



Ebedin Abi v. Turkey

[2018] ECHR 10839/09

Country: Turkey

Region:

Year: 2018

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Diet and nutrition, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to food

Facts

Decision and Reasoning

HEADNOTE

Ebedin Abi was diagnosed with type-2 diabetes and coronary heart disease, for which doctors prescribed that he follow a specific low cholesterol diet. While serving a prison sentence, he was provided the prison's standard menu which was inconsistent with his dietary needs. Abi challenged the refusal of prison authorities to supply him with meals compatible with his dietary restrictions on the grounds that this treatment was contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court held that the authorities had breached Article 3 by failing to take appropriate actions to protect Abi's health.

FACTUAL AND PROCEDURAL BACKGROUND

Ebedin Abi, a Turkish national, was held from April 30, 2008 to March 3, 2009 in the Erzurum H-type prison on terrorism related offences. He was diagnosed with type-2 diabetes and coronary heart disease. After undergoing testing at the Atatürk university hospital, the hospital's health board issued a report on June 24, 2008 which stated that Abi must follow a low cholesterol diet with high levels of poultry and vegetables and low levels of beef and saturated fats for his cardiac issues. The report also noted that if the current prison where Abi was held only provided one standard menu, the health board could later determine if Abi should be transferred to another facility after a dietician evaluated the cholesterol content of the menu.

Ebedin Abi filed a complaint with the Erzurum judge responsible for the execution of sentences regarding the prison authorities' refusal to supply meals compatible with his medically-prescribed diet which he alleged was central to his medical treatment. On January 2, 2009, the judge allowed for Abi's request, noting that the prison had not provided the required information to determine the cholesterol content of the menu and ordered for the standard menu to be examined by a dietician to determine whether it was appropriate for Abi. On appeal, the public prosecutor reasoned that due to the prison's budget, the prison was only able to serve all inmates with medically prescribed diets an "unsalted, fat-free and unspiced version" of the same standard meals as other prisoners. On January 9, 2009 the Assize Court overturned the judge responsible for the execution of sentences' decision from January 2.

On December 24, 2008, Abi filed an application against the Republic of Turkey with the European Court of Human Rights, alleging that the prison authorities refused to give him meals consistent with his medically prescribed diet and that his health deteriorated as a result in violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

RELEVANT LEGAL PROVISIONS

Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 "Prohibition of Torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court held that the prison authorities had breached Article 3 of the Convention by failing to take appropriate actions to protect Ebedin Abi's health. In considering the prison authorities' refusal to provide Abi with meals which met his dietary requirements, the Court found that the prison's lack of funding cannot justify a failure to provide medically appropriate meals.

The Court noted that the prison's rules stated that inmates with medical conditions were entitled to meals which met their specific medically-prescribed dietary needs, and Turkish law at the time of Abi's prison term

allowed prisons to have a separate budget for inmates with health conditions. Neither the prosecutor nor the Assize Court tried to determine whether the prison had sought increased funding from the relevant authorities in accordance with this law. Moreover, the Court observed that the domestic courts could not conclude that the prison's menu met Abi's medical needs since they did not investigate whether the prison meals were consistent with Abi's prescribed low cholesterol diet. The Court also rejected the Turkish government's argument that Abi could have obtained appropriate meals from the prison's canteen or from an outside supplier on the grounds that Abi should not face a heavier financial burden than other prisoners due to his poor health.

On the issue of the alleged deterioration of Ebedin Abi's health, the Court held that the authorities failed to protect Abi's health when they failed to provide appropriate conditions of detention compatible with human dignity. While Abi did not present evidence showing that he had experienced health consequences due to his diet in prison, the Court accepted that Abi had exhausted all available domestic legal channels to lodge complaints about his diet in prison and the deterioration of his health as a result of those meals and that the authorities did not address such complaints. The Court observed that the domestic authorities did not investigate whether Abi's meals had detrimental effects on his health. As prisoners cannot seek medical care at any time at the facility of their choice, the Court determined that State authorities had an obligation to ask a specialist to examine the standard prison menu and to offer Abi a medical examination regarding his specific complaints.

Decision Excerpts

As regards, in particular, persons deprived of their liberty, under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and his well-being are adequately secured by, among other things, providing him with the requisite medical assistance. Thus the lack of appropriate medical care and more broadly, the detention of persons suffering from disease in inadequate conditions may, in principle, amount to treatment contrary to Article 3. It is incumbent on the State to organize its penitentiary system in such a way as to ensure respect for the dignity of detainees regardless of financial or logistical difficulties. (Para 29)

The conditions of detention of a person suffering from disease must ensure that his or her health is protected, regard being had to the ordinary and reasonable demands of imprisonment. Article 3 of the Convention requires the State to protect the physical well-being of persons deprived of their liberty. In particular, the Court holds that the duty of the national authorities to guarantee the health and general well-being of prisoners includes the requirement to provide them with proper nourishment. (Para 30)

Moreover, the Court cannot agree with the Government that the applicant could have had meals compatible with his diet if he had ordered them from an outside supplier or eaten in the prison canteen. In that scenario the applicant would have had to pay for his sustenance out of his own pocket. The fact is that the applicant's poor state of health should not inflict on him a heavier financial burden than that faced by healthy prisoners. The Court therefore considers that a solution involving payment by the prisoner is incompatible with the State's duty to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties. (Para 44)

The Court acknowledges that it may indeed be difficult for a prisoner to obtain medical evidence of his allegations and that the difficulties encountered by an applicant in making his case may also result from a failure by the authorities to respond effectively to complaints which they receive. (Para 47)