



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

SECOND SECTION

CASE OF DUR v. TURKEY

(Application no. 34027/03)

JUDGMENT

STRASBOURG

18 September 2008

FINAL

18/12/2008

This judgment may be subject to editorial revision.

In the case of Dur v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 34027/03) 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 Hadiye Dur (“the applicant”), on 27 May 2003.

2. The applicant, who had been granted legal aid, was represented by Mrs F. Karakaş Doğan and Mrs E. Keskin, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 September 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 was born in 1973 and lives in Cologne, Germany.

A. The arrest of the applicant and the medical certificates concerning the allegedly excessive use of force against her

1. Facts as presented by the applicant

5. On 27 October 1998 at 1 p.m. a group of 43 women belonging to “Mothers for Peace”, including the applicant, arrived at the provincial branch of the Motherland Party (*Anavatan Partisi* (ANAP)) in Istanbul in order to meet that party’s provincial leaders. Two women who received them at the entrance of the building stated that there was a press conference in progress, asked them to wait in the waiting room, which was on the third floor of the building, and left.

6. Five to ten minutes later, police officers arrived in the waiting room, threw a smoke bomb inside and entered. A police officer hit the applicant on the back of her head with a truncheon, grabbed her hair and dragged her down the stairs. She was then put in a police vehicle and taken to the Beyoğlu police headquarters.

7. On the same day at 3.50 p.m. the applicant, along with the other 42 women, was examined by a doctor at the Beyoğlu branch of the Forensic Medicine Institute. According to the medical report, the applicant had oedemas on her neck and scalp. The doctor considered that the injuries rendered the applicant unfit to work for three days.

8. The applicant spent the night in a cell with 10 other women at the police headquarters. Police officers came to the cell two or three times and insulted and beat the detainees each time.

9. On 28 October 1998 the applicant was examined by the same doctor at the Beyoğlu branch of the Forensic Medicine Institute, who noted no new injuries on the applicant’s body.

10. On the same day, the applicant and the other 42 women were brought before the Beyoğlu Magistrates’ Court. They were questioned about whether they had deprived Y.U., the person who was in charge of the coffee bar in the waiting room, of his liberty and whether they had resisted the police officers who had arrested them. They all contended that they had neither deprived Y.U. of his liberty nor resisted the police officers. The court remanded five women in custody and ordered the release of the others, including the applicant.

2. Facts as presented by the Government

11. On 27 October 1998 a group of 43 women, including the applicant, entered the premises of the provincial branch of the Motherland Party in Istanbul after a press conference had been held by the party’s Vice-President. They occupied the premises with the aim of protesting against a meeting which would be held there and attended by the party members. The security forces attempted to lead the women out of the building in order to

prevent possible clashes between them and the party members. Three of the women, including the applicant, resisted the police and used physical violence. All 43 women were then arrested and taken to the Beyoğlu branch of the Forensic Medicine Institute for a medical examination. Subsequently, they were taken to the Beyoğlu police headquarters.

12. The police took statements from Y.U., who maintained that the women who had occupied the premises had beaten four party members and deprived him of his liberty. He further stated that they had resisted the police officers during the arrest.

B. Criminal proceedings against the applicant

13. On 2 November 1998 the Beyoğlu public prosecutor filed a bill of indictment with the Beyoğlu Assize Court, charging all 43 women with resisting the police and depriving Y.U. of his liberty for ideological reasons.

14. On 4 November 1999 the Beyoğlu Assize Court acquitted the applicant and the other accused. In its judgment, the trial court noted that the accused women were members of “Mothers for Peace” and that they had visited the Motherland Party in order to hold a meeting with the members of that party with a view to informing them of their problems. The court further noted that there was no evidence in the case file demonstrating that the members of “Mothers for Peace” had committed an offence. In particular, they had not deprived Y.U. of his liberty or damaged the building. Nor had they had any objects on their person which could have been used to commit offences. Furthermore, no complaint had been lodged against them by the party members who had allegedly been beaten by them. The court further observed that there was no evidence that the accused had resisted the police as no officer had been injured in the course of the arrest. On the contrary, some of the women, including the applicant, had sustained injuries.

15. According to the information in the case file, no appeal was lodged against the judgment of 4 November 1999.

C. Investigation into the applicant’s allegations of ill-treatment

16. On 19 March 1999 the applicant lodged a complaint with the Beyoğlu public prosecutor’s office, alleging that physical force had been used by the police officers during her arrest and requesting that an investigation be initiated.

17. On an unspecified date the Beyoğlu public prosecutor initiated an investigation. Within the context of this investigation, on 26 May 1999 the applicant made statements to the public prosecutor and reiterated her allegations. On the same day, she was examined by a doctor, who noted that there were no injuries on her body. On 30 September 1999 the public

prosecutor took statements from a police officer, F.M.S., who denied the allegation of having ill-treated the applicant.

18. On 8 October 1999 the Beyoğlu public prosecutor issued a decision not to prosecute F.M.S. in respect of the applicant's allegation. In his decision, the prosecutor noted that there was insufficient evidence to suggest that F.M.S. had ill-treated the applicant, who had participated in an illegal meeting and resisted the police. The public prosecutor considered that the force employed by the police had not been excessive and that they had acted within the scope of their duties.

19. The decision of 8 October 1999 was not served on the applicant or her representatives. One of the applicant's representatives obtained a copy of the decision from the Fatih public prosecutor's office in October 2002.

20. On 31 October 2002 the applicant filed an objection against the decision of 8 October 1999.

21. On 31 March 2003 the Istanbul Assize Court dismissed the applicant's objection, holding that the decision of 8 October 1999 was in accordance with the law.

II. RELEVANT DOMESTIC LAW

22. A description of the relevant domestic law in force at the material time can be found in *Balçık and Others v. Turkey* (no. 25/02, § 19, 29 November 2007), *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-99, ECHR 2004-IV), *Elci and Others v. Turkey* (nos. 23145/93 and 25091/94, § 577, 13 November 2003) and *Altay v. Turkey* (no. 22279/93, § 31, 22 May 2001).

THE LAW

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

23. The applicant complained that the treatment to which she had been subjected during her arrest amounted to a violation of Article 3 of the Convention. She further maintained under Articles 3, 6 and 13 of the Convention that there had been no adequate or effective investigation into her allegations of ill-treatment.

The Court finds it appropriate to examine these complaints under Article 3 of the Convention alone. Article 3 reads as follows:

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

A. Admissibility

24. The Government argued that the applicant had failed to exhaust the domestic remedies available to her, within the meaning of Article 35 § 1 of the Convention. In this connection, they argued that the applicant could have sought reparation for the harm allegedly suffered by instituting an action in the civil or administrative courts.

25. The applicant disputed the Government's argument.

26. The Court reiterates that it has already examined and dismissed the Government's preliminary objections in similar cases (see, for example, *Balçık and Others*, cited above, § 22; *Eser Ceylan v. Turkey*, no. 14166/02, § 23, 13 December 2007). It finds no particular circumstances in the instant case requiring it to depart from its findings in the above-mentioned applications. Consequently, it dismisses this aspect of the Government's preliminary objection.

27. The Government further submitted that the applicant's allegations were deceitful as she had waited three years before enquiring about the developments in the investigation conducted by the Beyoğlu public prosecutor. Pointing out that the decision of 8 October 1999 was available at the registry of the public prosecutor's office, they queried why the applicant had not been informed of it earlier than October 2002. They maintained that the applicant should have lodged her application within six months after her arrest.

28. Although the Government did not argue, in their submissions, that the applicant had failed to lodge her application in time but rather that the application was manifestly ill-founded, the Court considers that these arguments essentially concern the applicant's compliance with the six-month rule under Article 35 § 1 of the Convention.

29. In this connection, the Court reiterates that, where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best fulfilled by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33; *Mahmut Aslan v. Turkey*, no. 74507/01, § 16, 2 October 2007).

30. In the instant case, it is not disputed that the applicant learned of the Beyoğlu public prosecutor's decision in October 2002. Contrary to Article 164 of the former Code of Criminal Procedure, in force at the relevant time, which provides for notification of public prosecutors' decisions not to prosecute to the accused and the complainants, that decision was never served on the applicant or her legal representatives. Moreover, the Government have failed to provide the Court with any explanations on this point. On the contrary, in their submissions they implied that the applicant had not acted with due diligence.

31. Furthermore, the Istanbul Assize Court did not dismiss the applicant's objection on the ground that it had been submitted too late but conducted an examination of the merits of her objection. The Court therefore considers that the "final decision" within the meaning of Article 35 § 1 of the Convention was the Istanbul Assize Court's decision of 31 March 2003 and that, by lodging her application on 27 May 2003, the applicant complied with the six-month rule. Consequently, it dismisses this aspect of the Government's preliminary objection.

32. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. As to the responsibility of the respondent State in the light of the substantive aspect of Article 3 of the Convention

(a) The parties' submissions

33. The applicant maintained that the physical force employed by the officers during the police raid at the provincial branch of the Motherland Party constituted ill-treatment. She submitted in this connection that she had been hit on the back of her head with a truncheon and dragged down the stairs.

34. The Government maintained that the applicant and the other 42 women had started a violent demonstration which required the security forces' intervention and that they had resisted the arrest. They contended that the force employed against the applicant and the other women had been proportionate in such circumstances.

(b) The Court's assessment

35. The Court reiterates 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 other authorities, *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Krastanov v. Bulgaria*, no. 50222/99, §§ 52-53, 30 September 2004; *Günaydin v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005; *Eser Ceylan*, cited above, § 28).

36. In the instant case, the applicant claimed, in particular, that a police officer had hit her on the back of her head with a truncheon, grabbed her hair and dragged her down the stairs (see paragraph 6 above). In the Court's opinion, the findings of the medical report, namely oedemas on the applicant's neck and scalp, are consistent with the applicant's allegations. It

finds the applicant's injuries sufficiently serious to fall within the scope of Article 3.

37. The Court further notes that it is not disputed between the parties that the applicant's injuries resulted from the use of force by the State security forces in the performance of their duties. The Court therefore considers that the burden rests on the Government to demonstrate with convincing arguments that the use of force was indispensable and not excessive (see *Balçık and Others*, cited above, § 31).

38. The Court observes in this connection that the Government submitted arguments and documents according to which the group of 43 women, including the applicant, occupied the Motherland Party premises, where they deprived someone of his liberty and beat four others (see paragraphs 11 and 12 above). However, their version of the facts was refuted by the Beyoğlu Assize Court's judgment of 4 November 1999. According to that judgment, neither the applicant nor the other women had deprived Y.U. of his liberty or beaten anyone as alleged. Nor had they attacked the police officers or resisted arrest. They went to the Motherland Party in order to hold a meeting with the party members in their capacity as a civil-society movement. Having regard to the circumstances of the case, in particular the conclusions of the Beyoğlu Assize Court, the Court considers that the Government have failed to furnish credible arguments serving to explain or to demonstrate that the force used against the applicant was indispensable.

39. The Court concludes that the State is responsible, under Article 3 of the Convention, for the injuries sustained by the applicant on 27 October 1998. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. As to the responsibility of the respondent State in the light of the procedural aspect of Article 3 of the Convention

(a) The parties' submissions

40. The applicant maintained that the authorities had not conducted an effective investigation into her allegations despite their seriousness, as corroborated by the medical report of 27 October 1998. She submitted, in particular, that the failure of the Beyoğlu public prosecutor and the Istanbul Assize Court to examine the file of the case which had been before the Beyoğlu Assize Court demonstrated that her ill-treatment at the hands of the police had been tolerated by the national authorities.

41. The Government submitted in reply that the Beyoğlu public prosecutor had immediately initiated an investigation into the applicant's allegations, collected all the relevant evidence and conducted an adequate examination.

(b) The Court's assessment

42. The Court reiterates that where an individual raises an arguable claim that she or he has been subjected to ill-treatment by the police or other such agents of the State 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, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigatory procedure (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102; *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, § 98; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

43. The Court observes at the outset that the applicant underwent a medical examination immediately after the event giving rise to the present application. The report drawn up by the doctor who examined the applicant showed that the applicant had oedemas on her neck and scalp. However, the Beyoğlu public prosecutor's office did not initiate an investigation regarding the applicant's injuries despite Article 153 of the former Code of Criminal Procedure which stated that a public prosecutor who was informed by any means whatsoever of a situation that gave rise to the suspicion that an offence had been committed was obliged to investigate the facts in order to decide whether or not there should be a prosecution. It was not until five months later, upon the complaint lodged by the applicant, that the Beyoğlu public prosecutor initiated an investigation into the applicant's allegations of ill-treatment.

44. The Beyoğlu public prosecutor then took statements from the applicant and one of the police officers, F.M.S., who had been on duty at the time of the applicant's arrest. He also ordered a medical examination of the applicant. The investigation ended when the Assize Court upheld the decision of the public prosecutor not to prosecute.

45. The Court observes, however, that there were serious shortcomings in the way the investigation was conducted. Firstly, the public prosecutor did not attempt to obtain statements from any other women who had been at the Motherland Party's premises at the time of the incident. Nor did he summon other officers who had been on duty or identify potential witnesses who worked at the Motherland Party's provincial branch in Istanbul, other than a certain Y.U. Moreover, the public prosecutor issued his decision not to prosecute F.M.S. on 8 October 1999, before the Beyoğlu Assize Court gave its judgment acquitting the applicant. In the Court's view, the Beyoğlu public prosecutor should have awaited the outcome of the criminal proceedings against the applicant before holding that she had participated in an illegal meeting and resisted the police, or deciding not to bring criminal

proceedings in respect of her allegations. The Court further finds it noteworthy that the Istanbul Assize Court upheld that decision of the Beyoğlu public prosecutor even though another criminal court had, in the meantime, established the facts surrounding the incident and concluded that the applicant and the other women had not taken part in an illegal meeting or resisted the police.

46. In the light of the foregoing, the Court finds that the investigation into the applicant's allegations of ill-treatment cannot be described as adequate and was therefore in breach of the State's procedural obligations under Article 3 of the Convention.

47. It follows that there has been a violation of Article 3 under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant maintained under Article 13 of the Convention that she had had no opportunity, in the absence of an effective investigation, to bring compensation proceedings against the officers who had ill-treated her.

49. The Government contested this allegation.

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

51. However, having regard to the facts of the case, the submissions of the parties and its finding of a violation of Article 3 of the Convention under both its substantive and procedural limbs (see paragraphs 39 and 47 above), the Court considers that it has examined the main legal questions raised in the present application. It concludes therefore that there is no need to make a separate ruling on the applicant's complaint under Article 13 of the Convention (*Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008; *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

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 euros (EUR) in respect of non-pecuniary damage. She further claimed EUR 2,000 in respect of pecuniary damage.

54. The Government contested these claims.

55. As regards the alleged pecuniary damage sustained by the applicant, the Court finds that she has failed to substantiate her claim under this head, and accordingly dismisses it. However, the Court finds 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 violation found in the present case and ruling on an equitable basis, it awards the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed 5,500 new Turkish liras (TRY) (approximately EUR 3,000) for the legal expenses incurred before the Court and EUR 2,000 for other expenses, such as stationery, photocopying and postal costs. The applicant documented those expenses on the basis of the legal fees agreement concluded with her lawyer according to which the applicant would pay TRY 5,500 to the lawyer if the case before the Court was successful. Regarding her other expenses, the applicant submitted invoices disclosing that she had disbursed the overall amount of EUR 34.

57. The Government submitted that the applicant had failed to substantiate her claims.

58. 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, in particular the legal fees agreement, and the above criteria, the Court considers it reasonable to award the sum of EUR 2,534 covering her costs before the Court, less the EUR 850 which the applicant received in legal aid from the Council of Europe.

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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention concerning the alleged inability of the applicant to bring compensation proceedings against the officers who had subjected her to ill-treatment;
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:
 - (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 2,534 (two thousand five hundred and thirty-four euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, less EUR 850 (eight hundred and fifty euros) granted by way of legal aid;
 - (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 18 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President