



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

SECOND SECTION

CASE OF ÇAMDERELİ v. TURKEY

(Application no. 28433/02)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

01/12/2008

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 Çamdereli v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 28433/02) 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, Mrs Fatma Çamdereli (“the applicant”), on 4 May 2002.

2. The applicant was represented by Mrs N. Bener, a lawyer practising in Bursa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 11 June 2007 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, a housewife, was born in 1953 and lives in Bursa.

A. The alleged ill-treatment

5. In her application form the applicant submitted that on 18 February 1999, upon a complaint of Mr M.A.G., gendarmes had taken her to the

Görükle gendarmerie station where she was beaten with a truncheon and sworn at by a gendarme.

6. According to the report drafted by the gendarmes and signed by the applicant, upon the complaint of Mr M.A.G., that she was, *inter alia*, throwing garbage from her balcony and swearing at him, the gendarmes had arrived at the scene of the incident where they found the applicant to be shouting and disturbing the peace. The applicant had had to be taken to the gendarmerie station as she had failed to stop making a commotion. At the station, she had been orally warned not to disturb her neighbours and then released, since Mr M.A.G. did not wish to lodge an official complaint. In the same report it is stated that the gendarmerie station is situated 150-200 metres from the scene of the incident and that the gendarmes were well acquainted with the applicant due to numerous complaints brought against her by her neighbours regarding her unstable behaviour.

B. The criminal proceedings

7. On 19 February 1999 the applicant filed an official complaint with the Bursa public prosecutor about the above events and requested the prosecution of those responsible. In addition, she asked to be transferred to the Forensic Medical Institute for a medical examination.

8. On the same day, at 3.45 p.m., the applicant was examined by a doctor at the Bursa Forensic Medical Institute who noted that she had ecchymoses of 20x10 cm on her left shoulder and arm, an 8x5 cm ecchymosis on her right shoulder, a 6x5 cm ecchymosis on her right arm and an ecchymosis of 4x5 cm on her left thigh. He considered that the injuries rendered the applicant unfit for work for ten days.

9. On 20 April 1999 the prosecutor heard evidence from the applicant, Mr M.A.G. and Mr M.G.

10. On 21 April 1999 the prosecutor questioned the accused gendarme, Mr T.Ü. who denied the allegations against him.

11. On the same day, the prosecutor filed a bill of indictment against Mr T.Ü., Mr M.A.G. and Mr M.G. He accused Mr T.Ü. of ill-treatment under Article 245 of the Criminal Code, and Mr M.A.G. and Mr M.G. of defamation under Article 482.

12. On 3 May 1999 the criminal proceedings against the accused gendarme Mr T.Ü. and Mr M.A.G. and Mr M.G. commenced before the Bursa Criminal Court of First Instance.

13. In a hearing held on 28 September 1999, the court heard evidence from witnesses as regards the manner in which the applicant's arrest took place. In particular, the applicant's daughter testified that her mother had been pushed and hit with a truncheon. The court also heard submissions from the applicant who stated that Mr M.A.G. and Mr M.G. had insulted her

and that the gendarme Mr T.Ü. had hit her with a truncheon at the gendarmerie station.

14. On 26 December 2000 the Bursa Criminal Court of First Instance decided, in accordance with the relevant provisions of Law no. 4616, that the proceedings against the accused should be suspended and subsequently discontinued if no offence of the same or a more serious kind was committed by the offenders within a five-year period. The applicant's objection against this decision, notably regarding the application of Law no. 4616, was dismissed on 9 January 2002.

15. On 23 January 2006 the Bursa Criminal Court of First Instance, noting that the statutory time-limit for the offence had expired, decided to drop the criminal proceedings against the accused.

C. The compensation proceedings

16. On 17 May 2000 the applicant bought an action in tort against Mr T.Ü. and Mr M.A.G. before the Bursa Civil Court of First Instance. She sought compensation in the amount of 1,500,000,000 Turkish liras [TRL] (approximately 2,700 euros [EUR] at that time) for non-pecuniary damage for the treatment she had received from Mr T.Ü.

17. On 27 December 2002, after the first-instance court's judgment had been quashed twice by the Court of Cassation on account of the low amount awarded, the court abided by the decision of the Court of Cassation and ordered Mr T.Ü. to pay the applicant TRL 350,000,000 (approximately EUR 904), together with interest at the statutory rate from 18 February 1999, the date of the ill-treatment. Mr M.A.G. was also ordered to pay a certain amount of compensation to the applicant. In this judgment the court held it established that the applicant had been beaten by Mr T.Ü. at the gendarmerie station. This judgment became final on 17 February 2003 since no one objected to it.

18. The applicant's lawyer informed the court that she had been paid the amount awarded in full.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Okkalı v. Turkey*, (no. 52067/99, § 47, ECHR 2006-... (extracts)), and *Çalışır v. Turkey* (no. 52165/99, §§ 17-19, 21 February 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

20. The applicant complained about the treatment she had received on 18 February 1999 and about the manner in which the investigation and the criminal proceedings had been conducted by the authorities, resulting in impunity. She relied on Articles 3, 6 and 13 of the Convention.

21. The Court considers that these complaints should be examined from the standpoint of Article 3 alone, which provides:

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

A. The parties' submissions

22. The Government raised a number of objections regarding the admissibility of the applicant's complaints. They maintained, firstly, that the applicant was no longer a victim, since she had obtained redress before the civil courts. Secondly, the Government submitted that the applicant had failed to exhaust domestic remedies, particularly since she did not use the remedy provided under administrative law. Thirdly, they claimed that the applicant should have lodged her application within six months of the date on which the incident occurred.

23. As to the merits, the Government maintained that the applicant had been taken to the gendarmerie station on account of a quarrel between her and her neighbours and that, after they had reconciled and withdrawn their complaints against each other, they had been released without any formalities such as obtaining a medical report. They further submitted that the medical report drafted on 19 February 1999 had failed to establish beyond reasonable doubt that Mr T.Ü. had been responsible for the injuries noted therein. The Government also considered that the findings of this report did not attain the minimum level of severity threshold required under Article 3 of the Convention. Finally, referring to the various actions undertaken by the domestic authorities, they considered that an effective investigation as well as criminal proceedings had been conducted in the instant case.

24. The applicant maintained her allegations. In particular, in response to the Government's objections on admissibility, the applicant submitted, very briefly, that the awarded compensation by the civil courts was not sufficient and that the length of those proceedings had exceeded a reasonable time. As to the merits, she submitted that the evidence in the

case file supported her complaint of ill-treatment and that, due to the application of Law no. 4616 and the length of the criminal proceedings, the accused had not been sentenced, and eventually the crime committed against her had been left unpunished as the statutory time-limit for trying the offence had expired in 2006.

B. The Court's assessment

1 Admissibility

a) Preliminary considerations

25. At the outset the Court notes that some of the applicant's references to the alleged ill-treatment could be construed as also including the verbal abuse she had allegedly received from Mr M.A.G. and Mr M.G. However, the Court notes that, even assuming that this is the case, and even if the applicant was subjected to threats and/or verbal abuse as alleged and that, as a result, she felt apprehension or disquiet, the Court reiterates that such feelings are not sufficient to amount to degrading treatment, within the meaning of Article 3 (see, in particular, *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006). It follows that this aspect of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) Victim status

26. As regards the Government's objection regarding the victim status of the applicant, the Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-193, ECHR 2006-...).

27. As regards the first condition, namely the acknowledgement of a violation of the Convention, the Court considers that the civil court's decision to order Mr T.Ü. to pay compensation to the applicant for having beaten her at the gendarmerie station (see paragraph 17 above) does amount to an acknowledgment in substance that there had been a breach of Article 3 of the Convention.

28. With regard to the second condition, namely appropriate and sufficient redress, the Court will have to consider whether the compensation awarded to the applicant remedied her complaints under Article 3 of the Convention. In this connection, the Court takes note that, even assuming that the modest compensation awarded to the applicant by the domestic court, after the Court of Cassation had already twice remitted the case back

to it due to the low amount decided, could be deemed sufficient, the focal point of applicant's complaints, as laid down in the application form, concerns the inadequacy of the criminal proceedings, resulting in impunity for the person responsible for her ill-treatment. Consequently, the applicant's complaints, as laid down in the application form, concern matters which must be addressed from the angle of the adequacy of the mechanisms in place in order to maintain the deterrent power of the judicial system and the important role it plays in upholding the prohibition of torture (see, *mutatis mutandis*, *Okkali*, cited above, § 66).

29. In such cases, the Court considers that the breach of Article 3 cannot be remedied exclusively by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice. Therefore, the possibility of seeking and receiving compensation represents, in these cases, only one part of the measures necessary to provide redress for wilful ill-treatment by State agents (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 55-56, 20 December 2007).

30. Consequently, the Court must ascertain whether the measures taken by the authorities, in the particular circumstances of the instant case, afforded the applicant appropriate redress in order to determine whether she can still claim to be a victim. As the Government's objection under this head is closely linked to the merits of the applicant's complaints, the Court decides to join them.

c) Other points on admissibility

31. As to the Government's objection regarding the exhaustion of domestic remedies, the Court notes that, in the instant case, the applicant filed a complaint with the public prosecutor's office about the ill-treatment she had received on 19 February 1999. However, the proceedings brought against the accused were suspended pursuant to Law no. 4616. The applicant's objection to this decision was dismissed on 9 January 2002. Independent of the criminal law remedy, the applicant also applied for civil-law remedies and obtained a certain amount of compensation. In these circumstances, the Court dismisses the Government's argument and finds that the applicant was not required to embark on another attempt to obtain redress by bringing an administrative law action for damages (see, for example, *Akpınar and Altun v. Turkey*, no. 56760/00, § 68, ECHR 2007-... (extracts)).

32. In view of the Court's above considerations and reiterating that the six-month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their cases within six months of the final decision in the process of exhaustion of domestic remedies, the Court considers that the application lodged on 4 May 2002 was introduced in conformity with the six-month time-limit laid down in Article 35 § 1 of the Convention. Consequently, it also rejects the Government's objection in this connection.

d) Conclusion

33. In sum, the applicant's complaint under Article 3 of the Convention regarding the treatment she received from Mr T.Ü. is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

34. At the outset, the Court observes that the Bursa Civil Court of First Instance, after acquainting itself with the evidence and examining the facts of the case, found that Mr T.Ü., who was acting in his official capacity at the time of the events, was responsible for the injuries noted in the applicant's medical report of 19 February 1999. The Court finds that the degree of bruising found by the doctor who examined the applicant (see paragraph 8 above) indicates that the latter's injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3.

35. The Court reiterates that Article 3, from which no derogation is permitted, enshrines one of the most fundamental values of democratic societies, making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see, *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV).

36. The Court further reiterates that where an individual raises an arguable claim that she has been 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 (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102). The minimum standards as to effectiveness defined by the Court's case-law include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

37. In addition, the Court reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical and illusory. Therefore, in such cases, an effective investigation must be able to lead to the identification and punishment of those responsible (see, *mutatis mutandis*, *Nevruz Koç v. Turkey*, no. 18207/03, § 53, 12 June 2007). 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 (see *Assenov and Others*, cited above, § 102; *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 177, 24 February 2005, and *Zeynep Özcan v. Turkey*, cited above, § 40).

38. In the instant case, the Court observes that an investigation into the allegations of the applicant was initiated promptly by the public prosecutor's office. This investigation led to the committal for trial of the accused gendarme for the offence of ill-treatment. However, no information was submitted by the Government to demonstrate that Mr T.Ü. was suspended from duty while being investigated or tried (see *Abdulsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). Moreover, the Court notes that the proceedings in question did not produce any result due to the application of Law no. 4616, which created virtual impunity for the perpetrator of the acts of violence (see, *mutatis mutandis*, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 147, ECHR 2004-IV (extracts), and *Abdulsamet Yaman*, cited above, § 59). In this context, the Court reiterates its earlier finding in a number of cases that the Turkish criminal law system has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents when the criminal proceedings brought against the latter are suspended due to the application of Law no. 4616 (see *Nevruz Koç*, § 54, cited above, *Yeşil and Sevim v. Turkey*, no. 34738/04, § 42, 5 June 2007). The Court finds no reason to reach a different conclusion in the present case.

39. In sum, the Court finds that the measures taken by the authorities failed to provide appropriate redress for the applicant (see *Okkalı*, cited above, § 78). She may therefore still claim to be a victim within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objections under this head and finds that there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 75,000 US dollars (USD - approximately EUR 51,400) in respect of non-pecuniary damage.

42. The Government contested the amount.

43. The Court considers that the applicant must have suffered pain and distress which cannot be compensated solely by its finding of a violation. Having regard to the nature of the breach found in the present case and ruling on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed USD 10,000 (approximately EUR 6,851) for costs and expenses incurred before the Court. She submitted documentation regarding postal and translation expenses.

45. The Government contested the amount.

46. According to the Court’s case-law, an applicant is entitled to the 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 1,000 under this head.

C. Default interest

47. 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. *Joins to the merits* the Government’s objection concerning the victim status of the applicant and *dismisses* it;

2. *Declares* the applicant's complaint under Article 3 regarding the treatment she received from Mr T.Ü. admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of 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 according to 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:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, 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 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President