



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ALİ YAVUZ v. TURKEY

(Application no. 35160/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Ali Yavuz 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 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 35160/05) 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 Ali Yavuz (“the applicant”), on 19 September 2005 initially by fax, followed by mail.

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. The applicant alleged, in particular, that he had been subjected to torture during his detention in the custody of security forces and that the national authorities had failed to establish the criminal and administrative responsibilities of the accused police officers. This had consequently denied him the right to seek compensation before the civil courts. The applicant relied on Articles 3, 6, 13 and 14 of the Convention.

4. On 15 May 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

5. The applicant was born in 1963 and lives in Bursa.

6. On 7 March 1999 the applicant and four others were arrested at around 12.30 p.m. by police officers in Kadifekale, İzmir, and taken into police custody at the İzmir police headquarters. On the same day, at 4.p.m., the applicant was taken to İzmir Atatürk State Hospital where a doctor examined him and drew up a provisional report which is mostly illegible. The legible parts of the report indicate that the applicant is conscious, that there is no need for an urgent intervention and that his medical condition does not require him to take time off from work.

7. On 8 March 1999, at 8.15 a.m., two police officers who were on duty where the applicant was in custody drew up and signed a report which indicated that the applicant hit his head against the door of his cell whilst refusing breakfast in an angry manner. The names of the police officers are not indicated on the report.

8. On 8 March 1999, at 3.55 p.m., the applicant was seen by a doctor at the Konak Forensic Medicine Institute who noted an oedema and lesion on the right upper eyelid and a minor lesion on the lower lid of the same eye and a lesion on the upper lip. The report noted that these findings rendered the applicant unfit for work for two days. On the same day the applicant was brought before the investigating judge, who ordered his release.

9. On 9 March 1999 the applicant lodged a complaint with the public prosecutor, who heard him in person the same day. The applicant alleged that he had been subjected to torture by the police officers whilst in custody and requested to be referred to a forensic doctor in order for the marks of ill-treatment still visible on his face and body to be verified.

10. On the same day the applicant went, of his own accord, to be examined by the doctors of the İzmir Chamber of Doctors, who drew up a report on 25 June 1999 noting pain in various parts of the head and neck and lesions around the right eye. The report also stated that the applicant was suffering from post-traumatic stress. The report concluded that the findings on the applicant's body corroborated his allegations and that they had been caused by the use of force.

11. The public prosecutor heard the accused police officers on 2 June 1999 and on that day issued a decision not to prosecute. The police officers stated that they had not been there when the applicant was arrested. They had questioned him afterwards. The public prosecutor found it established, on the basis of the police officers' statements, that the marks on the applicant's face had occurred when the applicant hit his head on the door of his detention room whilst refusing breakfast on 8 March 1999. The public prosecutor concluded that there was insufficient evidence against the police officers.

12. On 12 July 1999 the applicant lodged an objection with the Karşıyaka Assize Court against the decision not to prosecute and submitted the report drawn up by the İzmir Chamber of Doctors in support of his allegations.

13. On 30 July 1999 the applicant was seen by a forensic doctor, who referred to the findings of the medical report dated 8 March 1999, namely lesions around the right eye and on the upper lip, and noted that periorbital lesions would not occur as a result of hitting one's head on a door and that it was possible that they had been caused by the use of force.

14. On 2 August 1999 the Karşıyaka Assize Court upheld the applicant's objection, finding that the medical reports submitted by the applicant constituted sufficient evidence to initiate criminal proceedings.

15. On 26 August 1999 the İzmir public prosecutor filed a bill of indictment with the İzmir Criminal Court of First Instance in which he accused the police officers who had been on duty when the applicant was in custody, under Article 245 of the former Criminal Code, of ill-treating the applicant during the performance of their duties (*görev sırasında efrada sui muamele*). On 10 November 1999 the applicant joined the proceedings as a civil party.

16. During the proceedings the İzmir Criminal Court of First Instance heard the applicant as well as the witnesses of both parties. The applicant reiterated his allegations and stated further that he had been blindfolded and could not therefore identify the perpetrators. He added that he had also been verbally insulted during questioning. The police officers who had participated in the applicant's arrest stated that the applicant had been among his supporters at the time and had shown physical resistance during arrest. Other individuals who were detained at the same time as the applicant, and who testified on his behalf, stated that they had seen bruises on his face after questioning.

17. On 9 October 2000 the İzmir Criminal Court of First Instance acquitted the police officers in the absence of any concrete evidence. The court found that the medical report of 25 June 1999 had been issued three months after the alleged incident and that the applicant could not identify the perpetrators.

18. On 24 November 2000 the applicant appealed. On 8 April 2002 the Court of Cassation quashed the judgment on the ground that the accusations against the police officers fell under Article 243 of the former Criminal Code, which prohibited public officials from inflicting torture to extract confession or information, rather than Article 245 under which they had initially been charged. The Court of Cassation added that the case should therefore have been examined by the İzmir Assize Court and remitted the case to the İzmir Criminal Court of First Instance.

19. On 9 April 2003 the İzmir Criminal Court of First Instance gave a decision of non-jurisdiction and referred the case to the İzmir Assize Court.

20. On 6 October 2003 İzmir Assize Court acquitted the two police officers on the ground, *inter alia*, that the medical report of the İzmir Chamber of Doctors submitted by the applicant had been issued three months after the end of his custody period and that it reflected his

description of the events alone without conducting or making any reference to the medical examinations. The İzmir Assize Court did not mention the first two medical reports drawn up on 7 and 8 March 1999 but simply quoted a paragraph of the findings of the report drawn up on 30 July 1999.

21. The applicant appealed and maintained that there was sufficient evidence to prove his allegations. He added that he had been tortured by five or six police officers, whereas criminal proceedings had been initiated against only two officers.

22. On 21 March 2005 the Court of Cassation quashed the judgment on the ground that the prosecution of the offences had become time-barred.

II. RELEVANT DOMESTIC LAW

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, ECHR 2004-IV) and *Okkai v. Turkey* (no. 52067/99, 17 October 2006).

THE LAW

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

24. The applicant complained under Article 3 of the Convention that he had been subjected to torture whilst in police custody. Relying on Articles 6 and 13, he further alleged that he had been denied an effective remedy in respect of his ill-treatment complaint due to shortcomings in the proceedings, in particular their excessive length and the lack of a hearing before the Court of Cassation, which amounted to an unfair trial.

25. The Court considers that these complaints should be examined solely from the standpoint of Article 3 of the Convention. The relevant Articles read as follows:

Article 3

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

A. Admissibility

26. The Government argued that the applicant had lodged his complaint on 15 November 2005 whereas the final decision in domestic law was dated

21 March 2005. Therefore the application should be rejected for having been introduced outside the six-month time-limit laid down in Article 35 § 1 of the Convention. The Government further maintained that the applicant had failed to exhaust the domestic remedies available to him within the meaning of Article 35 § 1. 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 sustained.

27. The Court observes that the application was initially introduced by fax on 19 September 2005 whereas the date the Government referred to in their observations is the stamp on the original version of the application form. This stamp indicates the date of arrival of the application form at the Court. It follows that the complaint was lodged by written communication to the Court within the six months allowed. The Court further reiterates that it has already examined and rejected the Government's preliminary objections regarding exhaustion of domestic remedies in similar cases (see, in particular, *Ataş and Seven v. Turkey*, no. 26893/02, § 29, 16 December 2008). The Court finds no particular circumstances in the instant case which would require it to depart from such previous conclusions. It therefore rejects the Government's preliminary objection.

28. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

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

29. The Government rejected the complaints and argued that the applicant's ill-treatment complaints had been examined thoroughly by three different courts, all of which had considered that the evidence at hand had been insufficient to convict the police officers.

30. The Court refers to the basic principles laid down in its judgments concerning Article 3 (see, in particular, *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 62, 12 April 2007; *Yavuz v. Turkey*, no. 67137/01, § 38, 10 January 2006; *Emirhan Yıldız and Others v. Turkey*, no. 61898/00, §§ 41-42, 5 December 2006; *Diri v. Turkey*, no. 68351/01, §§ 35-39, 31 July 2007). It will examine the present case in the light of these principles.

31. The Court observes that four medical reports were drawn up in respect of the applicant. Although mostly illegible, the first medical report – drawn up on the day the applicant was taken into custody (7 March 1999) – indicated that he was fit for work. The second medical report – issued on the

day after the applicant's release from custody – mentioned an oedema and lesions around the right eye and on the upper lip. This report established that the applicant was unfit for work for two days. The third medical report – based on the applicant's examination on 9 March – stated that the applicant had been suffering from post-traumatic stress in addition to the pain and lesions and that these findings corroborated the applicant's allegations of ill-treatment. Finally, the fourth report, which referred to the findings of the medical report of 8 March, concluded that periorbital lesions would not occur as a result of hitting one's head on a door and that it was possible the marks on the applicant had been caused by the use of force.

32. The Court notes that the police officers who had participated in the applicant's arrest stated that the applicant had shown physical resistance during arrest. In this connection the Court considers that it is not clear whether the marks on the applicant's body existed at the time or before he was taken into custody since the contents of the first medical report are not fully legible. However, the Court observes that neither of the police officers who were heard by the public prosecutor on 2 June 1999 referred to any existing marks on the applicant's face which had occurred previously during his arrest. On the contrary, referring to a report drawn up on the morning of 8 March, they both stated that the applicant had hurt himself while in custody. The Court further notes that this report was drawn up and signed by two police officers, whose names were not indicated, and did not bear the signatures of either the applicant or any other witnesses. Having regard to the findings of the fourth medical report, which indicated that periorbital lesions would not have occurred as a result of hitting the head on a door (see paragraph 13 above), the Court does not find it credible, in the circumstances, that the marks on the applicant's face were caused by hitting his head against the door of his cell.

33. The Court observes that the domestic court which acquitted the two police officers did not refer to the first two medical reports at all. It found the third report unconvincing because it had been delivered three months after the alleged events. Moreover, it simply quoted a paragraph of the findings of the fourth report without further examining its contents. In this connection the Court notes that, although drawn up on 25 June 1999, the third report was based on the applicant's medical examination which had taken place on 9 March, that is, the day after his release.

34. In the light of the foregoing considerations, the Court concludes that the applicant's allegations are consistent and substantiated by the medical reports, whereas the Government have not submitted any plausible explanation for the marks on the applicant's face.

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

2. The responsibility and positive obligation of the State in the light of the procedural aspect of Article 3

35. The Court reaffirms that when, in principle, an agent of the State is accused of crimes that violate Article 3, the criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permissible (see *Erdoğan Yılmaz and Others v. Turkey*, no. 19374/03, § 56, 14 October 2008, and, *mutatis mutandis*, *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 72, 8 April 2008).

36. The Court notes in the instant case that the prosecution of the police officers was dropped on 21 March 2005 as the statutory time-limit had expired. Consequently, the Court reiterates its earlier finding in a number of cases that the Turkish criminal-law system as applied can prove to be far from rigorous and have little dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents if criminal proceedings brought against the latter are dropped for being time-barred (see, among others, *Hüseyin Esen v. Turkey*, no. 49048/99, § 63, 8 August 2006). The Court finds no reason to reach a different conclusion in the present case.

37. In the light of the foregoing, the Court finds that the criminal proceedings brought against the police officers cannot be described as having been adequate and were therefore in breach of the State's procedural obligations under Article 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicant asserted that he had been denied the right to seek compensation before the civil courts as the criminal proceedings against the police officers had been dismissed for exceeding the statutory time-limit. The applicant relied on Article 13 of the Convention, which reads as follows:

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

40. The Government rejected this allegation and maintained that effective domestic civil law remedies had been available to the applicant.

41. The Court refers to its findings above (see paragraph 28) and reiterates its conclusion in a number of previous cases that the civil remedies were inoperative in similar situations, as they did not enable the applicants to obtain compensation for the alleged violations (see, among

others, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 148, ECHR 2004-IV (extracts)). The Court finds no reason in the instant case to depart from its earlier conclusion.

42. There has accordingly been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. The applicant further complained of the lack of independence and impartiality of the domestic courts as well as the lack of a hearing before the Court of Cassation. He added that he had been subjected to torture and denied the right to a fair hearing because of his Kurdish origin. He relied on Article 6 and on Article 14 in conjunction with Articles 3 and 6 of the Convention.

44. Having regard to its conclusion concerning the procedural aspect of Article 3 (see paragraph 34 above), the Court considers that it is not necessary to examine whether, in this case, a separate issue arises under Article 6 of the Convention (see, for example, *Mehmet Eren v. Turkey*, no. 32347/02, § 59, 14 October 2008).

45. The Court further considers that the complaint under Article 14 is unsubstantiated in the light of the materials submitted to it. It follows that these complaints 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

46. 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.”

47. The applicant submitted his claims for just satisfaction out of time. Accordingly, these submissions were not included in the case file for examination by the Court. Consequently, the Court considers that there is no call to award any sum (see, for example, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 156, 14 June 2007).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the applicant’s complaint concerning his alleged ill-treatment in custody, the alleged ineffectiveness of the ensuing

criminal proceedings and the alleged lack of an effective remedy in respect of any civil claim for damages;

2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;
6. *Rejects* 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