



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

THIRD SECTION

CASE OF ÇAĞLAYAN v. TURKEY

(Application no. 30461/02)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Çağlayan v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Işıl Karakaş, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 30461/02) 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 Erol Çağlayan (“the applicant”), on 10 June 2002.

2. The applicant was represented by Ms H. Demir, a lawyer practising in Muğla. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that he had been subjected to ill-treatment during his detention in police custody and that there were no effective domestic remedies in respect of his grievances. He also raised complaints under Articles 6 and 11 of the Convention and Article 1 of Protocol No. 1.

4. On 30 August 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged ill-treatment and ineffectiveness of the domestic remedies 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**

5. The applicant was born in 1961 and lives in Muğla.

6. The applicant is a member of the Haber-Sen, a trade union formed by public employees. He is also a member of the Confederation of Public Employees' Trade Unions (*Kamu Emekçileri Konfederasyonu* – “KESK”).

7. On 29 October 1997 the applicant was arrested in Muğla and taken to the Anti-Terrorism Branch of the Muğla Security Directorate on charges of having insulted a police officer. He had allegedly attempted to resist arrest. During his detention in police custody, the applicant was allegedly beaten up, slapped and threatened with death by the police officers.

8. On the same day, the applicant was taken to the Emergency Service of Muğla State Hospital, where he was examined by a doctor. In his report, the doctor indicated the presence of hyperaemia on the applicant's cheeks and another red mark measuring 10 cm x 10 cm on his back. The doctor concluded that the injuries in question (hyperaemia) would heal in three days and would not render the applicant unfit for work.

9. On 30 October 1997 the applicant was brought before the Muğla Public Prosecutor and the Muğla Magistrates' Court respectively, where he complained that he had been beaten up and threatened with death during his detention in police custody. He was subsequently placed in pre-trial detention.

10. On 11 November 1997 the applicant underwent a new medical examination at Muğla State Hospital by a surgeon, who stated in her report that there were healing wounds and haematoma caused by a blunt object on the applicant's shoulder blades.

11. On 12 November 1997 another doctor at the Muğla State Hospital examined the applicant and stated in his medical report that there was no sign of physical violence on his body.

12. On 25 November 1997 the applicant filed a complaint against the police officers who had allegedly ill-treated and insulted him.

13. According to a photo identification report dated 12 January 1998, the applicant was shown photos of forty-five police officers from the Anti-Terrorism Branch of the Muğla Security Directorate and identified the six police officers who had ill-treated and threatened him.

14. Between 14 and 19 January 1998 senior police officers, who had been appointed as investigators, took statements from the six police officers who had allegedly ill-treated the applicant. The police officers all denied the applicant's allegations of ill-treatment. They claimed that the applicant had made slanderous allegations in an attempt to waste their time and to demean the police force. The applicant also made statements to the senior police officers and claimed that he had been slapped, insulted and threatened with death by six police officers.

15. On 2 March 1998 the Muğla Chief Public Prosecutor delivered a decision of non-prosecution in respect of the applicant's allegations that he had been insulted and threatened while in police custody. On the same day, the public prosecutor filed an indictment with the Muğla Criminal Court

against six police officers, accusing them of ill-treatment under Article 245 of the Criminal Code.

16. On 10 March 1999, the Muğla Criminal Court decided to stay the proceedings against the accused police officers and transferred the case file to the Muğla Provincial Administrative Council to obtain authorisation to bring criminal proceedings against the officers pursuant to the provisions of the Law on the prosecution of civil servants.

17. On 10 February 2000 the Muğla Provincial Administrative Council decided not to authorise prosecution on the ground that there was insufficient evidence to indicate that the police officers had inflicted ill-treatment on the applicant.

18. On 3 March 2000 the applicant appealed against the Muğla Provincial Administrative Council's decision. He argued that the conclusion that there was no evidence proving ill-treatment was ill-founded and unjust in view of the medical reports, which clearly indicated that he had been beaten up during his detention in police custody.

19. Meanwhile, a disciplinary investigation was also conducted against the six police officers in question. However, on 2 May 2000, relying on the conclusion reached by the Provincial Administrative Council, the Police Disciplinary Board of the Muğla Governorship decided to terminate the investigation against the accused police officers.

20. On 21 December 2000 a law (Law no. 4616) on conditional release was enacted. This law provided for the suspension of proceedings or execution of sentences in respect of crimes committed before 23 April 1999 and for which the maximum penalty did not exceed ten years' imprisonment.

21. On 10 February 2000 the Supreme Administrative Council decided to suspend the criminal proceedings against the accused police officers pursuant to Law no. 4616. The applicant appealed against this decision.

22. On 15 January 2002 the Supreme Administrative Court upheld the Supreme Administrative Council's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. 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. ADMISSIBILITY

24. The Government argued that the applicant had failed to exhaust the domestic remedies available to him within the meaning of Article 35 § 1 of the Convention. In this connection, they submitted that the applicant had not availed himself of the civil and administrative law remedies which could have provided reparation for the harm he had allegedly suffered.

25. 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). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned case. It therefore rejects the Government's preliminary objection.

26. The Court notes that 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.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that he had been subjected to various forms of ill-treatment and that the domestic authorities had failed to carry out an effective investigation into his complaints. He relied on Article 3, which provides:

Article 3

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

A. Submissions of the parties

1. *The applicant*

28. The applicant alleged that he had been beaten up by the police officers during his detention and that the domestic remedies had proved to be ineffective.

2. *The Government*

29. The Government submitted that the police officers had had to use reasonable force against the applicant in order to effect a lawful arrest and

to take him to the police station, because he had insulted them and resisted arrest. Furthermore the applicant's allegations were ill-founded, given that the findings contained in the medical report dated 29 October 1997 were inconsistent with his allegations. In the Government's opinion, had the applicant been beaten up by six police officers, as he alleged, he would have sustained serious injuries. Finally, they claimed that an effective investigation did not necessarily mean a favourable outcome for the applicant. Nonetheless, the authorities had carried out an effective investigation into the applicant's allegations and had concluded that they were unsubstantiated.

B. The Court's assessment

1. General Principles

30. The Court reiterates that Article 3 of the Convention ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. It also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human rights requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII (extracts)).

31. The Court further reiterates that, where an individual is taken into custody in good health but is found to be injured at 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 veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy*, cited above, § 61; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

32. The Court is sensitive to the subsidiary nature of its role 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). However, where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 135, 16 July 2002) and will do so on the basis of all the material submitted by the parties.

33. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002, and *Avşar*, cited above, § 282). Such proof may, however,

follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ülkü Ekinçi*, cited above, § 142).

34. Furthermore, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

35. Lastly, the Court reiterates that where an individual raises an arguable claim that he has been seriously 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. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. 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 v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 102).

2. Application of the above principles to the circumstances of the present case

a. Alleged ill-treatment suffered by the applicant

36. The Court notes that the applicant underwent three medical examinations following his release from the custody of the police officers. Although the first two medical reports, dated 29 October 1997 and 11 November 1997, indicated the presence of hyperaemia and wounds on the applicant's body, the third medical report, dated 12 November 1997, stated that there was no sign of physical violence on his body (see paragraphs 8, 10 and 11 above).

37. The Court considers that the injuries described in the first two medical reports (see paragraphs 8 and 10) are consistent with the applicant's allegation that he had been beaten up by the police officers, particularly having regard to the finding in the medical report of 11 November 1997 that the wounds and haematoma observed on the applicant's back had been caused by a blunt object. It also observes that the hyperaemia (reddening of the skin) noted in the medical report dated 29 October 1997 could have been

the result of the slapping alleged by the applicant. In view of the foregoing, the Court is of the opinion that the injuries suffered by the applicant are sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch*, cited above, pp. 9 and 26, §§ 13 and 39). The Court attaches no weight to the third medical report dated 12 November 1997, which is unaccountably inconsistent with the findings contained in the first two reports.

38. In view of the above, it needs to be ascertained whether the Government have provided a plausible explanation of how those injuries were caused and produced evidence casting doubt on the veracity of the victim's allegations.

39. In response to the applicant's allegations, the Government argued that the police officers had used reasonable force in order to arrest him and that more serious injuries would have occurred had he been beaten up by six police officers. They also submitted that the applicant's allegations had not been corroborated by any evidence. Similar conclusions had also been reached by the local authorities in charge of the investigation (see paragraphs 17 and 19 above).

40. The Court reiterates that, in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch*, cited above, § 38). Furthermore, the use of force in the context of an arrest, even if it entails injury, may fall outside Article 3, particularly in circumstances resulting from an applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 64, 20 June 2002).

41. In the instant case, it does not appear from the documents contained in the case file that the injuries found on the applicant's body had been sustained prior to his detention in police custody. In this connection, the Court notes that the applicant was not examined by a doctor following his arrest. Such an examination would have been the appropriate step for the authorities to have taken, bearing in mind particularly the Government's allegation that the applicant had resisted arrest. Moreover, there is no arrest report which describes the reasons for and conditions of the applicant's arrest. Such a report could also have shed light on the acts of the parties which might have caused the injuries found on his body.

42. Furthermore, in cases of this kind where force had to be used to effect a lawful arrest, it is all the more important that the arrested person is medically examined before being placed in police custody. This would not only ensure that the person is fit to be questioned in police custody but would also enable the respondent Government to discharge their burden of providing a plausible explanation for those injuries. In this connection, the Court notes that a medical examination, together with the right of access to

a lawyer and the right to inform a third party of the detention, constitute fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.) (see the 2nd General Report of the European Committee for Prevention of Torture, CPT/Inf/E (2002) 1 - Rev. 2006, § 36).

43. Accordingly, in view of the national authorities' failure to conduct a medical examination before placing the applicant in detention, the Government cannot rely on that failure in their defence and claim that the injuries in question resulted from the applicant's own conduct. The Court may thus assume that the applicant was in good health prior to his being taken into custody (see, *mutatis mutandis*, *Abdulsamet Yaman v. Turkey*, no. 32446/96, § 45, 2 November 2004).

44. As regards the Government's contention that more serious injuries would have occurred had the applicant been beaten up by six police officers, the Court observes that, as noted earlier, the injuries described in the medical reports are already serious enough to exceed the threshold of minimum level of severity and are capable of falling within the scope of Article 3 of the Convention.

45. As to the Government's submission that the applicant's allegations had not been corroborated by any evidence, the Court notes that the two medical reports issued by Muğla State Hospital clearly indicate the presence of injuries on the applicant's body, which had been caused by a blunt object (see paragraphs 8 and 10 above). In these circumstances, the Court cannot accept the submission of the Government, whose authorities did nothing to establish the cause of the injuries described in the medical reports mentioned above.

46. In light of the foregoing, the Court reiterates that a State is responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody and in the absence of any explanation concerning the injuries noted in the two medical reports mentioned above, the Court considers that the Government have failed to provide a plausible explanation of how the injuries were caused. It therefore concludes that the injuries in question were the result of treatment for which the Government bore responsibility.

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

b. Alleged ineffectiveness of the investigation

48. The Court notes that subsequent to the complaints of ill-treatment lodged by the applicant with the Muğla Chief Public Prosecutor's office (see paragraph 12 above), the authorities commenced an investigation into

his allegations and ultimately pressed charges against six police officers for inflicting ill-treatment on him (see paragraph 15 above). However, the Muğla Criminal Court stayed the criminal proceedings in order to obtain authorisation for prosecution and referred the case to the Muğla Provincial Administrative Council. That body first denied authorisation for the prosecution of the police officers and ultimately, following the applicant's appeal, suspended the criminal proceedings by virtue of Law no. 4616 (see paragraphs 18 and 20 above). Those proceedings would subsequently be discontinued if no offence of the same or a more serious kind was committed by the offenders within a five-year period, in accordance with that law. The applicant challenged that decision before the Supreme Administrative Court, albeit unsuccessfully (see paragraphs 21 and 22 above).

49. The Court reiterates its previous findings in cases against Turkey that bodies like the Provincial Administrative Council and Police Disciplinary Board attached to the Muğla Governor's office in the present case, which are in charge of investigations concerning similar allegations directed against security forces, cannot be regarded as independent, as they are made up of civil servants hierarchically dependent on the governor, an executive officer linked to the very security forces under investigation (see, among others, *Ipek v. Turkey*, no. 25764/94, § 174, 17 February 2004). It considers that, in the circumstances of the present case, the aforementioned bodies' appointment of senior police officers as investigators was inappropriate, given that the allegations were directed against the police force of which they are members. In this regard, the willingness of the investigators to give credence to the accounts put forward by their colleagues and the conclusions reached by them confirm the Court's previous findings (see paragraphs 14, 17 and 19 above).

50. The Court further reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical and illusory. Therefore, investigations of the present kind must be able to lead to the identification and punishment of those responsible. In the instant case, however, the proceedings in question did not produce any result due to the application of Law no. 4616, which created virtual impunity for the perpetrators of the acts of violence, despite the evidence against them (see, *mutatis mutandis*, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 147, ECHR 2004-IV, and *Abdülşamet Yaman v. Turkey*, cited above, § 59).

51. Consequently, the Court considers that the criminal-law system, as applied in the applicant's case, has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant (see, *mutatis mutandis*, *Okkalı v. Turkey*, no. 52067/99, § 78, ECHR 2006-...).

52. In the light of the foregoing and given the authorities' failure to pursue the criminal proceedings against the police officers leading to the determination of their responsibility and punishment, the Court does not consider that the above proceedings can be described as thorough and effective so as to meet the procedural requirements of Article 3 of the Convention.

53. There has accordingly been a procedural violation of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 3,480 euros (EUR) in respect of pecuniary damage and EUR 20,000 for non-pecuniary damage.

56. The Government contended that the amount claimed was excessive and that any award to be made under this heading should not lead to unjust enrichment.

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

B. Costs and expenses

58. The applicant also claimed EUR 1,868 for the costs and expenses incurred before the Court (EUR 1,739 for legal fees and EUR 129 for postage and stationary fees). In this connection, he submitted a contract signed with his legal representative stipulating a fee of 3,000 new Turkish liras (approximately EUR 1,580) for the presentation of his application before the Court.

59. The Government maintained that the amount claimed was not justified or actually and necessarily incurred.

60. 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 are 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 sum of EUR 1,700 for the proceedings before it.

C. Default interest

61. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural aspects;
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, the following amounts, to be converted into 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 1,700 (one thousand and seven hundred euros), plus any tax that may chargeable to the applicant, for 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President