



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

THIRD SECTION

**CASE OF SÜLEYMAN ERKAN v. TURKEY**

*(Application no. 26803/02)*

JUDGMENT

STRASBOURG

31 January 2008

**FINAL**

***30/04/2008***

*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 Süleyman Erkan v. Turkey,  
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:  
Boštjan M. Zupančič, *President*,  
Corneliu Bîrsan,  
Rıza Türmen,  
Elisabet Fura-Sandström,  
Alvina Gyulumyan,  
David Thór Björgvinsson,  
Ineta Ziemele, *judges*,  
and Santiago Quesada, *Section Registrar*,  
Having deliberated in private on 10 January 2008,  
Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 26803/02) 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 Süleyman Erkan (“the applicant”), on 15 March 2002.

2. The applicant, who had been granted legal aid, was represented by Mr A. Talipoğlu, 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 19 September 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 1969 and lives in İstanbul.

5. On 8 September 1999 at 5.15 a.m. the applicant was arrested by police officers from the anti-terror branch of the Istanbul Security Directorate on suspicion of membership of an illegal organisation, the PKK (the Kurdistan Workers' Party). According to the arrest protocol, the police officers had to use force to apprehend the applicant since he resisted the

arrest. The applicant refrained from signing this document. The applicant alleged that, contrary to what was indicated in the arrest protocol, he had been arrested on 5 September 1999.

6. Following his arrest, the applicant was blindfolded, put in a car and threats were uttered against him. After being driven around for some time, still blindfolded, he was taken to the anti-terror branch of the Istanbul Security Directorate. There, the applicant was allegedly punched, kicked, beaten on the head and the back with a truncheon and threatened with death. He also alleged that his testicles were squeezed.

7. On 8 September 1999 at 7.10 a.m. the applicant was examined by a doctor in the Haseki State Hospital who noted an ecchymosis of 9 x 3 cm on the left of the lower part of his abdominal region. The doctor concluded that there were marks of physical violence on the applicant's body and considered that he should be examined by an urologist. On the same day at 7.25 a.m. the applicant was examined by an urologist who found, by using the technique of palpation, that the applicant's testicles were painful and sensitive.

8. On 9 September 1999 the applicant was again examined by a general practitioner in the Haseki State Hospital who considered that the applicant should be taken to an internist. According to the report drawn up by the doctor, the applicant was brought to him as he was on a hunger strike in police custody. The applicant was then taken back to the Security Directorate.

9. On 11 September 1999 the applicant was again examined by a general practitioner in the Haseki State Hospital who noted that the applicant was brought before him because of hunger strike. The doctor considered that the applicant should be examined by an internist. On the same day, the applicant underwent a blood test.

10. On 12 September 1999 the applicant was examined by a doctor in the Haseki State Hospital who noted that there was no sign of physical violence on his body.

11. On the same day, the applicant was brought before the public prosecutor at the Istanbul State Security Court. In his statement, he maintained that he had been subjected to ill-treatment while in police custody and that, therefore, he had started a hunger strike. Subsequently, on the same day, the applicant was brought before the investigating judge at the Istanbul State Security Court. Before the judge, the applicant maintained that he had been kept in police custody for about one week and that he had been subjected to ill-treatment during custody. He further denied the accusations against him. The judge ordered the applicant's release as there was no strong evidence demonstrating that he had committed the offences of which he was accused.

12. On 14 September 1999 the applicant filed a complaint with the Büyükçekmece public prosecutor's office against the police officers from

the anti-terror branch of the Security Directorate, who had allegedly ill-treated him. In his petition, the applicant maintained that he had been arbitrarily deprived of his liberty between 5 and 8 September 1999 and that he had been subjected to ill-treatment while in police custody. He further contended that on the fourth or fifth day of his detention in police custody he had fainted due to ill-treatment and that he awoke in the Haseki State Hospital. He finally maintained that on 12 September 1999 the doctor had drawn up the medical report without examining him.

13. Upon receipt of the applicant's petition, on the same day the Büyükçekmece public prosecutor took a statement from the applicant who reiterated his complaints and requested that the police officers who had ill-treated him be punished. The public prosecutor then requested the doctor at the Büyükçekmece Health Centre to examine the applicant and submit a medical report.

14. Still on the same day, the applicant was examined by a medical expert from the Büyükçekmece Health Centre, who observed two scarred incisions of 0.5 cm each on his nose and on his left heel, a scarred incision of 2-3 cm on his left elbow and an ecchymosis of 2 cm on his abdominal region.

15. On 15 September 1999 the applicant was examined by two medical experts from the Human Rights Foundation who noted the following marks and considered that the applicant's account of events was consistent with the marks observed on his body:

“...a scabbed wound of 2 x 1 cm on the left elbow, a scabbed wound of 0.5 x 1 cm on the right side of the lower lip, an old wound of 0.5 cm in diameter on the forehead, a scabbed wound on the left heel, a dark brown ecchymosis of 3 x 1 cm on the left lower part of the sternum, haemorrhage on the upper part of the external part of the outer ear....”

16. On 20 September 1999 the Büyükçekmece public prosecutor issued a decision of lack of territorial jurisdiction and sent the investigation file to the Fatih public prosecutor's office.

17. On 23 and 26 November 1999 respectively the Fatih public prosecutor took statements from two police officers who were on duty at the anti-terror branch of the Istanbul Security Directorate at the time of the applicant's detention in police custody. The first officer R.D. contended that he had signed the document containing the applicant's statements but had not participated in the questioning. He denied the allegations against him. He further maintained that there had been no need to torture the applicant as the security forces had already found several organisational documents of the PKK in his house. The second officer, İ.K., denied the accusation and claimed that members of illegal organisations generally made this kind of false accusation. He further contended that the minor marks mentioned in the medical report of 14 September 1999 did not result from torture. He alleged that they might have been the marks resulting from handcuffing.

18. On 19 February 2001 the Fatih public prosecutor took a statement from the applicant, who reiterated his allegations and emphasised that he had been arrested on 5 September 1999, although the date on the arrest protocol was 8 September 1999.

19. On 20 February 2001 the Fatih public prosecutor issued a decision not to prosecute in respect of the police officers. He found that there was no evidence other than the applicant's allegations on which to initiate criminal proceedings against the police officers.

20. On 15 May 2001 the applicant filed an objection against the decision of 20 February 2001.

21. On 29 August 2001 the Beyoğlu Assize Court dismissed the applicant's objection. This decision was served on the applicant's lawyer on 9 October 2001.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicant complained under Article 3 of the Convention that he was subjected to ill-treatment during his police custody and that the authorities failed to conduct an effective investigation into his allegations of ill-treatment. Article 3 reads as follows:

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

23. The Government denied the allegations.

#### A. Admissibility

24. 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 he had allegedly suffered by instituting an action in the administrative courts. The Government further argued that the applicant had failed to comply with the six-month time-limit, since the Beyoğlu Assize Court had delivered its decision on 29 August 2001, whereas the application was lodged on 15 March 2002; i.e. more than six months later.

25. 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 objection.

26. As regards the preliminary objection concerning the six-month time-limit, the Court observes that the decision of the Beyoğlu Assize Court was served on the applicant's representative on 9 October 2001. As the application was lodged with the Court on 15 March 2002, less than six months later, it also rejects this part of the Government's objections.

27. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. Alleged ill-treatment of the applicant*

28. The applicant alleged under Article 3 of the Convention that he had been ill-treated during his custody. He also maintained that he had been arrested on 5 September 1999, not on 8 September 1999 as indicated in the arrest report. According to the applicant, he was beaten on the head and neck by a truncheon, punched, kicked and his testicles were squeezed during his interrogation at the Anti-Terror Branch of the Istanbul Security Directorate Building. In this respect, the applicant relied on medical reports dated 14 and 15 September 1999.

29. The Government denied the allegations.

30. The Court reiterates that where an individual is taken into custody in good health, but is found to be injured by the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim's allegations, particularly if those allegations were corroborated by medical reports. Otherwise, a clear issue will arise under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 62; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

31. 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).

32. 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*, cited above, § 32; *Avşar*, cited above, § 283).

33. Turning to the circumstances of the present case, the Court observes that, when the applicant was medically examined on 8 September 1999, the doctor who examined him noted in his report that there was an ecchymosis of 9 x 3 cm on the left of the lower part of his abdominal region. He further stated that there were marks of physical violence on the applicant's body and considered that he should be examined by an urologist. The medical report dated 12 September 1999, however, indicated that there were no signs of ill-treatment on the applicant's body. Nevertheless, the Court observes that the signs on the applicant's body reappeared on 14 September 1999, when the doctor who examined the applicant observed that there were two scarred incisions of 0.5 cm each on his nose and on his left heel, a scarred incision of 2-3 cm on his left elbow and an ecchymosis of 2 cm on his abdominal region. The marks on the applicant's body were further confirmed by the medical report dated 15 September 1999, which was prepared by two medical experts from the Human Rights Foundation. In their report, the experts concluded that there was a scabbed wound of 2 x 1 cm on the left elbow, a scabbed wound of 0.5 x 1 cm on the right side of the lower lip, an old wound of 0.5 cm in diameter on the forehead, a scabbed wound on the left heel, a dark brown ecchymosis of 3 x 1 cm on the left lower part of the sternum, haemorrhage on the upper part of the external part of the outer ear. Having regard therefore to its inconsistency with the other medical evidence, the Court attaches no weight to the findings of the report dated 12 September 1999.

34. The Court notes that the applicant repeatedly insisted both before the domestic authorities and the Court that he had been arrested on 5 September 1999 and not on 8 September 1999, as indicated in the arrest report. However, during the domestic investigation, the authorities did not take any steps to rebut this allegation. It is also noted that, in their observations, the Government did not rely on the disputed arrest report or put forward any explanation as to cause of the injuries on the applicant's body. Furthermore, the Court observes that it has not been alleged that the injuries observed on the applicant's body dated from the period prior to his arrest.

35. Reiterating the authorities' obligation to account for injuries caused to persons within their control in custody and considering the circumstances of the case as a whole, the Court finds that these injuries were the result of treatment for which the Government bore responsibility.

36. There has accordingly been a substantive violation of Article 3 of the Convention.

*2. Alleged lack of effective investigation*

37. The applicant maintained that the domestic authorities had not conducted an adequate investigation into his complaints of ill-treatment.

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

39. 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, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 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).

40. In the present case, the Court notes that the applicant raised his allegation of ill-treatment before the national authorities. Subsequently, the Büyükçekmece Public Prosecutor initiated criminal proceedings against two 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".

41. The Court notes that at no stage of the domestic investigation was the applicant provided with the opportunity to confront the accused police officers. Nor did his lawyer ever have the possibility of putting questions to them. It also observes that the criminal investigation in question was instigated solely against the police officers who had been involved in taking the applicant's police statement at the Security Directorate Building. In the Court's view, it is remarkable that no statements were taken from the officers who had arrested the applicant, despite the fact that the applicant challenged before the domestic authorities the accuracy of the arrest report, and in the arrest report it was indicated that the officers had to use force to arrest the applicant. Furthermore, no statements were taken from the doctors who indicated in their reports dated 8 September and 14 September 1999 respectively that there were signs of ill-treatment on the applicant's body. The statements of these two doctors could have provided valuable

information to clarify the exact cause and timing of injuries on the applicant's body.

42. 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.

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

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

43. The applicant alleged under Article 13 that the domestic authorities failed to conduct an effective investigation into his allegations of ill-treatment.

44. The Government contested that argument.

45. The Court notes that this complaint is linked to the one examined above and must likewise be declared admissible.

46. However, having regard to the finding relating to Article 3 (see paragraphs 40-42 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been a violation of Article 13.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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**

48. The applicant claimed 10,064 euros (EUR) in respect of pecuniary damage and EUR 60,000 in respect of non-pecuniary damage.

49. The Government contested the claims.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers 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. Costs and expenses**

51. The applicant also claimed EUR 4,843 for the costs and expenses incurred before the Court. In respect of his claim, the applicant relied on the Istanbul Bar Association's list of recommended minimum fees.

52. The Government contested the claim.

53. According to the Court's case-law, an applicant is entitled to reimbursement of 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, the applicant has not substantiated that he has actually incurred the costs so claimed. Accordingly, the Court makes no award under this head.

## **C. Default interest**

54. 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 substantive violation of Article 3 of the Convention on account of the ill-treatment to which the applicant was subjected to;
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 allegations of ill-treatment;
4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *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 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;

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

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Boštjan M. Zupančič  
President