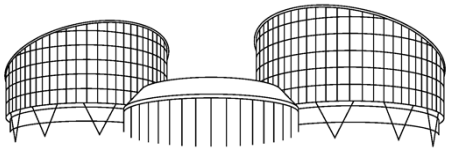

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF EBEDİN ABİ v. TURKEY

(Application no. 10839/09)

JUDGMENT

STRASBOURG

13 March 2018

FINAL

13/06/2018

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ebedin Abi v. Turkey,

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

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 13 March 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10839/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Ebedin Abi ("the applicant"), on 24 December 2008.

2. The applicant was represented by Ms S. Coşkun, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. On 7 July 2014 notice of the complaint concerning Article 3 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. The applicant was born in 1970 and is detained in Kırıkkale.

2. He suffers from type-2 diabetes[1] and coronary heart disease[2]. He has in the past undergone coronary angioplasty.

1. Type-2 diabetes is a disease characterised by chronic hyperglycaemia, that is to say a high blood sugar level.
2. Disease of the coronary arteries.

3. According to a medical report issued on 29 June 2004 by the Gaziantep university hospital, the applicant's state of health required him to follow one diet for his diabetes and another one for his coronary disease, and to live in a well-ventilated environment free of tobacco smoke.

4. On 30 April 2008 the applicant was placed in the Erzurum H-type prison, where he remained until 6 March 2009, serving a term for terrorist offences.

5. On 17 July 2008 the applicant was taken to the cardiology department of the Atatürk university hospital in Erzurum ("Erzurum hospital") for blood tests and an echocardiogram.

6. A report drawn up on 24 July 2008 by the Erzurum hospital's health board pointed out that owing to his cardiac issues the applicant had to adhere to a special anti-cholesterol diet with high poultry meat and vegetable content and low levels of beef and saturated fats. The report mentioned that if the prison in which the applicant had been placed offered a wide choice of daily menus it would be unnecessary to transfer the applicant to another prison providing such facilities. It added that on the other hand, if the prison only offered one standard menu, the Erzurum hospital's health board would hold a further meeting in order to decide whether the applicant should be transferred to another prison, after ascertaining the view of a dietician on the cholesterol content of the standard menu.

7. On an unspecified date the applicant, arguing that the meal served in prison was incompatible with his medically prescribed diet, asked the prison authorities to send samples to the Ministry of Justice and the Human Rights Commission of the Grande National Assembly of Turkey.

8. On 24 October 2008 the prison disciplinary board rejected his request on the grounds that the foodstuffs would spoil very quickly, before reaching their destination. That board pointed out that the applicant could lodge a complaint by mail with the aforementioned institutions in order to inform them of his grievances concerning the meals served in prison.

9. The applicant appealed against that decision. On 7 November 2008 the Erzurum judge responsible for the execution of sentences ("the judge responsible for the execution of sentences") dismissed the appeal. On 5 December 2008 the Erzurum Assize Court ("the Assize Court") upheld the dismissal decision given by the judge responsible for the execution of sentences.

10. Meanwhile, on 24 November 2008, the applicant had been taken to the emergency department of Erzurum hospital complaining of chest pains. On 5 December 2008 he underwent an exercise electrocardiogram.

11. On an unspecified date the applicant lodged a complaint with the judge responsible for the execution of sentences about the refusal by the prison authorities, despite his many requests, to provide him with meals compatible with his medically prescribed diet, which he said formed an

integral part of his medical treatment. He also complained about his difficulties in obtaining medication. The applicant stated the following, *inter alia*:

> "... my state of health [is poor]; the prison authorities informed me that I would be provided with meals compatible with my diet, but that has not happened; this can be noted from surveillance camera footage; I was not provided with the menu list when I wanted to submit it to the Ministry for examination."

12. On 2 January 2009 the judge responsible for the execution of sentences allowed the applicant's request. That judge referred in his decision to a document which the prison authorities had drawn up for the attention of the Erzurum public prosecutor's office, stating the following:

> "... medically prescribed diets cannot be prepared in [our] prison's kitchen; we can only cook unsalted and unspiced versions of the meals prepared for the other [prisoners]. Extra potatoes, boiled eggs and tomatoes are sometimes provided."

13. The judge responsible for the execution of sentences pointed out that the prison had not indicated in that document whether or not the meals contained fats, which made it impossible to assess their cholesterol content. In view of the impossibility of ascertaining whether meals prepared in that manner were compatible with the medical prescriptions in question, he ordered that the standard menu should be examined by a dietician and, if that menu proved incompatible with the applicant's diet, that the applicant should be provided with an appropriate menu.

14. On 5 January 2009 the Erzurum public prosecutor ("the prosecutor") appealed against the decision of 2 January 2009. On 8 January 2009 the judge responsible for the execution of sentences dismissed that appeal.

15. On the same day the prosecutor lodged a fresh appeal against the decision of 8 January 2009, this time with the Assize Court. He argued as follows: the meals were prepared in the prison kitchen; the daily allowance per prisoner, which totalled three Turkish liras (TRY – about 1.40 euro at the material time), was only sufficient to prepare one type of meal per day, which meant that the prisoners could not be offered several types of menus; menus could not be prepared for the medically prescribed diets for a total of thirty-eight individuals detained in the same prison, and only an unsalted, fat-free and unspiced version of the standard menu was on offer. According to the prosecutor, the prison would only be able to improve its service in that respect if the amount of the daily allowance were increased.

16. On 9 January 2009 the Assize Court followed the prosecutor's reasoning and quashed the decisions given by the judge responsible for the execution of sentences on 2 and 8 January 2009.

17. Furthermore, according to the weekly lists of standard menus for the weeks of 24 February 2009 and 3 March 2009, the meals served to prisoners in the Erzurum Prison had mainly consisted of beef, fried food and starches:

poultry meat had only been served once a week and the menus had comprised minimal fresh vegetables.

II. RELEVANT DOMESTIC LAW

18. In its relevant articles in force at the material time, the regulations enacted by the Ministry of Justice on the daily allowance for convicted prisoners, detainees and prison staff (OG No. 25978 of 26 October 2005) provided as follows:

Amount of daily allowance
Article 5

The amount of the daily allowance shall be calculated in cooperation with the Ministry of Health, upon analysis of daily calorie requirements and the available budget.

Daily allowance for prisoners suffering from an illness
Article 9

Convicted prisoners and detainees suffering from disease shall be served foodstuffs as decided by the prison doctor.

19. The Decree enacted by the Committee of Ministers on the management of prisons and the execution of sentences and preventive measures (OG No. 26131 of 6 April 2006) provides as follows:

Titre II
Tasks, competences and responsibilities of prison staff
Health services
Article 25-7

Dietician's duties: taking the requisite action to ensure healthy nutrition in line with the prisoners' and prison staff's calorie requirements, planning their daily, weekly and monthly allowances, ensuring the preparation of meals compatible with the patient's state of health, and taking any other action required for that purpose.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant alleged that the authorities' refusal to provide him with meals compatible with his medically prescribed diet had infringed his right to live a healthy life, in breach of Article 2 of the Convention. Moreover, he submitted that his continued detention in the particular circumstances of the case had amounted to a violation of Article 5 of the Convention.

21. The Government contested that argument.

22. The Court considers that the complaints put forward by the applicant should be assessed solely from the angle of Article 3 of the Convention since, being the master of the characterisation to be given in law to the facts of a case, it is not bound by the characterisation given by an applicant or a Government (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, ECHR 2017).

Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

23. The Government submitted that it had not been demonstrated that the applicant's state of health had worsened because he had not followed the diet prescribed by the doctors and that his conditions of detention had not attained the severity threshold for the application of Article 3 of the Convention. They considered the application manifestly ill-founded.

24. The Court considers that the objection raised by the Government concerning the applicability of Article 3 of the Convention in the present case raises factual and legal issues which cannot be settled at the admissibility stage. Accordingly, the assessment of that objection should be joined to that of the merits of the case. Noting, moreover, that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

B. Merits

25. The applicant complained of the authorities' refusal to provide him with meals compatible with his medical prescriptions and of a deterioration in his state of health. He submitted that that situation had amounted to a violation of Article 3 of the Convention.

26. The Government contested that argument. They explained that, like the other prisoners, the applicant had had the option of eating in the prison canteen, which had offered a wide range of foodstuffs, including fruit and vegetables, and that he could also have had recourse to an outside supplier in order to obtain the foodstuffs recommended by the doctors.

27. The Court reiterates the principles established in its relevant case-law.

As it has ruled on many previous occasions, Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see *Pretty v. the United Kingdom*, no.

2346/02, § 49, ECHR 2002-III). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see, among other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V).

28. 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, in the nature of things, 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 state of health of the victim (see, among other authorities, *Mikadze v. Russia*, no. 52697/99, § 108, 7 June 2007, and *Dybeku v. Albania*, no. 41153/06, § 36, 18 December 2007). For a punishment or the accompanying treatment to be "inhuman" or "degrading", the suffering and humiliation inflicted must in any event go beyond the unavoidable level of suffering and humiliation inherent in any form of legitimate treatment or punishment.

29. 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 well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *Tekin Yıldız v. Turkey*, no. 22913/04, § 71, 10 November 2005). 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 (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII; *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII; and *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004). It is incumbent on the State to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see, *mutatis mutandis*, *Benediktov v. Russia*, no. 106/02, § 37, 10 May 2007, and *Sukhovoy v. Russia*, no. 63955/00, § 31, 27 March 2008).

30. Therefore, 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

(see, *mutatis mutandis*, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 451, ECHR 2004-VII, and *Moisejevs v. Latvia*, no. 64846/01, § 78, 15 June 2006).

31. In the present case, the Court observes that it is not disputed between the parties that the applicant's state of health required treatment for his various illnesses. It will therefore consider, in the light of the principles set out above, whether the applicant was given sufficient and adequate medical care during his custody in Erzurum Prison and whether the authorities' refusal to provide him with meals complying with his medical prescriptions was compatible with Article 3 of the Convention.

32. The Court first of all notes with satisfaction that the applicant was transferred to various hospitals whenever necessary (see paragraphs 8 and 13 above).

33. It then notes that the applicant was suffering from type-2 diabetes and coronary heart disease, as shown by two different medical reports, which concurred on that point (see paragraphs 6 and 9). According to those reports, the applicant had to observe a hypocaloric diabetic diet with low levels of beef and saturated fats.

34. Having considered the facts before it, however, the Court concludes that the applicant was served dishes which consisted mainly of beef and starches in the prison in question (see paragraph 22 above), that he complained to the prison authorities and that the latter rejected his request for his food to be brought into line with the requirements of the medically prescribed diet (see paragraphs 10 and 11 above).

35. The Court also observes that the applicant complained to the judge responsible for the execution of sentences about the prison authorities' attitude to him. That judge noted that the prison authorities had served the applicant and thirty-seven other prisoners suffering from disease the same meals as the healthy prisoners, the only difference being that their meals had contained a lower level of salt and spices. He allowed the applicant's request on the grounds that it had not been established how those salt- and spice-free meals complied with the latter's medically prescribed diet, and that the prison authorities had not specified whether or not those meals had contained fats (see paragraphs 16 and 17 above).

36. The Court then observes that the prosecutor appealed to the Assize Court against the decision of the judge responsible for the execution of sentences on the grounds that the prison authorities were unable to prepare and serve a special menu because of insufficient finances, given the prisoners' daily allowance of only 3 TRY. In his appeal, the prosecutor pointed out that it would only be feasible to prepare menus compatible with the medically prescribed diets if the amount of that allowance were increased. The Assize Court upheld the prosecutor's appeal, confirming that the prison had been providing the applicant with fat-, salt- and spice-free meals.

37. On that point, the Court reiterates its case-law on requirements in terms of the adequacy of prisoners' allowances, to the effect that for long prison terms like the applicant's, the competent authorities must ensure the provision of adequate and sufficient daily nourishment, if necessary by establishing an in-house catering structure for prisoners (see, *mutatis mutandis*, *Chkhartishvili v. Greece*, no. 22910/10, § 61, 2 May 2013, and *De los Santos et de la Cruz v. Greece*, nos. 2134/12 and 2161/12, § 44, 26 June 2014).

38. The Court notes that in the present case the prison in which the applicant was detained at the material time did indeed have a catering unit in which the meals were prepared by staff employed for the purpose. However, it observes that in view of the amount of the daily allowance granted to prisoners, the prison was not in a position to supply meals compatible with the specific requirements of special diets for prisoners suffering from disease, notwithstanding the corresponding medical prescriptions.

39. In that connection, the Court notes that under the prison rules, prisoners suffering from disease were entitled to foodstuffs indicated by the prison doctors. The amount of the daily allowance to be granted to prisoners suffering from disease depended on their individual medical prescriptions (see paragraph 21 above).

40. In those circumstances, the Court considers that the refusal to bring the applicant's meals into line with his medical prescriptions cannot be justified for economic reasons, given that the law in force at the material time provided for a separate budget for prisoners suffering from disease.

41. Furthermore, the Court notes that neither the prosecutor nor the Assize Court sought to ascertain whether the prison authorities had contacted the competent authorities to request an increase in the daily allowance in order to meet the dietary needs of prisoners suffering from disease, as required by law.

42. In any event, since the domestic courts refused to seek to ascertain whether the foodstuffs served to the applicant were compatible with his medically prescribed diet, the Court cannot discern how they managed to conclude that the prison's practice was compatible with the applicant's state of health.

43. That finding is particularly cogent because according to the documents on file, the applicant was not the only prisoner affected by that practice. It transpires from the case file that the practice was observed without distinction, ignoring the specific features of the diseases from which individual prisoners were suffering. The Court takes the view that such a practice amounts to a failure by the prison in question diligently to protect the health and welfare of the persons concerned (see paragraph 18 above).

44. 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 (see, *mutatis mutandis*, *Sukhovoy*, cited above, § 31, and *Benediktov*, cited above, § 37).

45. Firstly, for the above-mentioned reasons, the Court finds therefore that by acting in the aforementioned manner, the authorities failed to take the requisite action to protect the applicant's health.

46. Secondly, as regards the issue of the deterioration in the applicant's health as a result of his inability to follow his medically prescribed diet, the Court reiterates that allegations of treatment contrary to Article 3 of the Convention must be supported by appropriate evidence (see *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269; *Erdagöz v. Turkey*, 22 October 1997, § 40, *Reports* 1997-VI; *Martinez Sala and Others v. Spain*, no. 58438/00, § 121, 2 November 2004; and *Hüsniye Tekin v. Turkey*, no. 50971/99, § 43, 25 October 2005). In order to establish the alleged facts, the Court adopts the standard of proof "beyond reasonable doubt", although such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25, and *Labita v. Italy* [GC], no. 26772/95, §§ 121 and 152, ECHR 2000-IV).

47. That having been said, the Court acknowledges that it may indeed be difficult for a prisoner to obtain medical evidence of his allegations (see *Ayan v. Turkey*, no. 24397/03, § 55, 12 October 2010) 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 (ibid., § 56).

48. In that regard, the Court takes note of the Government's position that no evidence had been provided of the applicant's worsening state of health, that the applicant had not complained of any aggravation of his illness after the delivery of the Assize Court's judgment and that the fact that the applicant had not followed his medically prescribed diet had not caused him any suffering beyond that inherent in imprisonment.

49. In the present case the Court observes that at the material time the applicant had recourse to all the available remedies for lodging with the national authorities his complaints concerning the incompatibility of his meals with his diet and the worsening of his state of health resulting from his ingestion of those meals. The Court notes that he later raised those same issues before it, subsequently to the last-instance decision under domestic

law. The Court cannot discern how, or to which authority, the applicant could have submitted his complaints more effectively. The Court notes that the national authorities were unresponsive to the many requests which the applicant claims to have submitted with a view to receiving meals compatible with the requirements of his state of health (see paragraphs 10 to 12 and 14 above).

50. Having regard to prisoners' inability to seek medical help at any time from a hospital of their choosing, the Court considers that it is incumbent on the domestic authorities to instruct a specialist to assess the standard menu offered by the prison in question, and at the same time to invite the applicant to undergo a medical examination specifically linked to his complaints.

51. Indeed, as emphasised above, the authorities did not seek to ascertain whether the nourishment provided to the applicant was suitable or whether the failure to comply with his medically prescribed diet had had any negative effects on his state of health; in fact, on 24 November 2008 the applicant had been transferred to the emergency ward of Erzurum hospital for chest pains (see paragraph 13 above).

52. The Court further observes that the Government failed to provide any specific explanation as regards the effects of the practice followed by the prison on the applicant's state of health, and that the domestic authorities also failed to examine that issue.

53. The Court considers therefore that, owing to their negligence, the domestic authorities failed to take the requisite action to protect the applicant's health and well-being and that therefore they failed to provide him with appropriate conditions of detention compatible with human dignity, in breach of Article 3 of the Convention.

54. The foregoing considerations are sufficient to enable the Court to conclude that the preliminary objection raised by the Government (see paragraph 27 above) must be rejected and to find a violation of Article 3.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant claimed 110,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government consider that sum exorbitant and unsubstantiated by the circumstances of the case.

58. The Court considers that the applicant sustained non-pecuniary damage which cannot be sufficiently repaired by the finding of a violation. Deciding on an equitable basis, the Court awards him 5,000 euros (EUR) under this head.

B. Costs and expenses

59. The applicant also claimed EUR 1,150 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

60. The Government contested that sum.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the Court awards the whole amount of the applicant's claim in respect of the proceedings before the domestic courts.

C. Default interest

62. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection concerning the applicability of Article 3 of the Convention, and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 13 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President