



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

SECOND SECTION

CASE OF USLU v. TURKEY (no. 2)

(Application no. 23815/04)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Uslu v. Turkey (no. 2),

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 23815/04) 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 Abdülkadir Uslu (“the applicant”), on 13 May 2004.

2. The applicant was represented by Ms Ö. Uslu, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 29 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Istanbul. He was detained at the Inebolu prison at the time of the events.

5. Upon the applicant’s request he was examined by a doctor at the prison clinic on 14 January 2004.

6. According to the prison clinic’s registry provided by the Government, the applicant was examined by the prison doctor who considered that he was suffering from a tension headache. The doctor decided to transfer the

applicant to a neurology department of a hospital. The Government submitted that, since there was no neurology department at Inebolu State Hospital, the applicant was transferred to Kastamonu State Hospital where he was examined by a doctor at the Neurology Department on 25 March 2004.

7. In the meantime, on 19 January 2004 the applicant filed a petition with the Inebolu Judge for the Execution of Sentences, after an oral refusal by the prison authorities, requesting copies of the doctor's report issued after his medical examination of 14 January 2004 and the relevant pages of the prison clinic's registry.

8. On 21 January 2004 the Inebolu Judge of Execution ordered the prison authorities to provide the applicant with copies of the requested documents. The applicant was so provided.

9. On 26 January 2004 the Inebolu public prosecutor filed an objection against the above decision. Referring to the spirit and purpose of a circular dated 5 December 1990, he claimed, *inter alia*, that the delivery of the originals or copies of any official prison documents to detainees or convicted persons was not permitted, in practice, on grounds of security and public order.

10. On 27 January 2004 the Inebolu Assize Court accepted the prosecutor's objection on these grounds.

11. On 30 January 2004 the documents in question were reclaimed by the prison authorities.

12. On 29 March 2004, the applicant requested the prison authorities to provide him with a copy of the medical report and prescription issued at the Kastamonu State Hospital following his medical examination on 25 March 2004. On the same day he received them.

13. The applicant's further request from the Ministry of Justice to quash the Assize Court's judgment by a written order (*yazılı emir*) was also rejected on 4 May 2004.

14. On 26 November 2004 the applicant was released from prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The circular of the General Directorate of Prisons and Detention Places of the Ministry of Justice, dated 5 December 1990, referring to various security breaches in prisons at that time, prohibits, *inter alia*, the delivery of documents or copies sent by the Ministry to a prisoner in reply to his/her inquiry. In such circumstances the prisoner should be briefly informed, in writing, of the outcome of his/her inquiry.

THE LAW

I. PRELIMINARY REMARKS

16. The Court observes that the applicant's first letter to the Court was dated 13 May 2004. However, the applicant's complaints regarding the incidents above were raised for the first time in his application form sent by post on 26 July 2004. The Court therefore considers that the date of introduction of the application was 26 July 2004.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained that the refusal of the authorities to provide him with a copy of the results of his medical examination infringed his right to respect for his private life as provided in Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private ... life,

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

18. At the outset, the Court considers that, although the respondent Government have not raised any objection as to the Court's competence *ratione personae*, this issue requires its consideration, since the Court has to satisfy itself that it has jurisdiction in any case brought before it, and it is therefore obliged to examine the question of its jurisdiction at each stage of the proceedings (see, *Odièvre v. France* [GC], no. 42326/98, § 22, ECHR 2003-III, and *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-...). In the instant case, the Court observes that the applicant received the copy of the requested documents on 21 January 2004 (see paragraph 8). However, following the court's decision of 27 January 2004, they were reclaimed by the authorities on 30 January 2004 (see paragraph 11). The applicant therefore had the possibility to examine the impugned documents for a limited period of time. However, in the Court's view, this situation does not alter the fact that the applicant was eventually refused a copy of these documents by a court decision and therefore his victim status for the purposes of Article 34 of the Convention is not open to doubt.

19. Moreover, the Court notes that this complaint 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. The parties' submissions

20. The Government submitted that there had been no interference with the applicant's right to receive information concerning him since he had been provided with the documents he had requested, namely the copies of the medical report of 25 March 2004 and the prescription issued on that date by the Kastamonu State Hospital.

21. The applicant maintained his allegations. In particular, he submitted that his complaint did not concern the medical reports issued by the Kastamonu State Hospital but that concerning his examination by the prison doctor on 14 January 2004. In this connection, the applicant complained that, until his examination at the Kastamonu State Hospital, he had had no knowledge regarding his medical condition and, in the absence of such information, was prevented from seeking further medical assistance. This situation had adverse effects on his health.

2. The Court's assessment

22. The Court considers that personal information relating to a patient undoubtedly belongs to his or her private life and, as such, the question of that individual's access thereto falls within the ambit of Article 8 (see, *mutatis mutandis*, *I. v. Finland*, no. 20511/03, § 35, 17 July 2008). Indeed, this has not been contested by the parties.

23. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in ensuring effective "respect" for private or family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Odièvre c. France* [GC], cited above, § 40).

24. In the instant case the Court does not consider it necessary to decide whether it would be more appropriate to analyse the case as one concerning a positive or a negative obligation since it is of the view that the core issue in the present case is whether a fair balance was struck between the competing public and private interests involved.

25. The Court accepts that the applicant had an interest in obtaining a copy of the report issued by the prison doctor following his visit, as well as the relevant registry page regarding his admission to the prison clinic so that he could be properly involved in the choice of the medical care to be provided.

26. The Court observes that the applicant - a detainee - was refused a copy of the doctor's report issued after his medical examination at the prison clinic on 14 January 2004 and the relevant registry page regarding his admission there. It appears that this decision was taken on the basis of a practice - with reference to a Ministry of Justice circular - whereby no copies of official prison documents were to be given to detainees on grounds of security and public order. The Government have not submitted any observations on the legal basis and the manner in which this practice of restricting access to documents to detainees/prisoners was applied so as to enable the Court to weigh the relevant competing individual and public interests, or assess the proportionality of the restriction at issue. Nor have they submitted any particular justification for such a measure.

27. In these circumstances and taking into account, particularly, the nature of the documents requested by the applicant, the Court cannot find any security or public order considerations that would justify overriding the applicant's interest in having a copy of them.

28. Having regard to the above considerations, the Court is of the view that a fair balance was not struck between the competing general and individual interests. There has, accordingly, been a violation of Article 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. In the application form, the applicant further complained that the refusal to give him information and documents regarding his health constituted a breach of Article 2 of the Convention. In addition, the applicant claimed under Article 13 of the Convention that the recovery by the prison authorities of these documents from him, and the non-notification of the prosecutor's objection or the Assize Court's decision to him, had hindered some of the applications he would have made on the basis of those documents.

30. Prior to the application form, the applicant submitted letters, dated 7 June 2002, 13 May 2004, 31 May 2004 and 11 June 2004, briefly complaining about various events relating to some criminal proceedings. The applicant did not pursue these complaints in his subsequent application.

31. In the light of all the material in its possession, the Court finds that the applicant's above submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be declared

inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed a total of 3,000 euros (EUR) in respect of pecuniary and non-pecuniary damages. He requested the reimbursement of his medical expenses incurred due to the belated treatment he had received.

34. The Government contested the amounts.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

36. The Court further considers that the finding of a violation of Article 8 of the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

37. The applicant also claimed a total of 2,800 new Turkish liras (approximately 1,457 EUR) for the costs and expenses incurred before the Court. In support of his claim, the applicant submitted a fee agreement concluded between him and his legal representative and receipts of translation costs.

38. The Government contested the amount.

39. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,300 for the proceedings before the Court.

C. Default interest

40. 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 complaint concerning the alleged interference with the applicant's right to respect for private life admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that the finding of a violation of Article 8 in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President