



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

1959 · 50 · 2009

SECOND SECTION

CASE OF YANANER v. TURKEY

(Application no. 6291/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Yananer 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 6291/05) 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 Bülent Yananer (“the applicant”), on 13 January 2005.

2. The applicant was represented by Mr M. İşeri, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 2 April 2008 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 1976 and lives in Bodrum. He was the manager of a hotel at the time of the events.

5. On an unspecified date, a number of persons complained to the police that the applicant, together with other persons, was extorting money and threatening them.

6. On 24 July 2004 the applicant, together with three other persons, was arrested and taken into custody by police officers from the organised crime

unit of the Bodrum District Security Directorate. A certain amount of heroin was also found in the car driven by the applicant during arrest.

7. According to the rights of the suspected accused form (*şüpheli sanık hakları formu*) signed by the applicant, on the same day, at about 8 a.m., the latter was informed of his rights, including the right to legal assistance and to remain silent, both of which he waived.

8. On the same day, at 8.30 p.m., when interviewed by two police officers he denied the accusations against him.

9. In the application form the applicant complained, without any details, that he had been subjected to torture, during interrogation, by two police chiefs, named Mehmet and Soner.

10. On 28 April 2005 the applicant, at the Registry's specific request, submitted a letter running to approximately eleven pages in which he set out in detail the various forms of ill-treatment he had been allegedly subjected to at the hands of various police officers in custody. In particular, these treatments included a violent punch on his chest during arrest; being blindfolded, handcuffed, made to lie down on the floor face down and told to raise his legs and receiving kicks to his buttocks and a blow to his head when he lowered his legs after his arrival at the police station; having one officer pulling his right leg while at the same time another pressed down on his back during interrogation. During this time, his testicles were squeezed and he received kicks and pressure to his back. A few hours before he was to be brought before the prosecutor, the applicant was told that chief Soner was going to come and he was made to wait while sitting in an uncomfortable position for hours. This person punched the applicant's face and his chin and kicked him on his knees. The applicant submitted that those responsible for his alleged ill-treatment were Soner, Mehmet, Bayram, Osman, Tolga and three other police officers.

11. On 25 July 2004 the applicant was examined by Dr Ü.E. at the State hospital who found no signs of injury on his person.

12. On the same day, the applicant was brought before the public prosecutor and a judge at the Bodrum Magistrates' Court. The latter ordered his remand in detention.

13. On 26 July 2004 the applicant's lawyer submitted an official complaint to the Bodrum public prosecutor claiming that the applicant had been subjected to severe torture while he was held in police custody and requested the prosecution of the police officers who had taken part in the applicant's interrogation. The lawyer stated that the applicant had bruises under his right eye and on his back and asked that the applicant be urgently referred to a hospital for a medical examination, including a psychiatric evaluation. However, the petition did not include any details as regards the alleged ill-treatment.

14. On 27 July 2004 the applicant was examined by two doctors at the Bodrum State hospital. Dr M.A. noted that the applicant had five or six

longitudinally bruised areas on his lower back, which rendered him unfit for work for three days. In his report, Dr M.A. noted, with a question mark, that the applicant had complained of torture. On the same day, the applicant was examined by Dr E.T., an ophthalmologist, who found that he had a bruise under his right eye which rendered the applicant unfit for work for three days.

15. On 13 August 2004 the prosecutor heard evidence from two police officers who had interrogated the applicant. In their submission, these officers admitted that other colleagues had been present during the applicant's interrogation. However, they denied wrongdoing by any officer.

16. On 16 August 2004 the prosecutor heard evidence from the applicant. The latter submitted that, during interrogation, the head of the organised crime unit, Mehmet K., made him kneel and hit him while he was blindfolded and in handcuffs. Mr K. also threatened him and refused to provide him with a lawyer despite his request for one. The applicant stated that the police officers who had officially interviewed him had not ill-treated him and that he was ill-treated by Mehmet K. and a chief named Soner. Moreover, he claimed that since he was accompanied by two police officers when he was taken for a medical examination, he had been scared and had misled the doctor by stating that he did not have any injuries.

17. On 18 August 2004 the prosecutor heard evidence from the accused police officer, Mehmet K., who rejected the allegations against him. In particular, he submitted that he was the head of the organised crime unit and that he knew the applicant on account of various investigations conducted against him. The accused further maintained that the only police officer called Soner was the head of the unit at the Provincial Security Directorate and that he was not in the police station in question at the time of the alleged incident.

18. On the same day, the prosecutor heard evidence from the doctors who had examined the applicant.

19. Dr Ü.E. stated, *inter alia*, that when he had examined the applicant on 25 July 2004 there were no signs of ill-treatment on his person and that the applicant had told him that he had no complaints. The doctor further stated that since they did not have a separate room at the emergency service where he had examined the applicant, the police officers, who were not present during the examination, could see them. However, he claimed that he did not have the impression that the applicant had any fears or uneasiness about this fact.

20. Dr M.A. submitted, *inter alia*, that the applicant had complained of ill-treatment and showed the bruises on his back but that they could not conclude whether they were the result of ill-treatment and that therefore he had put a question mark next to the applicant's complaint.

21. Dr E.T. maintained, *inter alia*, that the applicant's general disposition was fine and that he heard the gendarmes saying that he was

hitting himself left and right before coming to the examination. He stated that the applicant had a light bruise under his right eye but no swelling. In this connection, the doctor maintained that he could not know when this bruise happened because bruising could last around ten days and could be self-inflicted.

22. In the meantime, on the same day, the applicant's lawyer petitioned the public prosecutor asking him to find the police officers who had ill-treated the applicant. In this petition, the lawyer claimed that the applicant had been subjected to torture by two police officers named Soner, a police chief who had worked in Mersin Security Directorate before, and Mehmet, whose surname could be Kuzu. These officers had indiscriminately punched the applicant's head and body. During the interrogation seven police officers had laid the applicant on the floor, kicked his back and waist and climbed on the applicant's back wearing sports shoes. In addition, the applicant had been sworn at and blindfolded. The applicant's lawyer further requested the transfer of the applicant, who had become withdrawn and fearful, to a hospital for a psychiatric evaluation.

23. On 19 August 2004 the prosecutor, taking into account the applicant's submissions, decided not to prosecute Ms S.A and Mr S.G., the police officers who had interviewed the applicant. As regards Mr Mehmet K., the head of the organised crime unit, the prosecutor, taking into account particularly the applicant's conflicting submissions and attitude before and after his remand in custody and the testimony of the doctors, considered that there was no evidence to demonstrate that the findings of the additional medical reports were the result of ill-treatment for which Mr Mehmet K. was responsible. He therefore decided not to prosecute Mehmet K.

24. On 1 September 2004 the applicant objected to the prosecutor's decision. He submitted, *inter alia*, that two police officers, namely Mehmet and Soner, had tortured him and had punched his head and body indiscriminately. Afterwards, seven other police officers had laid the applicant on the floor and kicked his back and waist.

25. On 16 September 2004 the Aydın Assize Court dismissed the applicant's objection.

26. In the meantime the applicant unsuccessfully asked for disciplinary proceedings to be brought against police officers at Bodrum District Security Directorate.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. A description of the relevant domestic law at the material time can be found in *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, ECHR 2004-IV (extracts)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained that he had been subjected to ill-treatment while he was held in police custody and that the authorities had failed to conduct an effective investigation into his complaints, in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

29. The Government asked the Court to dismiss the application 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 civil or administrative courts.

30. The Court reiterates that it has already examined and rejected the same argument by the Government in previous cases (see, for example, *Nevruz Koç v. Turkey*, no. 18207/03, § 31, 12 June 2007, and *Eser Ceylan v. Turkey*, no. 14166/02, § 23, 13 December 2007). The Court finds no particular circumstances in the present application which would require it to depart from that conclusion. Consequently, the Court rejects the Government’s preliminary objection.

31. Moreover, the Court finds that the applicant’s 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

32. The Government maintained that the applicant’s allegations of ill-treatment were not substantiated and, referring to the various actions undertaken by the domestic authorities, they considered that an effective investigation had been conducted in the instant case.

33. The applicant maintained his allegations.

34. 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,

failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, *Aksoy v. Turkey*, § 62, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, *Tomasi v. France*, §§ 108-111, 27 August 1992, Series A no. 241-A, and *Ribitsch v. Austria*, § 34, 4 December 1995, Series A no. 336).

35. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, § 161 18 January 1978, Series A no. 25). 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).

36. In the instant case, the Court observes that the applicant was not examined medically following his arrest. It further notes that the medical report drawn up at the end of his stay in police custody does not contain any indication that the applicant was ill-treated during that time. However, the Court observes that, upon the applicant’s specific request to see another doctor, he was examined, two days after the end of his police custody, and the doctors who had examined him made certain physical findings which, although the report fails to indicate details such as colour and size of the bruises, are consistent at the very least with applicant’s allegations of having received kicks on his back and a blow to his face.

37. In this connection, the Court observes that the Government failed to provide an explanation as to the manner in which the injuries noted in the medical report of 27 July 2004 were sustained by the applicant. Considering the circumstances of the case as a whole, and the absence of a plausible explanation from the Government as to the cause of the injuries to the applicant, who was throughout this whole time under the control of the State authorities, the Court finds that these injuries were the result of treatment for which the Government bore responsibility.

38. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). 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 and promptness (see, for example, *Çelik and İmret v. Turkey*,

no. 44093/98, § 55, 26 October 2004). In addition, the Court recalls that the rights enshrined in the Convention are practical and effective, and not theoretical or illusory. Therefore, in such cases, an effective investigation must be able to lead to the identification and punishment of those responsible (see *Orhan Kur v. Turkey*, no. 32577/02, § 46, 3 June 2008).

39. The Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by the applicant. An effective investigation was therefore required.

40. 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 ended when the Assize Court upheld the decision of the public prosecutor not to prosecute Ms S.A, Mr S.G. and Mr Mehmet K. In the course of the investigation additional medical reports were sought to establish the veracity of the applicant's allegations and the prosecutor heard evidence from the applicant, the accused officers and the doctors who had examined the applicant.

41. Nonetheless, the Court observes that there were shortcomings in the way the investigation was conducted by the prosecutor which had repercussions on its effectiveness. Firstly, the Court reaffirms that evidence obtained during forensic examinations plays a crucial role during investigations conducted against detainees and in cases where the latter raise allegations of ill-treatment (see *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 79, 17 March 2009¹). In this connection, the Court cannot but note that all these medical reports submitted to the Court lack detail and fall significantly short of both the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which are regularly taken into account by the Court in its examination of cases concerning ill-treatment (see, *inter alia*, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X), and the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "the Istanbul Protocol", submitted to the United Nations High Commissioner for Human Rights (see *Bati and Others*, § 100, cited above). The Court recalls the CPT's standard that all medical examinations should be conducted out of the hearing, and preferably out of the sight, of police officers. Further, every detained person should be examined on his or her own and the results of that examination, as well as relevant statements by the detainee and the doctor's conclusions, should be formally recorded by the doctor (see *Akkoç*, § 118, cited above, and *Mehmet Eren v. Turkey*, no. 32347/02, § 40, 14 October 2008). Moreover, an opinion by medical experts on a possible relationship between physical findings and ill-treatment was found to be a requirement by the Court (see

1. Judgment not yet final.

Mehmet Emin Yüksel v. Turkey, no. 40154/98, § 29, 20 July 2004). In the instant case, the medical reports were drafted in cursory manner, for example, without any mention as regards size, colour or possible relationship between the physical findings and the applicant's statements. Moreover, at least on one occasion, the applicant was examined in circumstances where police officers could see the examination room if they wished (see paragraph 19 above), in clear breach of the aforementioned CPT standards.

42. Secondly, the Court notes that the applicant was never requested to identify the alleged perpetrators either by way of checking police photographs or an identification parade. There was no serious attempt to elucidate the identities of the persons referred to as Mehmet and Soner by the applicant or the veracity of his claims as regards their respective rank and presence in the police station at the time of the events. Thirdly, the prosecutor failed to secure the testimonies of the other police officers on duty that day, those that accompanied the applicant to the medical examinations as well as those of potential eye-witnesses, such as the persons arrested together with the applicant or others present at the police station on the day of the events. In the absence of conclusive medical evidence in the case file, these testimonies would have provided, in the Court's opinion, important information capable of casting light on the origins of the injuries noted on the applicant's medical reports dated 27 July 2004 and of proving or disproving the applicant's allegations.

43. In the light of the above, the Court does not find that the above investigation can be described meeting the requirements of thoroughness and effectiveness under Article 3 of the Convention.

44. There has therefore been both a substantive and a procedural violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

45. The applicant further complained under Articles 6 and 13 of the Convention that the authorities' failure to conduct an effective investigation into his complaints of ill-treatment had rendered impossible the punishment of the persons responsible for the ill-treatment inflicted on him or the initiation of civil proceedings against them.

46. The Court notes that these complaints are linked to the ones examined above and must likewise be declared admissible.

47. However, having regard to the facts of the case, the submissions of the parties and its finding of a violation of Article 3 under its procedural limb above, the Court considers that it has examined the main legal question raised in the present application. It concludes, therefore, that there is no need to give a separate ruling on the applicant's remaining complaints under

Articles 6 and 13 of the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *K.Ö. v. Turkey*, no. 71795/01, § 50, 11 December 2007; *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008; and *Mehmet Eren*, § 59, cited above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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.”

49. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage. Referring to the Turkish Bar Association’s scale of fees, he further claimed EUR 1,000 in respect of costs and expenses incurred before the Court.

50. The Government contested the amounts.

51. As regards the applicant’s claims regarding non-pecuniary damage, the Court finds 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, the Court awards the applicant EUR 10,000 for non-pecuniary damage.

52. As to the claims concerning costs and expenses, the Court finds that since the applicant submitted no relevant justification regarding costs and expenses, as required by Rule 60 of the Rules of Court, it makes no award under this head.

53. Finally, 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 both a substantive and procedural violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 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 in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent Government 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 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President