



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

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THIRD SECTION

**CASE OF VOLKAN ÖZDEMİR v. TURKEY**

*(Application no. 29105/03)*

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court  
in a judgment of 20 July 2010*

STRASBOURG

20 October 2009

**FINAL**

*20/01/2010*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the  
Convention. It may be subject to editorial revision.*



**In the case of Volkan Özdemir v. Turkey,**

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

Josep Casadevall, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Luis López Guerra,

Işıl Karakaş,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

## PROCEDURE

1. The case originated in an application (no. 29105/03) 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, Mr Volkan Özdemir (“the applicant”), on 18 July 2003.

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

3. On 13 July 2006 the President of the Third 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 1986 and lives in İzmir.

### **A. The applicant's arrest and detention in police custody**

5. On 30 March 2002 the applicant, together with Mr Z.K., was arrested by police officers at the Buca District Security Directorate Security Office and taken into police custody on suspicion of committing robbery.

6. According to the record of the arrest, drafted by three police officers on the same day at 7.10 p.m. and signed by the applicant and Mr Z.K., the police had received information that at about 1 p.m. two persons had been seen trying to break into three different houses in Buca Egekent. A unit was dispatched and at 7 p.m. arrested the suspects, who corresponded to the description given by eyewitnesses; in the course of the arrest, the applicant had sustained various injuries to his knees, back and forehead since he had fallen on stony ground while he was running.

7. On the same day (30 March 2002) at 7.30 p.m. an eyewitness identified the applicant and Mr Z.K. in the course of an identification parade.

8. According to a verbatim report, the applicant was not questioned since he was a minor.

9. In the application form the applicant submitted, in great detail, that he had been subjected to various forms of ill-treatment while he was held in police custody. In particular, he submitted that he had been taken to an interrogation room where one part of the wall was covered with sponge and that the officers had hit his head against this wall. He claimed that, in this room, he had been beaten and threatened, for example with electric shocks, by four plain-clothed police officers. He stated that, although he was blindfolded, he was able to see at one point and recognised them from their voices. The applicant further stated that the officers had later made him take a cold shower, stripped him naked and tied his hands. He claimed that all this had taken place at Buca central police station and not at the Ş. Çoşkun Erçin police station, where he had been taken for certain procedures before being brought before the court.

10. At 7.45 p.m. the applicant was examined by a doctor at the Buca medical clinic, Mr O.T., who found that he had a 1.5 cm slight skin lesion and oedema on his head, an elliptical area of redness of around 8 cm in the middle of his back resulting from rubbing or hitting, a slight bruise on the back towards the right shoulder and a slight abrasion on the right knee due to rubbing.

11. On 31 March 2002, at 2.35 p.m., the applicant was examined by a doctor, Mr B.G., at the Buca medical clinic, who found that he had an old bruise of 6 cm by 7 cm in the middle of his back. The doctor considered it to be around seven to eight days old.

12. According to the undated rights of suspects and accused form signed by the applicant and a police officer at the Ş. Çoşkun Erçin police station, the latter was arrested at 7 p.m. However, according to the transfer/release

form, dated 31 March 2002, the applicant was arrested by the İzmir Buca Juvenile Service on 30 March 2002 at 1.30 p.m. and released on 31 March 2002 at 4 p.m. According to a report (*fezleke*) prepared by the police, on 31 March 2002, the applicant and Mr Z.K. were arrested at 7.10 p.m. by police officers from Buca Security Office (*Asayiş Bürosu*). In this report it is stated that at 2.56 p.m. on 30 March 2002 Ms E.C. arrived at the police station to complain about the theft.

13. It appears that on 31 March 2002 the police attempted to bring the applicant before the prosecutor and a judge. However, since it was too late, the prosecutor ordered the applicant to be brought before him early the next day. The applicant was transferred to the İzmir Buca Juvenile Service to be detained.

### **B. The criminal proceedings against the applicant**

14. On 1 April 2002 the applicant was first brought before the İzmir public prosecutor's office and later before the İzmir Magistrates' Court, where he denied the accusations against him. The applicant was represented by a lawyer appointed by the Bar. The court remanded him in custody.

15. On 8 April 2002 the İzmir public prosecutor filed a bill of indictment with the İzmir Criminal Court of First Instance, accusing the applicant and Mr Z.K. of theft on 6 February 2002 and of attempted theft on 30 March 2002 in three different houses. The charges were brought under Articles 493 and 522 of the Criminal Code.

16. Criminal proceedings were instigated against the applicant and Mr Z.K. before the İzmir Criminal Court of First Instance. At the hearing held on 29 April 2002 the applicant stated that he did not know what Mr Z.K. had been doing during the first attempted theft and had only understood during the second attempted theft. The applicant, who was represented by a lawyer, maintained that he had never entered anyone's house or stolen anything and that at the time of the events, once he had understood what his friend was doing during the second attempted theft, on being told to run he had done so. The court ordered the release of Mr Z.K. and the applicant pending trial.

### **C. Investigation into the applicant's alleged ill-treatment in police custody**

17. On 20 May 2002 the applicant filed an official complaint with the İzmir public prosecutor's office against eight police officers, whom he believed to be working at the Ş. Çoşkun Erçin police station. In his complaint, the applicant submitted that at that police station he had received punches and kicks to his stomach, his head had been hit against a wall and he had been stripped naked, hosed with cold water, threatened with electric

shocks and made to wait in the cold. He further complained that he had been unlawfully deprived of his liberty, since he had been arrested at 1.30 p.m. on 30 March 2002 but brought before a judge only on 1 April 2002.

18. On 23 August 2002 the İzmir public prosecutor Mr C.Ç. decided not to prosecute three police officers from the Ş. Çoşkun Erçin police station, two police officers from the Buca Juvenile Service and three police officers from the Buca Security Office on the ground that there was no evidence to substantiate the applicant's allegations of ill-treatment. In particular, the prosecutor, referring to the record of the arrest, considered that the findings of the medical report were consistent with the injuries sustained by the applicant when he had fallen during his arrest. He further noted that the medical report had stated that these bruises were old.

19. On 23 December 2002 the applicant objected to the above decision.

20. On 6 January 2003 the Karşıyaka Assize Court dismissed the applicant's objection concerning the alleged ill-treatment. In this connection, it held that, apart from the bruises sustained by the applicant while he had been running from the police and had fallen, there was no physical evidence of ill-treatment. On the other hand, it upheld the applicant's objection regarding his deprivation of liberty on the ground that the applicant – a minor – had been brought before the prosecutor at 7.45 p.m. on 31 March 2002, whereas the prosecutor had asked at 1 p.m. that he be brought before him immediately. The court therefore decided that criminal proceedings should be instigated against the police officers for abuse of their position. That decision was served on the applicant's lawyer on 21 January 2003.

21. In the meantime the Security Directorate initiated a disciplinary inquiry into the applicant's allegations of wrongful deprivation of liberty as regards the length of his detention. On 10 September 2003 the Disciplinary Board, relying on the evidence in the case file, including the statements by the applicant and his mother, found that there was no need to impose a disciplinary penalty on the eight accused police officers from the İzmir Security Directorate. That decision was served on the applicant's lawyer on 21 January 2003.

22. At a hearing held on 29 March 2004 the first-instance court heard evidence from the applicant. He submitted that he had been beaten at the police station by one dark-skinned police officer and that there had been others next to him. The applicant asserted that if he saw them he would be able to recognise them. He further stated that he had not lodged a complaint against the police officers.

23. In 2006 the first-instance court acquitted the police officers. The applicant appealed. The case is pending before the Court of Cassation.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Okkalı v. Turkey* (no. 52067/99, §§ 47-52, ECHR 2006-XII (extracts)), and *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 2004-IV (extracts)).

## THE LAW

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

25. The applicant complained that he had been subjected to ill-treatment while in police custody and that the domestic authorities had failed to conduct an effective investigation into his allegations. He invoked Articles 3, 6 and 13 of the Convention.

26. The Court considers that these complaints should be examined from the standpoint of Article 3 alone, which provides:

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

#### A. Admissibility

27. The Government raised a number of objections regarding the admissibility of the applicant's complaints. They pointed out, firstly, that the criminal proceedings against the impugned police officers were still pending before the domestic courts. Secondly, the Government claimed that the applicant had failed to exhaust domestic remedies because he had not used those provided for under civil and administrative law. Finally, they claimed that the applicant should have lodged his application within six months after the decision of the Karşıyaka Assize Court or, alternatively, within six months of the date on which the incident had occurred.

28. The applicant disputed the Government's arguments.

29. The Court considers, firstly, that the final effective decision concerning the applicant's complaint under Article 3 of the Convention was the Karşıyaka Assize Court's decision of 6 January 2003, dismissing the applicant's objection against the public prosecutor's decision, since it involved the determination of the merits of his complaint (see, *mutatis mutandis*, *Ete v. Turkey* (dec.), no. 29315/02, 13 June 2006). That decision was served on the applicant's lawyer on 21 January 2003. Secondly, the Court reiterates that in previous cases it has already examined and rejected

identical arguments by the Government concerning civil and administrative remedies (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. It therefore dismisses the Government's objection of failure to exhaust domestic remedies.

30. Furthermore, reiterating that the six-month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies, and that where an applicant is entitled to be served automatically with a written copy of the final domestic decision the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment, the Court considers that the application lodged on 18 July 2003 was introduced in conformity with the six-month time-limit provided for in Article 35 § 1 of the Convention. It thus likewise dismisses the Government's preliminary objection in this connection.

31. Moreover, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established. It must therefore be declared admissible.

## **B. Merits**

32. The Government maintained that the applicant had been arrested at 7 p.m., that he had sustained injuries during his arrest since he had fallen while running from the police, that he had not complained of ill-treatment when he was brought before the prosecutor and judge on 1 April 2002, that he had failed to cooperate with the trial court by not providing his proper address, with the result that it had not been possible to summon him to give evidence until 29 March 2004, and that his statements before that court contradicted his previous statements.

33. The applicant maintained his allegations. In particular, he submitted that he had been afraid to complain about the ill-treatment before the prosecutor and the judge on 1 April 2002 since he had been arrested for robbery many times before and would probably face the same police officers again. Moreover, if the medical examination had been properly conducted it would have been possible to observe the physical indications of the ill-treatment. He further denied that there were contradictions in his statements. In addition, the applicant pointed out that it did not make sense for him to have been arrested six hours after the theft in the same neighbourhood with incriminating evidence at hand.



34. 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). 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.

35. 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 v. Turkey*, 18 December 1996, § 61, *Reports of Judgments and Decisions* 1996-VI, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

36. 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 Ekinci*, cited above, § 142). 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).

37. In the instant case the ill-treatment complained of by the applicant, a minor, consisted mainly of beatings, threats and cold showers. In this connection, the Court finds that, contrary to the Government's argument, the applicant's version of events, save for slight details, has been consistent both before the Court and the domestic authorities.

38. The Government relied on the record of the arrest drafted by the police in maintaining that the applicant's only injuries were those sustained when he had fallen during his arrest (see paragraph 6 above). On this point, the Court, having regard to the inadequate and contradictory information contained in official documents relating to the applicant's arrest, where the

applicant appears on the one hand to be arrested by police officers at Ş. Çoşkun Erçin police station at 7 p.m. or by the İzmir Buca Juvenile Service at 1.30 p.m. or by police officers from Buca Security Office at 7.10 p.m. on 30 March 2002 (see paragraph 12 above), considers that it can attach no significant weight to the contents of the record drafted by the police officers who took part in the applicant's arrest and relied on by the Government or, having regard, – on account of his age – to the vulnerability of the applicant at the time of the arrest, to the fact that he had signed it.

39. As regards medical evidence, the Court notes that two medical reports were drafted in respect of the applicant concerning his detention in police custody between 30 and 31 March 2002. The first report, drafted on the day of his arrest, after the identification parade, contains certain physical findings which could indicate ill-treatment. However, the second report, drafted the next day, mentions one old bruise on the applicant's back. The Court finds not only that there is a discrepancy between these reports but also that they both lack detail and fall significantly short of 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 also 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*, cited above, § 100). As such, the Court considers that the medical reports in question cannot be relied on as cogent evidence for proving or disproving that the applicant was ill-treated (see, for example, *Mehmet Eren v. Turkey*, no. 32347/02, §§ 40-42, 14 October 2008).

40. The Court notes in this connection that on 27 January 2009 it requested the Government to provide, among other additional information and documents, a copy of the medical report(s) issued by the prison doctor after the applicant was remanded in custody on 1 April 2002. However, the Government have failed to respond to this request, without providing any reasons, notwithstanding the terms of Rule 44A of the Rules of Court to cooperate with the Court. The Court, accordingly, finds that it can draw inferences from the Government's conduct in this respect.

41. In view of the above considerations, the Court finds that there are inferences, based on concrete elements, on which it may be concluded beyond reasonable doubt that the applicant was ill-treated as alleged.

42. 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 reiterates 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).

43. 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.

44. In the instant case, the Court observes that an investigation into the applicant's allegations was initiated promptly by the public prosecutor's office. The investigation ended when the Assize Court upheld the decision of the public prosecutor not to prosecute the police officers for ill-treatment on 6 January 2003. The Court, having examined the scarce documentation contained in the case file, considers that there were serious shortcomings in the way the investigation was conducted by the prosecutor, which had repercussions on its effectiveness. Firstly, in the course of the investigation, it appears that the prosecutor never sought to obtain evidence from the applicant or the accused police officers. Secondly, the Court notes that there was no serious attempt on the part of the prosecutor to elucidate the identities of the accused police officers. In this connection, it appears that the applicant was never requested to identify the alleged perpetrators either by checking police photographs or through an identification parade. Thirdly, the prosecutor also appears to have failed to secure the testimonies of potential eyewitnesses, such as other police officers on duty that day, the persons arrested or detained 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, in the Court's opinion, have provided important information capable of casting light on the origins of the injuries. Finally, the prosecutor failed to undertake any measures, such as hearing evidence from the doctors who had examined the applicant, in order to clarify the apparent contradictions between the two medical reports drafted a day apart.

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

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government contested the amount.

50. Having regard to the nature of the violation found in the present case and ruling on an equitable basis, the Court awards the applicant the amount claimed in full.

### B. Costs and expenses

51. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

52. The Government contested the amount.

53. Since the applicant submitted no substantiation by way of vouchers or receipts of his costs claim, as required by Rule 60 of the Rules of Court, the Court makes no award under this head.

### C. Default interest

54. 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 a procedural violation of Article 3 of the Convention;

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, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Santiago Quesada  
Registrar

Josep Casadevall  
President