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

SECOND SECTION

DECISION

Application no. 20687/20
Abdulaziz ADIYAMAN
against Türkiye

The European Court of Human Rights (Second Section), sitting on 25 February 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Anja Seibert-Fohr,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 20687/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 May 2020 by a Turkish national, Mr Abdulaziz Adıyaman ("the applicant"), who was born in 1966, lives in Van and was represented by Mr M. Kaçan, a lawyer practising in Van;

the decision to give notice of the application to the Turkish Government ("the Government"), represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's alleged ill-treatment during his arrest and ensuing police custody and the effectiveness of the ensuing investigation into his claims.

2. At the time of the events the applicant was working as a municipal police officer in Çaldıran, Van. On 8 October 2014 he was arrested during a demonstration which, according to the security forces, was organised by certain groups affiliated with the PKK (Workers' Party of Kurdistan, an

armed terrorist organisation). On the same day he was examined by a doctor at Çaldıran State Hospital, who noted that the applicant felt pain in his right thigh as a result of the events. The form in the report regarding the conditions of the examination was not filled in. The applicant was then placed in police custody.

3. On 9 October 2014 he was examined once again by the same doctor who issued a fresh medical report, this time filling in the form as to the conditions of the examination and specifying that appropriate conditions were provided in that only the doctor, the applicant, and another health professional were present during the examination, and that the applicant's clothes were partially removed. The report concluded that there was no indication of battery or use of force on the applicant's body and that he did not have any complaints.

4. On 10 October 2014 the applicant was examined by another doctor at Çaldıran State Hospital. The medical report drawn up after the examination stated that the applicant had gone through a full body examination and that no issue could be detected. His general condition was good, and he was fully conscious.

5. On the same day the applicant gave his statements before the Çaldıran Public Prosecutor, noting that he had not been involved in the events and had been arrested by the police while he was about to enter the mosque. He argued that as he had entered the police station, one of the police officers had poured a chemical liquid on a piece of napkin and had rubbed the napkin on his chest, causing him serious pain. The applicant's lawyer added that the applicant had also been beaten during his arrest. He also requested the Public Prosecutor to collect the applicant's clothes which had been in contact with the chemical liquid as evidence. Later on the applicant was brought before the Çaldıran Magistrates' Court where he reiterated his previous statements. The Magistrates' Court decided to place him in detention on remand on suspicion of membership of an illegal organisation.

6. Subsequently, before being transferred to the prison, the applicant was transferred to Yüzüncü Yıl University Hospital where a new medical report, noting no signs of injury, was drawn up.

7. On 20 October 2014 the applicant filed a criminal complaint with the Çaldıran Public Prosecutor's Office, once again reiterating his previous submissions as to the unfolding of the events, the alleged beating, and the chemical liquid. This time he further argued that during his medical examination on 8 October 2014 five police officers had been present and that the doctor had drawn up the report without having examined him. He requested that criminal proceedings be initiated against the officers concerned and that relevant evidence such as witness statements, CCTV footage and his clothing be collected to that end. Lastly, he requested to be transferred to a fully-equipped hospital for a detailed physical and psychological examination.

8. On 21 October 2014 the applicant was transferred to the Van Training and Research Hospital. The medical report issued at that hospital noted that there was a 2x3 cm ecchymosis on his left pelvis which could be treated by simple medical attention.

9. On 8 September 2017 the Çaldıran Public Prosecutor issued a decision not to prosecute the officers concerned, finding that the medical reports issued with respect to the applicant noted no signs of injury and that the suspects had also denied the accusations. He concluded therefore that there was no concrete evidence to support the applicant's claims. The applicant's objection to that decision was rejected by the Erciş Magistrates' Court on 20 October 2017.

10. Subsequently, the applicant lodged an individual application with the Constitutional Court, complaining of a violation of the prohibition of ill-treatment. By a decision of 4 March 2020, the Constitutional Court found his application inadmissible as being manifestly ill-founded, with reference to a previous decision it had delivered in another case wherein it had found that, in the absence of medical reports supporting that applicant's claims and in view of the discrepancy in her submissions, that applicant had not raised an arguable claim.

11. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment and that the investigation into his complaint had been ineffective. In that connection he argued that he had been heavily beaten during his arrest and had been left standing with his handcuffs on for many hours at the police station, where he had also been subjected to some sort of a chemical liquid which he believed to be liquid tear gas. Although the ill-treatment inflicted on him had been determined partially by the medical report of 21 October 2014, the Public Prosecutor had not taken that report into account and had delivered a decision not to prosecute the officers concerned without having examined any evidence.

THE COURT'S ASSESSMENT

12. The Government argued that the applicant had failed to raise an arguable claim of ill-treatment as none of the medical reports issued during his two-day police custody noted any signs of battery or coercion and that the only report showing any signs of injury had been obtained more than ten days after the end of his police custody. Referring to the case-law of the Court and the Constitutional Court, they invited the Court to declare the application inadmissible as being manifestly ill-founded.

13. The applicant contested the Government's arguments and stated that he had conveyed the ill-treatment he had been subjected to in detail from the moment he had had access to a lawyer. Moreover, although he had requested to go through a detailed physical and psychological examination so as to determine the effects of the ill-treatment on him, he had been referred to Van

Training and Research Hospital where he had been examined superficially. Lastly, he reiterated his previous submissions as regards the nature of the ill-treatment and the deficiencies in the investigation.

14. The Court reiterates that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. 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 such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 82-83, ECHR 2015, with further references).

15. Turning to the facts of the present case, the Court notes that during the period at issue, that is, between 8 and 10 October 2014, the applicant went through four medical examinations, all of which noted that he had no signs of battery or coercion on his body. None of these reports, except for the first report issued on 8 October 2014, were challenged by the applicant during the course of the domestic proceedings. In that connection the Court observes that the first report, which merely noted that the applicant had pain in his right thigh and which, according to the applicant, had been issued in the presence of police officers and without the doctor having examined him, did indeed not indicate the conditions of the examination, thereby not allowing the Court to establish the veracity of the applicant's claims and to fully rely on its conclusion. Nevertheless, the Court can only note that the report issued on the next day by the same doctor, which clarified that the examination had been carried out in the absence of any officers, reached the same conclusion, and found no signs of injury on the applicant. That report further noted that the applicant did not have any complaints. Moreover, the two medical reports drawn up at two different hospitals on 10 October 2014, before the applicant's release from police custody and later on, before his placement in pre-trial detention, both concluded that there were no signs of injury on the applicant's body. In the absence of any specific claim raised by the applicant regarding those latter examinations, the Court sees no reason to doubt their conclusions.

16. Moreover, the Court considers that the conclusion of the medical report of 21 October 2014, which had been obtained eleven days after end of the applicant's police custody, upon his request to be examined in another hospital, did not corroborate his claims. In that respect, while the applicant complained of pain in his right thigh during the first medical examination after his arrest and elaborated on the pain caused to him by the rubbing of the

liquid-imbibed napkin on his chest, the said report noted a 2x3 cm ecchymosis on his left pelvis. At this juncture, the Court notes that at no stage during the domestic proceedings or the proceedings before the Court did the applicant specify any injuries caused to other parts of his body. It also notes that although the ecchymosis noted in the last report might have occurred during the applicant's pre-trial detention, his complaint under Article 3 of the Convention merely pertains to his alleged ill-treatment during his arrest and ensuing police custody.

17. In view of the above, the Court concludes that the applicant failed to lay the basis of an arguable claim or to make a credible assertion of ill-treatment during his arrest and ensuing police custody. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

18. The Court further finds that in the absence of an arguable claim of ill-treatment the State authorities could not be considered to be under a positive obligation to conduct an effective investigation into the applicant's allegations (see *Maļinovskis v. Latvia* (dec.), no. 48435/07, §§ 43 and 52-53, 4 March 2014; *Öcalan v. Turkey* (dec.), no. 12261/10, §§ 26-35, 4 September 2018; and *Ghişoiu v. Romania* (dec.), no. 40228/20, §§ 48 and 63-64, 29 November 2022). It follows that this part of the application is equally manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 March 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President