbow, a graze of 3 cm on his right arm and two grazes of 1 cm below his right knee. The doctor further noted that the applicant also had two 5x10 cm ecchymoses on the right side of his scapula (shoulder bone) and multiple grazes and ecchymoses between his scapulas.

11. On 8 March 1999 the applicant was examined by a doctor at the Bakırköy Forensic Medicine Department, who mentioned that the applicant complained of having being beaten and sworn at. The doctor noted that he had a freshly-ecchymosed region with small red spots over an area of 22x20 cm on the right scapula, a bump of 2-3 cm on the head and a 2x3 cm bloody graze below the right knee. He further found that the applicant had an oedema of 3x5 cm on the grazed region of his right elbow and a fresh ecchymosis of 2x4 cm on the grazed region of the left arm. Finally, relying on the medical reports of 7 and 8 March 1999, the doctor concluded that the injuries rendered the applicant unfit for work for seven days.

B. Criminal proceedings against the applicant

12. That same day, 8 March 1999, the applicant appeared before the Bakırköy Magistrates' Court where he denied the accusations against him. In particular, he denied that he had been the victim of an attempted lynching and claimed that suspicious-looking persons had stolen his wallet. His lawyer was present at the hearing. The court ordered his remand in custody.

13. The applicant objected to the court's decision to remand him. In his petition addressed to the Bakırköy Assize Court, the applicant submitted, *inter alia*, that he had been caught by several people who had stolen his wallet. He had been handed over to the police during a demonstration which he had come across while going to his sister's house. He also stated that there had been no direct intervention by the police. The applicant's objection was dismissed by the court on 15 March 1999, having regard to the nature of the offence and the content of the case file.

14. In the meantime, on 9 March 1999, the Bakırköy public prosecutor filed a bill of indictment accusing the applicant of throwing a Molotov cocktail. He requested the applicant's conviction and sentence under Article 264 of the Criminal Code.

15. On 18 March 1999 the Bakırköy Assize Court declared that it lacked competence *ratione materiae* and transferred the case to the Istanbul State Security Court. It decided, at the same time, to prolong the applicant's remand in custody.

16. On 12 April 1999 the Istanbul State Security Court decided that the applicant's detention pending trial should be continued.

17. On 20 May 1999 the applicant applied to the Istanbul State Security Court for release pending trial on the ground that there had been a mistake. In his petition the applicant reiterated that he had been caught by several people who had stolen his wallet during a demonstration, which he had come across while he was shopping for a present for his niece. He stated that there had been no attempted lynching. The court ordered, on 30 June 1999, that the applicant's detention pending trial be continued having regard to the nature of the charge, the state of the evidence and the fact that he had not been heard by the court.

18. The Istanbul State Security Court, noting that the applicant's act, of which he was accused, had no link to an illegal organisation, found that it lacked competence *ratione materiae* on 12 July 1999. It decided, at the same time, that the applicant's remand in custody be continued. The case was transferred to the Court of Cassation to rule on the competent court.

19. On 11 August 1999 the Court of Cassation held that the Bakırköy Assize Court had jurisdiction to try the case and remitted the case to it.

20. On 7 September 1999 the criminal proceedings before the Bakırköy Assize Court commenced. It extended the applicant's remand in custody.

21. On 27 October 1999 the court issued summonses requiring Mr H.Ü., Mr M.D. and Mr I.Ö., the police officers who had prepared the arrest protocol, to give evidence.

22. In the hearing held on 13 December 1999, the applicant submitted that, on the day of the incident, he was walking towards his sister's house when a person ran past him and then someone else twisted his arm, pressed him against a car and stole his wallet. He stated that they later called the police and he was arrested. The applicant stated that he had been beaten at the police station and that the protocols drawn up by the police officers were inaccurate.

23. On 9 February 2000 the court heard one of the police officers, Mr M.D. who stated, in particular, that the applicant had first been caught by some citizens, badly beaten and handed over to the police. He submitted that, since none of the persons who had caught the applicant agreed to testify, the police had been unable to obtain their signatures on the apprehension protocol. The applicant refuted Mr M.D.'s testimony, stating that he had not been the subject of an attempted lynching. He mentioned that he had been hit on the back by police officers in the car. On the same day, the court ordered the applicant's release pending trial.

24. Between 7 April 2000 and 30 October 2002, the Bakırköy Assize Court held six hearings and summoned Mr H.A. and the police officers, Mr H.Ü. and Mr I.Ö., to give evidence.

25. On 30 October 2002 the court abandoned the proposal to hear one of the witnesses, Mr H.A., since he could not be found.

26. On 19 December 2003 the court heard Officer I.Ö., who stated that he did not remember the incident but that the protocol which had been drawn up at the relevant time would contain accurate information.

27. Between 19 December 2003 and 2 February 2005, the Bakırköy Assize Court fixed numerous hearings which were all adjourned, in particular because one of the witnesses, Mr H.Ü., repeatedly failed to appear.

28. By a letter dated 28 June 2007, the applicant informed the Court that his case was still pending before the Bakırköy Assize Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. A description of the relevant domestic law at the material time can be found in *Bati and others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained, without providing any details, that he had been subjected to ill-treatment while he was held in police custody, in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

31. The Government disputed the applicant's allegations. In particular, they noted that the applicant had failed to give any details as regards the alleged ill-treatment and maintained that the injuries noted in the medical reports had been sustained when he was beaten by a crowd of people.

32. The applicant submitted that he had been ill-treated during his arrest and throughout his detention in police custody, as shown by the medical reports issued in his respect. He claimed that the police had made up the whole story about the lynch mob in order to avoid prosecution. He further claimed that, since police officers were rarely prosecuted for ill-treatment, he had been discouraged from making an official complaint.

B. The Court's assessment

33. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrikulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002). To assess this evidence, the Court 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 (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

1. Alleged ill-treatment in police custody

34. The medical report drawn up at the end of the applicant's stay in police custody (8 March 1999) noted a number of injuries which could have been the consequence of acts of ill-treatment (see paragraph 11 above). Apart from a small bump on the head, this medical report was largely identical to that issued on the day of the applicant's arrest (7 March 1999) as regards the location and type of injuries, with a slight worsening in their condition (see paragraph 10 above). Consequently, the Court considers that

the indications noted in the medical report of 8 March 1999 are insufficient to substantiate the applicant's allegations of having been subjected to ill-treatment while in police custody, in particular since the applicant never provided the Court with any details as regards the type or manner of ill-treatment to which he had been allegedly subjected, thereby enabling it to assess whether the findings noted in the second medical report, drawn up after his stay in custody, could confirm it.

35. In conclusion, the material submitted by the applicant is not sufficiently conclusive or convincing to enable the Court to find beyond all reasonable doubt that he was subjected to ill-treatment while he was held in police custody as alleged.

36. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Alleged ill-treatment on arrest

37. The Court recalls that in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is, in principle, an infringement of Article 3 (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38, and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

38. The Court observes that the parties did not dispute that the applicant's numerous injuries, as noted in the medical report of 7 March 1999, were sustained on that date. However, they put forward different versions as to how they were actually sustained (see paragraphs 31 and 32 respectively).

39. The Court finds that the contradictory statements of the applicant, both before the domestic authorities and before the Court, cast doubt on the veracity of his claims and lend credibility to the version put forward by the Government. In this respect, it is also noted that, before the domestic authorities, the only time the applicant mentioned having been ill-treated during arrest was when he challenged Officer M.D.'s version of events on 9 February 2000 (see paragraph 23 above). Prior to that, the applicant, while denying the attempted lynching, never mentioned any excessive force being used by the police officers who had apprehended him (see, for example, paragraphs 13 and 22 above). The Court finds this omission striking, particularly since the applicant was represented by a lawyer throughout the criminal proceedings, including the day of his arrest (see, in particular, paragraphs 8 and 12 above). Before the Court, the applicant remained silent as regards the details of the alleged ill-treatment on his arrest. In addition, the Court observes that the applicant, in his letter of 10 November 1999, admitted that he had been beaten up by a group of people before his alleged ill-treatment by police officers in custody (see paragraph 9 above).

40. In view of the foregoing, the evidence in the case file does not demonstrate beyond reasonable doubt that any excessive force was inflicted on the applicant when he was arrested. It follows that this part of the application is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 5 § 3 AND 6 § 2 OF THE CONVENTION

41. The applicant complained that the length of his remand in custody was unreasonably long and that, as a result, his right to be presumed innocent had been breached. He relied on Articles 5 and 6 of the Convention.

42. The Court considers that this complaint should be examined from the standpoint of Article 5 § 3 alone, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

43. The Government refuted the applicant's allegations.

44. The Court observes that the period to be taken into account as regards the applicant's remand in custody began on 7 March 1999, with the applicant's arrest, and ended on 9 February 2000 when he was released pending trial. It thus lasted eleven months.

45. Having examined all the material submitted to it and having regard to its case law on the subject (see, for example, *Sevgin and İnce v. Turkey*, no. 46262/99, § 61, 20 September 2005; *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001; *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 59, ECHR 2003-IX (extracts)and; *Sağat and Others v. Turkey* (dec.), no. 8036/02, 6 March 2007), the Court considers that the length of the applicant's remand in custody did not exceed the reasonable time requirement of Article 5 § 3. In reaching this conclusion the Court has taken into account the accusation against the applicant, the reasons given by the courts for his continued detention and the overall length of his remand in custody.

46. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

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

47. The applicant complained that the length of the criminal proceedings exceeded the “reasonable time” requirement of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ...any criminal charge against him, everyone is entitled to a...hearing within a reasonable time by [a]...tribunal...”

A. Admissibility

48. The Court notes that this complaint 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

49. The Government refuted the applicant's allegations.

50. The applicant maintained his allegations.

51. The Court observes that the period to be taken into consideration began on 7 March 1999, when the applicant was arrested and taken into police custody. According to the information available in the case file, as submitted by the parties, it appears to be still pending before the first-instance court. It has thus already lasted more than eight years and seven months by the date of adoption of the present judgment.

52. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular, *Sertkaya v. Turkey*, no. 77113/01, §§ 20-21, 22 June 2006, and *Mehmet Güneş v. Turkey*, no. 61908/00, § 31, 21 September 2006).

53. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings has been excessive and has failed to meet the “reasonable time” requirement.

54. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed, in total, 50,000 New Turkish Liras (YTR) (approximately 30,250 euros [EUR]) in respect of pecuniary and non-pecuniary damage.

57. The Government contested the amounts.

58. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicant also claimed, in total, YTR 12,400 (approximately EUR 7,500) for costs and expenses incurred before the domestic courts and before the Court. He relied on the Istanbul Bar Association's recommended scale of fees in 2005. However, the applicant did not submit any receipts or other relevant documents.

60. The Government contested the amount.

61. Since the applicant submitted no substantiation of his costs claim, as required by Rule 60 of the Rules of Court, the Court makes no award under this head.

C. Default interest

62. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;

(b) that from the expiry of the abovementioned 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President