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

SECOND SECTION

DECISION

Application no. 14040/10
Olcay OĞUZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 November 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
Dragoljub Popović,
András Sajó,
Paulo Pinto de Albuquerque,
Helen Keller,
Egidijus Kūris, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 22 February 2010,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Olcay Oğuz, is a Turkish national, who was born in 1970 and lives in Istanbul. He was represented before the Court by Mr H. Ölçer, a lawyer practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 28 October 1994 the applicant was arrested on suspicion of membership of an illegal organisation, namely the Ibda-C (*Great Eastern Islamic Raiders' Front - İslami Büyükdoğu Akıncılar Cephesi*) and taken to the Anti-Terrorist Branch of the Istanbul Security Directorate.

5. On 9 November 1994 the applicant was placed in detention on remand.

6. On the next day, he was examined by a doctor at the Bakırköy branch of the Forensics Medical Institute. The medical report, which was drawn up on 14 November 1994, indicated that the applicant had numerous red patches (erythema) (four measuring 5 x 30 cm on his back, a wider one on his neck and around twenty at the back of both of his upper legs), scars on his legs and pain and numbness on his ankles. The report concluded that the injuries to the applicant were not life-threatening but would prevent him from performing routine activities for a week.

1. Criminal proceedings against the police officers complained of by the applicant

7. On an unspecified date the applicant submitted a complaint to the Istanbul public prosecutor, claiming that he had been ill-treated by certain police officers.

8. On 31 January 1996 the prosecutor issued an indictment with the Istanbul Assize Court in respect of four of the officers concerned, accusing them of torture pursuant to Article 243 of the Penal Code (Law no. 765) in force at the time. The prosecutor decided not to prosecute the rest of the officers, stating that they had not been working at the Anti-Terrorist Branch during the time the applicant had been kept in custody. The applicant did not object to that decision.

9. During the course of the criminal proceedings against the four officers, on 20 March 1996 the applicant gave his statements and maintained that he had been hosed with cold water, beaten, sexually harassed, hung by the arms and subjected to electric shocks during his time in police custody.

10. On 6 November 1996 the Istanbul Assize Court acquitted the police officers concerned.

11. The applicant did not appeal against that judgment and it became final on 13 November 1996.

2. Criminal proceedings against the applicant

12. On 8 December 1994 the public prosecutor at the Istanbul State Security Court issued an indictment with that court, accusing the applicant with three others of involvement in activities which undermined the constitutional order of the State.

13. During the criminal proceedings against the applicant, on 20 March 1995 and 24 January 1996 respectively, he indicated that he had been ill-treated during his time in police custody and had been forced to confess to having committed some of the offences.

14. On 13 December 1996 the applicant was released pending trial. On 6 February 2002 the Istanbul State Security Court sentenced him to twelve years and six months' imprisonment for membership of an illegal organisation.

15. The Court of Cassation quashed that judgment on 17 June 2003. Neither the first-instance court nor the higher court ruled on the applicant's allegations of ill-treatment.

16. In June 2004 State Security Courts were abolished and the Istanbul Assize Court acquired jurisdiction over the case.

17. On 3 October 2005, in a statement he submitted before the Istanbul Assize Court, the applicant indicated again that he had been ill-treated and that his police statements had been taken under duress.

18. On 19 April 2006 the Assize Court sentenced the applicant to imprisonment. On 18 December 2006 that judgment was quashed as well.

19. On 5 March 2008 the Assize Court sentenced the applicant to six years and three months' imprisonment for membership of an illegal organisation. The applicant appealed against the judgment, raising once more his complaints as to his alleged ill-treatment and his forced confession.

20. On 30 March 2009 the Court of Cassation upheld the judgment of the first-instance court.

21. On 25 May 2009 the final decision was deposited with the registry of the Istanbul Assize Court.

COMPLAINTS

22. The applicant maintained under Article 3 of the Convention that he had been subjected to ill-treatment while in police custody and argued that his complaints about the matter had been disregarded by the domestic authorities.

23. Relying upon Article 6 § 1 of the Convention, the applicant complained about the excessive length of the criminal proceedings against him. He further submitted that he had not had a fair trial in that the Istanbul Assize Court based its judgment on his police statements, which had been obtained unlawfully. Finally, he maintained under the same provision in conjunction with Article 6 § 3 (d) that the domestic court had not taken account of the witness statements in his favour.

THE LAW

A. Complaint under Article 3 of the Convention

24. The applicant complained under Article 3 of the Convention about the alleged physical violence inflicted on him during his time in police custody and the domestic authorities' failure to conduct an effective investigation into his allegations.

25. The Government submitted that the applicant had failed to appeal against the judgment of the Istanbul Assize Court, acquitting the police officers accused of having inflicted physical violence on the applicant. They argued that in any event, the complaint had been lodged outside the six-month period as the said judgment had become final on 13 November 1996. They finally maintained that the applicant's repetition of the complaint during the criminal proceedings against him did not stop the running of the six-month time-limit as he had not adduced new evidence requiring the re-examination of his allegations.

26. The Court notes that following the applicant's complaint, the Istanbul public prosecutor started an investigation, as a result of which he issued an indictment concerning four of the police officers accused of ill-treatment by the applicant and a decision not to prosecute with regard to the rest of the officers. The applicant did not object to the decision not to prosecute. At the end of the criminal proceedings against the four police officers concerned, the Istanbul Assize Court acquitted them. The applicant did not appeal against that judgment either.

27. The Court finds moreover that the applicant's submissions concerning his alleged ill-treatment during the course of the criminal proceedings against him do not alter the fact that he failed to exhaust the domestic remedies available to him, as he did not pursue the investigation and criminal proceedings against the police officers concerned by objecting to their outcome.

28. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention as the applicant failed to exhaust domestic remedies.

B. Complaints under Article 6 §§ 1 and 3 (d) of the Convention

29. The applicant submitted under Article 6 § 1 of the Convention that the criminal proceedings against him had lasted for an excessive period of time. He further alleged that the domestic court had based its judgment on unlawful evidence and had not taken into account the witness statements in his favour.

30. The Government maintained that the complaint had been lodged outside the six-month period as the final decision was deposited with the registry of the first-instance court on 25 May 2009.

31. The Court reiterates that, where an applicant is entitled to be served *ex officio* 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, whereas in cases where the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to be informed of its content (see, among others, *Seher Karataş v. Turkey*, no. 33179/96, § 27, 9 July 2002, and *Çınar v. Turkey* (dec.), no. 8345/04, 2 November 2010).

32. In the instant case, the Court observes that the criminal proceedings against the applicant ended on 30 March 2009 with the final decision of the Court of Cassation. It further notes that the applicant was represented by a lawyer during the course of the criminal proceedings, including the appeal stage. The final decision was at the disposal of the applicant and his lawyer as of 25 May 2009, when it was deposited with the registry of the Istanbul Assize Court. However, the applicant lodged the present application with the Court on 22 February 2010, that is more than six months after the date the final decision was put at his disposal (see, among others, *Ertuğrul Kılıç v. Turkey* (dec.), no. 38667/02, 4 October 2005, and *Aydın and Şengül v. Turkey*, no. 75845/01, § 15, 3 May 2007).

33. Consequently, the Court declares this part of the application inadmissible for being outside the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith Registrar	Guido Raimondi President