



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

SECOND SECTION

CASE OF ÖZGÜR UYANIK v. TURKEY

(Application no. 11068/04)

JUDGMENT

STRASBOURG

23 March 2010

FINAL

23/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Özgür Uyanık 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 2 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 11068/04) 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 Özgür Uyanık (“the applicant”), on 18 February 2004.

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

3. On 26 January 2009 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 1974 and lives in Istanbul.

5. Between 16 May and 30 May 1996 the applicant was detained in police custody in connection with an investigation into an illegal organisation. He claimed to have been subjected to various forms of ill-treatment whilst in custody. In the application form the applicant complained, in particular, that he had been blindfolded, suspended from the

arms, electrocuted, stripped and beaten. He further submitted that he had been arrested on either 13 or 14 May 1996.

6. On 30 May 1996 the applicant was examined at the Istanbul State Security Court by a doctor from the Forensic Medicine Institute, who found that the applicant had pain and difficulty in hearing in his right ear and numbness in his left arm. The doctor recommended the applicant be transferred to a hospital for a neurological and an EGM test (an electromyogram is a test that is used to record the electrical activity of muscles).

7. An additional medical examination of the same date at the Taksim State Hospital revealed that there were no pathological findings in the applicant's ears but that there were symptoms of brachial plexitis (damage to nerves) on the left arm. The doctor recommended an EGM test, which revealed no pathology at the time of the test, 18 October 2000.

8. On 30 May 1996 the applicant was brought before the public prosecutor at the Istanbul State Security Court, where he accepted the contents of his statements given to the police and gave information about various events. He also requested to be transferred to a State hospital on the ground that he had some complaints. Afterwards the applicant was brought before a judge at the Istanbul State Security Court, where he accepted his earlier submissions. The judge remanded him in custody.

9. On the same day the applicant and five other suspects arrested and detained on the same grounds as the applicant ("complainants") lodged an official complaint with the Istanbul public prosecutor's office against the police officers who had taken part in their questioning, claiming that they had been ill-treated.

10. On 3 July 1997 the Istanbul public prosecutor transferred the complainants' case to the Fatih public prosecutor's office.

11. On 13 April 1998 the Fatih public prosecutor heard evidence from the applicant, who complained in particular of being blindfolded, suspended from his arms, electrocuted, stripped and beaten. He submitted that he had been arrested on either 13 or 14 May 1996, and that during his custody period he had been transferred to different anti-terrorism headquarters in various parts of Turkey. The applicant further claimed that his arm had been injured because he had struggled while he was being suspended and that the problem in his ear resulted from a blow. He alleged that he had been ill-treated by at least twenty to twenty-five police officers and that he would be able to identify most of them.

12. On 12 May 1998 the prosecutor decided that; in the absence of evidence proving the allegations, there was no need to prosecute any police officer at the Anti-Terrorist Branch of the Istanbul Security Headquarters.

13. The applicant objected to this decision before the Beyoğlu Assize Court.

14. Meanwhile, by an indictment dated 27 June 1996, the public prosecutor at the Istanbul State Security Court initiated criminal proceedings against the applicant and ten others, accusing them, *inter alia*, of membership of an illegal armed organisation and of taking part in various robberies and killings on its behalf.

15. On 7 July 1996 criminal proceedings against the applicant commenced before the Istanbul State Security Court. In the hearing held on 20 November 1996 the court heard the applicant, who retracted his statements given to the police and the public prosecutor, claiming that he had been subjected to torture during his police custody. Throughout these criminal proceedings which, according to the information in the case file to date, are still pending before the domestic courts, the applicant, who was remanded in custody until 1 February 2006, repeated that his statements during the preliminary investigation had been extracted from him under torture and ill-treatment.

16. In the meantime, at the request of the Beyoğlu Assize Court, further medical examinations and tests were conducted on the applicant on 25 October 2000, 9 August 2002 and 14 May 2003. On 9 August 2002 the applicant was examined by doctors at the 2nd, 3rd and 4th Section of Expertise of the Forensic Medicine Institute. It appears that the applicant, who was on hunger strike, suffered, *inter alia*, from hallucinations, memory deficit and schizophrenia of the Korsakoff syndrome type.

17. On 9 July 2003 the 2nd Section of Expertise of the Forensic Medicine Institute, after examining the applicant's version of the facts and the medical reports contained in the case file, concluded that the applicant was suffering from an ulnar cubital turner syndrome on his right arm and slight axial motor neuropathy. However, it was not possible to conclude that these conditions had appeared as a result of alleged ill-treatment in custody. Moreover, there was no medical evidence to demonstrate that the applicant had suffered a traumatic lesion.

18. On 7 December 2003 the Beyoğlu Assize Court, referring to the conclusions of the above report and other evidence in the case file, dismissed the applicant's objections.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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 ARTICLES 3 AND 13 OF THE CONVENTION

20. The applicant complained under Articles 3 and 13 of the Convention 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.

21. 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

22. The Government first asked the Court to dismiss the application as inadmissible 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. Secondly, the Government claimed that the applicant should have lodged his application within six months of the date on which the incident had occurred.

23. 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.

24. 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, the Court considers that the application lodged on 18 February 2004 was introduced in conformity with that time-limit. It thus likewise dismisses the Government's preliminary objection in this connection.

25. 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

26. The Government disputed the applicant's claims. In this connection, they maintained that the applicant's allegations were not supported by appropriate evidence and that an investigation had been carried out into his complaint of ill-treatment.

27. The applicant maintained his allegations.

28. 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 *Yananer v. Turkey*, no. 6291/05, § 34, 16 July 2009 and the references therein).

29. 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).

30. In the instant case, the Court observes that the applicant was detained in police custody for at least fourteen days. It notes that the ill-treatment complained of by the applicant consisted mainly of being blindfolded, hanged, electrocuted, stripped and beaten. In this connection, it considers that the applicant's version of events has been consistent both before the Court and the domestic authorities.

31. As regards medical evidence, the Court notes that the applicant was not examined medically following his arrest. It further observes that the medical report drawn up at the end of his stay in police custody found that the applicant had pain and difficulty in hearing in his right ear and numbness in his left arm. A second report issued the very same day established that the applicant's left arm presented symptoms of brachial plexitis (nerve damage). The findings regarding the applicant's left arm, in

the Court's opinion supports the applicant's allegations that he suffered damage to this limb.

32. In this connection the Court observes that the Government failed to provide an explanation as to the manner in which this injury was 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 this injury to the applicant, who was throughout this whole time under the control of the State authorities, the Court finds that it was the result of treatment for which the Government bore responsibility.

33. 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).

34. 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 (*ibid*, § 47).

35. 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 any police officer at the Anti-Terrorist Branch of the Istanbul Security Headquarters. 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.

36. Nonetheless, the Court observes that there were striking shortcomings in the way the investigation was conducted by the domestic authorities, which had repercussions on its effectiveness. Firstly, the Court reaffirms that evidence obtained during forensic examinations plays a crucial role during investigations into detainees' allegations of ill-treatment (see *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 79, 17 March 2009). In this connection, the Court cannot but note that the medical reports established at the end of the applicant's detention in police custody lack detail and fall significantly short of the standards recommended by both 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). Moreover, although the Beyoğlu Assize Court sought to obtain additional medical evidence, the time which elapsed between the alleged ill-treatment and the date of these examinations (see paragraphs 16 and 17 above) adversely affected, in the Court's view, the possibility of establishing the origins of the applicant's arm injury. In this connection, it regrets the fact that it took the authorities more than four years to organise an EGM test for the applicant in order to ascertain the origins of his injury (see paragraph 7 above).

37. Secondly, the Court notes that neither the applicant nor the other complainants were ever requested to identify the alleged perpetrators either by way of checking police photographs or by an identification parade. In this connection, the Court considers that there was no serious attempt on the part of the public prosecutor to elucidate the identities of these police officers, who are referred to in his decision only as “police officers at the Anti-Terrorist Branch of the Istanbul Security Headquarters”. Thirdly, in the course of his investigation the prosecutor appears to have failed to hear any police officers or potential eyewitnesses, such as other persons held in the same detention unit as the applicant.

38. In the light of the above, the Court does not find that the above investigation met the requirements of thoroughness and effectiveness under Article 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

40. In his application form the applicant further complained under Article 5 §§ 2, 3, 4 and 5 of the Convention in respect of his detention in police custody.

41. The Government argued under Article 35 § 1 of the Convention that the applicant's complaints under this head should be rejected for failure to comply with the six-month rule. They maintained that he should have lodged his application with the Court within six months of the date on which his police custody ended.

42. As to the Government's objection concerning the six-month rule, the Court reiterates that, according to the established case-law of the Convention organs, where there is no domestic remedy available, the six-month period runs from the date of the act alleged to constitute a violation

of the Convention (see, among other authorities, *Yüksektepe v. Turkey*, no. 62227/00, § 31, 24 October 2006).

43. The Court notes that the applicant's detention in police custody ended when he was remanded in custody on 30 May 1996, whereas the complaints under Article 5 of the Convention were lodged with the Court on 10 February 2004, more than six months later. In these circumstances, the Court accepts the Government's objection that the applicant has failed to comply with the six-month rule. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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, costs and expenses

45. The applicant claimed in total 90,000 euros (EUR) in respect of pecuniary and non-pecuniary damage incurred due to the torture to which he had been subjected and also for his lengthy detention and criminal proceedings. The applicant further asked the Court to order the Government to reopen a proper criminal investigation into his complaints of ill-treatment and to initiate an inquiry regarding those who had conducted the previous investigation.

46. The Government rejected the applicant's claims for damages.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, 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 27,300 for non-pecuniary damage.

48. Finally, the Court does not find it appropriate to rule on the applicant's remaining requests.

B. Default interest

49. 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 ill-treatment of the applicant whilst in police custody and the lack of an effective domestic investigation into his complaints admissible and the remainder of the application inadmissible;
2. *Holds* that there has been both a substantive and procedural violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 27,300 (twenty-seven thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable on 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 23 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President