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

SECOND SECTION

DECISION

Application no. 19139/12
Tahir CANAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 10 March 2015 as a Chamber composed of:

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 23 December 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tahir Canan, is a Turkish national, who was born in 1953 and is currently serving a prison sentence in Bandırma. He is represented before the Court by Ms Y. İmrek, a lawyer practising in Istanbul.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant and the Turkish government, may be summarised as follows.

3. The applicant was serving a prison sentence at the Adana F-Type High Security Closed Penitentiary Institution for the offences of "homicide and purchase or possession of unlicensed firearms and bullets".

4. On 12 August 2009, the applicant was transferred from Adana Prison, where he had been held until that date, to Bandırma M-Type Closed Penitentiary Institution, approximately 1,000 km away from the former. It was planned that the bus carrying a total of twelve detainees and convicts who were being transferred from Adana province to various other provinces would stop off at the Ankara Sincan Closed Penitentiary Institution.

5. Roughly halfway through the trip, the bus carrying the prisoners stopped off at the Gendarmerie Command in Ankara to break the journey and the applicant asked to be taken to the toilet.

6. The detainees and the convicts started to go to the toilets in groups of three after the necessary security measures were taken under the supervision of the deputy patrol commander. The applicant asked the gendarmerie officers who were ensuring security to remove his handcuffs which were positioned in front of his body (see paragraph 29 below), while he was relieving himself. However, the gendarmerie lieutenant Ü.G., in charge of the group, refused that request.

7. On 17 August 2009 the applicant filed a complaint with the Bandırma public prosecutor's office, submitting that he had been subjected to degrading treatment by Ü.G. because he had had to use the toilet wearing handcuffs, despite his repeated requests to have them unlocked. He claimed that such treatment could not have been justified by security concerns, as he had been using the Gendarmerie Command's toilet facilities, which had been guarded by gendarmerie officers.

8. On 5 February 2010 the Bandırma public prosecutor took a statement from the applicant. Repeating his initial submissions, the applicant maintained that the other inmates on the bus had witnessed the degrading treatment, as they had also been required to use the toilets under the same conditions.

9. On 6 September 2010 a colonel from the Adana Gendarmerie Command informed the applicant that lieutenant Ü.G. had made a statement before the Adana public prosecutor and that no other disciplinary or administrative measure had been taken against him, as he had acted in compliance with the relevant orders.

10. Subsequently, on 27 October 2010 the Adana Gendarmerie Command sent a second letter to the applicant, indicating that security measures during the transfer of prisoners were taken having regard to the security requirements at a given time. The letter added that the lieutenant in charge of the transferred group was the sole person authorised to determine whether the situation required the application of a security measure, namely the use of handcuffs in the applicant's case.

11. On 8 December 2010, after having examined the case file and an investigation report from the Gendarmerie Command, the Governor of Adana decided not to permit the instigation of a criminal investigation against Ü.G., pursuant to Law no. 4483 (Law on the Prosecution of Civil Servants and Public Officials). The Governor referred to section 456 of the Directive on the Transfer of Prisoners (*Ceza İnfaz Kurumu ve Tututkevlerinin Dış Koruması ile Sevk ve Nakil Hizmetleri Yönergesi*), which stated that the gendarmerie had the authority to handcuff prisoners in order to prevent their escape. He further relied on section 27 of the Gendarmerie Guidelines (*Jandarma Talimnamesi*), which stated that prisoners would be allowed to go to the toilet if in the company of gendarmerie officers and that their handcuffs must not be removed during that time. The Governor found accordingly that lieutenant Ü.G. had acted in compliance with the relevant legislation in not permitting the applicant to go to the toilet without handcuffs.

12. Following the Governor's decision, on 4 April 2011 the Ankara public prosecutor decided to discontinue the case.

13. The applicant objected to the public prosecutor's decision. On 30 September 2011 the Sincan Assize Court rejected that objection.

B. Relevant domestic law

14. Regulations in the domestic law authorising the use of handcuffs and devices restraining bodily movements during the transfer of detainees are as follows.

15. Article 50 of Law no. 5275 on the Execution of Penalties and Security Measures, which is entitled "Use of Constraining Devices", provides as follows: "Handcuffs and other body restraints can be used with a view to preventing escape during referral or transfer, on the condition that they are removed when the convict is brought before the competent authority."

16. Article 155 of the Regulation (2006/10218) on the Administration of Penitentiary Institutions and the Execution of Penalties and Security Measures, which is entitled "Use of Constraining Devices", provides as follows: "All the necessary measures that would not cause any harm to health shall be taken to prevent escape during referral or transfer, on the condition that they are removed when the convict, except for child convicts, is brought before the competent authority."

17. The relevant part of Article 76 of the Regulation on the Duties and Powers of the Gendarmerie, which is entitled "Measures to Be Taken During Referral and Transfer", provides that "All the necessary measures that would not cause any harm to health shall be taken to prevent escape of the detainees and the convicts during referral and transfer...".

18. The relevant provisions under the heading of "General Rules to be respected by the Referring Penitentiary Institution Unit, City Centre or District Gendarmerie Commands During Referral and Transfer" of paragraph 4/B of the Directive on the Transfer of Prisoners read as follows: "All the necessary measures that would not cause any harm to health, such as using handcuffs, linking arms with those who are transferred and encircling them with a sufficient number of personnel, shall be taken to prevent escape of detainees and convicts during referral and transfer. The security needs shall be the only decisive factor in designation of the level of the security measures to be taken. The commander in charge of the transfer shall be the sole person authorised to make a decision for the use of handcuffs by assessing the security need."

"The patrol commander shall have the keys to the handcuffs of detainees and convicts. The handcuffs shall not be unlocked on any account, except for cases such as deaths, injuries, heart attacks and serious diseases.

In cases where the handcuffs are unlocked, the security measures shall be improved and more attention shall be paid.

During the transfer, the convict will be provided with food and her/his biological needs shall be met."

19. The relevant provisions under the heading of "Use of Handcuffs" of the Regulation on the Duties and Powers of the Gendarmerie: Directive no. 27-3 on Patrols, pages 8-5, insofar as relevant, read: "Handcuffs shall be used with a view to preventing escape of the detainees and the convicts during referral or transfer, or outside the penitentiary institutions, and to prevent them from posing a danger to the lives and physical integrity of themselves or others".

20. The relevant provisions of the Gendarmerie Guidelines provide as follows.

Paragraph (b) of the Article entitled "Measures to be taken during referrals and transfers": "The prisoners and their belongings shall be searched thoroughly before they get on the bus; they are dispossessed of all instruments that could be used for attacking or escaping. The patrol commander shall have the keys to the handcuffs of the prisoners. The handcuffs shall not be unlocked under any circumstances except for the mandatory conditions."

21. In the same Gendarmerie Guidelines, the Article entitled "Code of conduct to be followed for contingencies during the transfer" reads: "All the necessary measures that would not cause any harm to health shall be taken to prevent escape of the detainees and the convicts during referral or transfer."

"The prisoners shall be searched before going on a journey. They shall be allowed to use the toilets and their similar needs shall be taken care of.

When they go into the toilet, the door shall be kept open and the handcuffs shall remain locked."

COMPLAINTS

22. The applicant alleges under Article 3 of the Convention that the fact that he was obliged to go to the toilet in handcuffs and thus had to travel in an unsanitary state constituted degrading treatment.

23. Relying upon Article 6 of the Convention, the applicant complains about the outcome of the investigation into the matter and the manner in which it was conducted.

THE LAW

24. The applicant complains that he was subjected to degrading treatment during his transfer from one prison to another and about the ensuing investigation into the matter. The applicant relies on Articles 3 and 6 of the Convention.

25. The Court considers that the applicant's complaints should be examined from the standpoint of Article 3 of the Convention alone.

26. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 114, 17 July 2014).

27. As regards the kind of treatment in question in the present case, the use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see, among other authorities and *mutatis mutandis*, *Raninen v. Finland*, cited above, § 56, *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005-IX, *Kuzmenko v. Russia*, no. 18541/04, § 45, 21 December 2010 and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 117, 17 July 2014).

28. The Court notes that in the instant case, the applicant was obliged to go to the toilet in handcuffs halfway through his transfer to a new prison. The applicant did not submit any documentary evidence or make any argument which would enable the Court to conclude that that treatment had

any physical or mental effects on him. The Court observes that the alleged act did not have a public nature either.

29. The Government submitted that the detainees and convicts were handcuffed by Masonite-type handcuffs during the transfers, and their hands were handcuffed in front of the body. They added that since Masonite-type handcuffs are used, a 10 cm range is left between the two hands of the detainees and the convicts; a space of at least 1 cm is left between the wrists and the handcuffs. The Government also indicated that having regard to the range between the handcuff tops, the mobility of the applicant's hands was sufficient for him to clean himself after using the toilet.

30. The Court considers that the treatment complained of by the applicant was not aimed at debasing and humiliating him, and was merely a result of the gendarmerie lieutenant's application of the relevant guidelines regulating the security measures to be taken during the transfer of prisoners (see, *mutatis mutandis*, *Raninen v. Finland*, cited above, § 58).

31. Taking into consideration that the applicant did not allege that he was suffering from any health problem on the day of the incident, the Court concludes that the application of such a security measure was reasonable in the circumstances.

32. In the light of the foregoing, the Court does not find it established that the treatment at issue attained the minimum level of severity required by Article 3 of the Convention.

33. Therefore, the applicant has failed to lay the basis of an arguable complaint that he was subjected to degrading treatment within the meaning of Article 3 and for this reason it is not open to him to contest the effectiveness of the domestic investigation (see *Igars v. Latvia* (dec.), no. 11682/03, § 72, 5 February 2013).

34. Accordingly, the Court rejects the applicant's complaint under both the substantive and procedural limbs of Article 3 of the Convention as being manifestly ill-founded, pursuant to 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 2 April 2015.

Stanley Naismith
Registrar

András Sajó
President