



## Violation of Article 3 in a case where a prisoner suffered serious burns during a police operation in Bayrampaşa prison

In today's **Chamber judgment**<sup>1</sup> in the case of **Ebru Dinçer v. Turkey** (application no. 43347/09) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.**

The case concerns an operation conducted by the security forces in Bayrampaşa Prison (Istanbul) in December 2000, during which Ms Dinçer suffered serious burns to various parts of her body, including her face, owing to a fire which broke out in the women's dormitory.

The Court found in particular that only an investigation or an effective procedure could allow the cause of the fire to be determined. However, to date no light had been shed on that cause and, 18 years after the facts, the criminal proceedings were still pending in the Assize Court. In addition, the domestic proceedings had not shown that the violence which had led to Ms Dinçer's physical and mental suffering had been made inevitable by her own conduct.

### Principal facts

The applicant, Ebru Dinçer, is a Turkish national who was born in 1976.

In December 2000 Ms Dinçer was incarcerated in Bayrampaşa Prison (Istanbul) when violent clashes broke out between the security forces and prisoners during an operation named "Return to life". That day Ms Dinçer, who suffered serious burning owing to a fire which broke out in the women's dormitory, was taken to the civil hospital where doctors found that she had second-degree burns over her face and other parts of her body. She was subsequently transferred to the burns unit of Cerrahpaşa University Hospital where the next day she underwent facial reconstruction surgery involving skin grafts. She was subsequently monitored by surgeons and psychiatrists and underwent two other reconstructive grafts. A few months later she had a skin graft on her eyelids then a scalp reconstruction in three phases. In 2002 she went to Switzerland where additional treatment was given to her with financial help from the Swiss Red Cross.

In February 2001 experts from the Forensic Institute drew up a report, concluding that it was impossible to accurately determine the cause of the fire, and that it may have been caused by the excessive use of tear gas grenades in an area containing flammable materials or have been knowingly provoked by the inmates. In July of the same year, the public prosecutor's office charged 155 warders with abuse of power for allowing firearms to be brought into the prison. In addition, 1,460 gendarmes were prosecuted for ill-treatment of prisoners during their evacuation at the end of the operation. Those proceedings resulted in two judgments of the Criminal Court in June 2018, stating that the prosecutions had been discontinued. In February 2015 the prosecutor's office committed 157 gendarmes to stand trial in the Assize Court because of the injuries and deaths that occurred during the operation. Those proceedings are still pending.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In the meantime Ms Dinçer had brought proceedings against the Interior Ministry before the Administrative Court, claiming damages for her injuries. Her claims were dismissed, particularly on the ground that it was impossible to determine how and by whom the fire had been started and that Ms Dinçer was one of the prisoners who had shown resistance to the security forces.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman treatment), Ms Dinçer complained that she had sustained serious injuries during the impugned operation owing to an allegedly excessive use of tear gas grenades, the circumstances in which she had been evacuated from the site of the operation, and the lack of emergency medical care necessitated by her condition. She also complained that there had been no effective remedy by which to submit her complaints, alleging that the investigations and proceedings conducted in her case had been slow and ineffective and that these circumstances, among others, had led to the discontinuance for statutory limitation of the criminal proceedings against those responsible for her injuries.

The application was lodged with the European Court of Human Rights on 31 July 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,  
 Paul Lemmens (Belgium),  
 Işıl Karakaş (Turkey),  
 Julia Laffranque (Estonia),  
 Jon Fridrik Kjølbro (Denmark),  
 Stéphanie Mourou-Vikström (Monaco),  
 Ivana Jelić (Montenegro),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 3 (prohibition of torture and inhuman or degrading treatment)

#### ***Complaints concerning unsuitability of medical care and the treatment allegedly inflicted on Ms Dinçer during her evacuation:***

As regards the medical care provided to her, the Court noted that Ms Dinçer had had access to comprehensive and appropriate medical care, and had benefited from regular monitoring in the various hospitals. The Court did not therefore note any appearance of negligence on these points. As to the treatment she claimed the gendarmes had inflicted on her after the operation, the Court noted that the circumstances described by Ms Dinçer, in general terms, concerned more what had happened to her fellow inmates during their evacuation and transfer to other prisons. In fact she had not adduced before the Court any evidence in support of that allegation, nor had she provided any detailed or convincing explanations about her alleged treatment by the gendarmes. The Court thus rejected this part of the application, finding it manifestly ill-founded.

#### ***Complaints concerning the burns sustained by Ms Dinçer and ineffectiveness of domestic remedies:***

The Court observed that it had previously examined the relevant counter-mutiny operation and had concluded that the Government had not been able to give sufficient explanations concerning the cause of the injuries complained of, failing in particular to provide information directly related to the

preparation and conduct of the intervention<sup>2</sup>. In the present case it could see no reason to reach a different conclusion, especially for the following two reasons.

First, the Court found that no argument was made out on the basis of any “misconduct” by Ms Dinçer during the events, or on that of her own behaviour more generally, because there was no verifiable evidence in the file to suggest that she had actively resisted the security forces or had attacked them.

Secondly, the Court observed that no light had been shed on the cause of the fire. It further noted Ms Dinçer’s submission that it had been triggered in her dormitory by the grenades thrown by the security forces, an allegation that the Government had not denied. Nor was that hypothesis excluded by the Forensic Institute, according to which it had been impossible to determine the exact cause of the fire.

In the Court’s view, only an investigation or an effective procedure could allow the cause of the fire to be determined. However, nearly 18 years after the facts, the criminal proceedings were still pending in the Bakırköy Assize Court and the circumstances in which the fire started in Ms Dinçer’s cell had not been established. The proceedings conducted thus far had still not given rise to any evidence that could justify the applicant’s injuries, namely by showing that the violence which had led to Ms Dinçer’s physical and mental suffering had been made inevitable by her own conduct. Consequently, **the Court found that there had been a violation of Article 3 of the Convention.**

#### Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

<sup>2</sup> See, among other authorities, *Şat v. Turkey* (no. 14547/04, § 81, 10 July 2012) and *Erol Arıkan and Others* (no. 19262/09, § 84, 20 November 2012).