



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

THIRD SECTION

CASE OF ESER CEYLAN v. TURKEY

(Application no. 14166/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Eser Ceylan v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŖ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 14166/02) 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, Ms Eser Ceylan (“the applicant”), on 19 October 2001.

2. The applicant was represented by Ms S. C. Erkat, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 14 December 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 Ankara.

5. On 12 December 2000 an unauthorised demonstration in Kızılay, Ankara against F-Type prisons turned into a violent clash between some of the participants, a group of Turkish nationalists and the security forces. The demonstrators caused severe material damage to cars and a shop, and eight police officers were injured during the incident.

6. The applicant claims that she had been on her way to her sister's law office when she saw armoured police vehicles firing high pressure water jets and a group of people throwing stones at others in the vicinity. She had had to enter the ÖDP (Liberty and Solidarity Party) building in order to protect herself from the police and the demonstrators.

7. After a while, police officers, who had previously obtained a search warrant, entered the ÖDP building and arrested around fifty persons who were inside at the time, including the applicant. During the arrest, the applicant claims to have been insulted and beaten, in particular, hit with truncheons on the legs, and that one of the policemen sexually harassed her. The same police officer punched the applicant in her right eye after she had been placed in the police vehicle.

8. On the same day, the applicant, along with several other people, was examined by a forensic doctor, who noted the following with respect to the applicant:

“A bruise of 2 cm. in diameter on the left parietal bone, widespread bruises under the right eye and on the zygoma, a laceration on the lower lip and 3 - 4 cm. abrasions on the pretibial bones have been observed. The injuries render Eser Ceylan unfit for work for seven days.”

9. On 13 December 2000 the applicant was examined again by a forensic expert who noted that there were no traces of battery on the applicant's body other than those mentioned in the report of 12 December 2000.

10. On the same day the applicant was taken to the Ankara public prosecutor's office. Before the public prosecutor, the applicant complained about the sexual harassment and beatings to which she had been subjected during the arrest and requested that the police officers who committed these offences be punished.

11. On the same day, the applicant, along with seventy other persons, appeared before the Ankara Criminal Court of First Instance. They were charged with taking part in an unauthorised demonstration. The applicant reiterated that she had been beaten and sexually harassed during her arrest. She gave a description of the events with details about the perpetrators. The court ordered the applicant's release.

12. On 15 December 2000 the judge of the Ankara Criminal Court of First Instance sent a letter to the Ankara public prosecutor's office, stating that almost all of the defendants in the case had complained of ill-treatment by the security forces and requested that the necessary measures be taken.

13. Following receipt of the letter of the Ankara Criminal Court of First Instance, the Ankara public prosecutor initiated an investigation into the circumstances of the events.

14. On 30 January 2001 the public prosecutor decided not to prosecute the police officers who had been on duty at the relevant time. In this connection, he maintained that the complainants had taken part in a

demonstration against F-type prisons. Although before intervening and making arrests the police had given the demonstrators a warning and had ordered them to disperse, the demonstrators had resisted the police and thrown stones at them. Some of the demonstrators had then gone into the buildings of the ÖDP and the TSİP (Socialist Workers Party of Turkey) where they had been arrested. The public prosecutor considered that the force used by the security forces had not been excessive and that the injuries sustained by the complainants had been a result of the clash which broke out between the police and the demonstrators. He concluded that there was no concrete evidence other than the complainants' allegations of an "abstract nature" that the members of the security forces had ill-treated and insulted the complainants during and after the arrest.

15. On 18 June 2001 the applicant filed an objection with the Ankara public prosecutor's office, to be referred to the closest assize court, against the decision of 30 January 2001.

16. On 6 July 2001 the Kırıkkale Assize Court dismissed the applicant's objection.

17. In the meantime the Ministry of the Interior lodged an action for compensation against the applicant and the other co-accused and requested the reimbursement of the amount of compensation paid to the injured police officers.

18. On 22 January 2004 the Ankara Criminal Court of First Instance acquitted the applicant on account of lack of evidence. The court's reasoned decision refers to evidence such as eye-witness reports, video recordings of the Security Directorate, video recordings of TRT (Turkish Radio and Television) and other national television channels and other material evidence. According to the information available in the file, the compensation proceedings were apparently still pending on the date on which the present judgment was adopted.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A description of the relevant domestic law at the material time can be found in *Şimşek and Others v. Turkey*, (nos. 35072/97 and 37194/97, §§ 8284 and 86-87, 26 July 2005), and in *Batı 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

20. The applicant complained that the treatment to which she had been subjected during her arrest amounted to torture and inhuman treatment. She further complained that there had been no adequate investigation into the circumstances surrounding the incident. Article 3 reads as follows:

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

A. Admissibility

21. The Government asked the Court to dismiss this complaint 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 allegedly suffered by instituting an action in the administrative courts. The Government further maintained that the application was not lodged within the six-month time-limit.

22. The applicant disputed the Government's arguments.

23. As regards the Government's preliminary objection concerning the non-exhaustion of domestic remedies, the Court reiterates that it has already examined and rejected the Government's preliminary objections 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. Consequently, it rejects this part of the Government's preliminary objection.

24. As regards the Government's second objection concerning the six-month rule, the Court reiterates that under Article 35 § 1 of the Convention it may deal with an application within a period of six months from the date on which the final decision was taken. In the instant case, the final decision concerning the applicant's allegations of ill-treatment was delivered on 6 July 2001 by the Kırıkale Assize Court. As the application was lodged with the Court on 19 October 2001, the applicant's complaint was introduced with the Court within the six-month time-limit. In view of the foregoing, the Court also rejects this part of the Government's objections.

25. The Court notes that the application 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. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

26. The Government contested the applicant's allegations. In particular, they submitted that the physical findings noted in the medical reports did not attain a sufficient level of severity to fall within the scope of Article 3 of the Convention. In addition, the Government maintained that an effective investigation had been conducted into the circumstances of the case. In this connection, they referred to the steps undertaken by the public prosecutor.

27. The applicant maintained that she had been beaten and sexually harassed during arrest. She submitted that the ill-treatment had continued during her transportation to detention despite the fact that she had showed no resistance. In addition, the applicant stated that during the criminal proceedings against her, the court had examined video recordings of the demonstration which clearly showed that she had not participated in the demonstration and that she did not have any physical injuries prior to entering the ÖDP building. In this connection, the applicant complained that the public prosecutor had failed to take into account material evidence such as video recordings when it decided not to prosecute the police officers for ill-treatment.

2. *The Court's assessment*

28. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII, *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004, and *Günaydın v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005).

29. In the instant case, the applicant claimed, in particular, to have been hit on the legs with truncheons and punched in the right eye. The findings of the medical report, in the Court's opinion, match at least the applicant's allegations of having been punched in the right eye. It finds the applicant's injuries (see paragraph 8) sufficiently serious to bring them within the scope of Article 3. The Government have not denied that the applicant's injuries resulted from the use of force by the State authorities in the performance of their duties. They have, however, stressed the mitigating circumstances surrounding the incident.

30. The Court notes at the outset that it is undisputed that the applicant was arrested at the ÖDP building and not during the demonstration where there were violent clashes between various parties. In this connection, it takes note of the fact that the applicant was acquitted of the charges of participating in an unauthorised demonstration (see paragraph 18) by the

Ankara Criminal Court of First Instance on 22 January 2004. Therefore the applicant was not injured in the course of a random and widespread demonstration which might have given rise to unexpected developments to which the police officers had to react without prior preparation (see, *mutatis mutandis*, *Rehbock*, cited above, § 72). In these circumstances, the Court considers that the burden rests on the Government to demonstrate with convincing arguments that the use of force, which resulted in the applicant's injuries, was not excessive (see, *mutatis mutandis*, *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

31. However, in the instant case, the Government merely stated that force had to be used against the demonstrators, including the applicant, without providing any explanation or documentation which could shed light on the circumstances which led the police to use force on the applicant and the exact nature of the force inflicted on her. In this connection, the Court observes that there is no indication in the case file that the applicant could have sustained the injuries noted in her medical reports during the demonstration or that police had had to use force on the applicant during her arrest at the ÖDP building because they had encountered violent or active resistance on her part. In these circumstances, the Court finds that the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used against the applicant, whose injuries are corroborated by medical reports.

32. In light of the above, the Court concludes that the force used against the applicant during her arrest was excessive and that therefore the State is responsible, under Article 3 of the Convention, for the injuries sustained by her on that date. It follows that there has been a violation of Article 3 of the Convention.

33. Having regard to the facts of the case, the submissions of the parties and its finding of a violation under Article 3 above, the Court considers that it has examined the main legal question raised in the present application. The Court concludes therefore that there is no need to give a separate ruling on the applicant's remaining complaint under Article 3 (see, for example, *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 43, 17 July 2007, and *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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, costs and expenses

35. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. This sum concerned loss of earnings and medical costs and expenses. She further claimed EUR 100,000 in respect of non-pecuniary damage.

36. The Government disputed those amounts.

37. As regards the alleged pecuniary damage sustained by the applicant, the Court considers that she has failed to properly substantiate her claims under this head. The Court accordingly dismisses it. On the other hand, the Court finds that the applicant must have suffered pain and distress which cannot be compensated solely by the Court's finding of a violation. Having regard to the nature of the violation found in the present case and ruling on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Default interest

38. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the injuries sustained by the applicant during her arrest;
3. *Holds* that there is no need to examine separately the applicant's remaining complaint under Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 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 above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President