



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

SECOND SECTION

CASE OF BOZDEMİR AND YEŞİLMEN v. TURKEY

(Application no. 33860/03)

JUDGMENT

STRASBOURG

9 July 2013

FINAL

09/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bozdemir and Yeşilmen v. Turkey,

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

Guido Raimondi, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 18 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 33860/03) 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 two Turkish nationals, Mrs Gülçin (Yeşilmen) Bozdemir and Mrs Maşallah Yeşilmen (“the applicants”), on 6 August 2003.

2. The applicants were represented by Mrs F. Karakaş Doğan and Mrs E. Keskin, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged that they had been deprived of their right to liberty and security, that they had been subjected to ill-treatment while in police custody and that they had been denied an effective remedy in respect of their complaints of ill-treatment. The applicants invoked Articles 3, 5, 6 and 13 of the Convention.

4. On 11 September 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicants’ alleged deprivation of liberty, their ill-treatment while in police custody, and the lack of effective remedies to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1970 and 1979 respectively and live in Istanbul. They are the sister and wife of Ş.Y., allegedly a member of the PKK (the Kurdistan Workers' Party), an illegal organisation.

A. The facts as alleged by the applicants

6. On 28 November 1997, at 1 a.m. and 4 a.m. respectively, the applicants' separate flats were raided by police officers from the anti-terrorist branch of the Istanbul Police Headquarters. They were looking for Şabettin Yeşilmen. Subsequently, they took him and the applicants and their children into custody.

7. The applicants and their children were subjected to ill-treatment both when at their flats and when they were taken to the police headquarters. In particular, Gülçin Bozdemir, who was pregnant at the time, was stripped naked, beaten, insulted and threatened with the killing of her children. She lost her baby as a result of the ill-treatment deliberately inflicted on her by the police officers. She concealed this for cultural reasons and never mentioned it until after the application was communicated to the Government. She was also forced to watch her brother being tortured.

8. Maşallah Yeşilmen was insulted and threatened with the killing and torture of her children. She was beaten with a truncheon. She received blows to her hands and abdomen. She was stripped naked and threatened with rape in the presence of her husband.

9. On the same day, when Şabettin Yeşilmen confessed to the charges against him, allegedly as a result of the ill-treatment that he and his family members had suffered, the applicants and their children were taken home by the police. The detention of the applicants and their children at the Istanbul Police Headquarters was not recorded.

10. On 2 December 1997 the applicants lodged a complaint with the Fatih public prosecutor's office, claiming that they had been taken into custody on 28 November 1997 and subjected to ill-treatment at the Istanbul Police Headquarters.

11. On the same day, Gülçin Bozdemir was examined by a doctor from the Istanbul branch of the Human Rights Foundation of Turkey, who observed a purple bruise measuring 8 x 5 cm on her upper left arm, a purple bruise of 6 x 2 cm on her left biceps, a purple bruise of 4 x 4 cm on her right biceps, a purple bruise of 7 x 5 cm and a yellow-green bruise of 3 x 2 cm on her left thigh, and a purple bruise of 3 x 4 cm on her left foot. The doctor diagnosed Gülçin Bozdemir as suffering from, *inter alia*, soft tissue trauma,

an upper respiratory tract infection and an acute stress disorder. On 28 July 1998 a committee of three doctors from the same organisation drafted a medical report on Gülçin Bozdemir's medical examination and concluded that the diagnosis of soft tissue trauma and acute stress disorder was consistent with the applicant's allegations of ill-treatment, and that it was possible that the applicant's upper respiratory tract infection was the result of the alleged ill-treatment.

12. On 3 December 1997, at the request of the Fatih public prosecutor, the applicants were examined by a doctor at the Istanbul branch of the Institute of Forensic Medicine. The doctor reported the following in respect of Maşallah Yeşilmen:

"There are purple and yellow bruises on the left palm. She complains of pain in her neck."

As regards Gülçin Bozdemir, the doctor reported the following:

"Purple-green bruises of 3 cm and 2 cm in diameter are observed on the left and right biceps respectively. There are also purple-green bruises of 1.5 cm and 2 cm in diameter on the left thigh and left foot."

13. The doctor certified Gülçin Bozdemir and Maşallah Yeşilmen unfit for work for three days and one day respectively.

14. On an unspecified date Şabettin Yeşilmen contended before the court which tried him that his sister, Gülçin Bozdemir, had been tortured in front of him when he was in police custody.

15. On 13 April 2000 the Fatih public prosecutor issued a decision not to prosecute six police officers from the anti-terrorist branch of the Istanbul Police Headquarters. In his decision, the public prosecutor noted that there was no evidence, such as an arrest report, or documents containing statements by the applicants or witnesses, in support of the applicants' allegation that they had been taken into police custody on 27 and 28 November 1997. He therefore concluded that there was insufficient evidence to commit the police officers for trial in connection with the applicants' allegations of ill-treatment.

16. The decision of 13 April 2000 was not served on the applicants or their representatives. The applicants' representatives obtained the decision from the Fatih public prosecutor's office in October 2002.

17. On 30 October 2002 the applicants lodged an objection against the decision of 13 April 2000. In support of it, they submitted the report dated 28 July 1998 concerning Gülçin Bozdemir's medical examination (see paragraph 11 above).

18. On 11 April 2003 the Beyoğlu Assize Court dismissed the applicants' objection, holding that the decision of 13 April 2000 was in accordance with the law.

B. The facts as alleged by the Government

19. On 3 December 1997 the applicants' lawyer lodged a complaint with the Istanbul Chief Public Prosecutor's office alleging that the applicants had been taken into custody on 27 November 1997 and had been subjected to ill-treatment by the police officers on duty. The lawyer requested a medical examination of the applicants.

20. On the same day, the applicants underwent medical examinations at the Istanbul Forensic Medicine Institute. The medical report issued by the doctors stated that Maşallah Yesilmen had an ecchymosis on her palm and Gülçin Bozdemir had bruises on her arms and left foot.

21. On 4 December 1997 the applicants' legal representative filed an application with the Fatih public prosecutor's office in Istanbul complaining that on the night of 27 November 1997 the applicants had been arrested, together with their husbands, at their homes and had been taken to the Security Directorate by police officers from the anti-terrorist department. She alleged that the applicants had been beaten during the arrest in the presence of their children and that ill-treatment in the form of beatings, insults and threats had continued at the Security Directorate. Relying on the medical reports issued by the forensic doctor, she claimed that the applicants had been unfit for work for one and three days respectively. She thus requested the prosecuting authorities to carry out an investigation and to bring the police officers involved in the ill-treatment to justice.

22. The Fatih public prosecutor immediately commenced an investigation into the applicants' allegations. In this connection, by letters of 8 December 1997 and 5 February 1998 he requested the Istanbul Security Directorate's anti-terrorist department to furnish the statements taken from the applicants at the police station, together with the custody records and medical reports. He also asked for the names of the police officers who had taken part in the questioning of the applicants. The prosecutor also asked the Ümraniye Police Department to find the applicants and to ensure that they attended at his office.

23. In a report dated 13 January 1998 a police officer, after visiting the applicants' residences a number of times, noted that, according to information given by the neighbours, the applicants had not been living at their homes for the last two months.

24. By a letter of 16 February 1998 the Security Directorate informed the Fatih public prosecutor that the applicants had not been taken into custody. The custody records were made available to the public prosecutor's office. The logbook did not contain the applicants' names.

25. On 19 July 1999 the public prosecutor took a statement from the second applicant in relation to her allegations. She stated that on the night of 27 November 1997 she had been taken from her home and taken to the anti-terrorist police department, where she spent three days. She had been

beaten up, denied food, sexually abused and threatened with rape. The police officers had also spent a night in her house in the hope that members of the illegal organisation might visit her.

26. The public prosecutor also took statements from the police officers who were on duty on 27 and 28 November 1997. The police officers all denied the allegations and claimed that they had not arrested or detained the applicants.

27. On 13 April 2000 the Fatih public prosecutor issued a decision of non-prosecution in relation to the applicants' complaints, on the ground that there was no evidence to substantiate the allegations. He noted that there was no documentary evidence, such as an arrest report, custody record or witness statements, which could help prove the allegations.

28. On 30 October 2002 the applicants' lawyer filed an objection against the Fatih public prosecutor's decision with the Beyoğlu Assize Court.

29. On 11 April 2003 the Beyoğlu Assize Court dismissed the applicants' appeal on the basis of the evidence contained in the investigation file and the reasons given by the Fatih public prosecutor.

C. The documents furnished by the parties

1. Police reports dated 29 November 1997

30. The Government furnished three reports concerning police operations carried out on 29 November 1997 subsequent to the killing of a police officer and the wounding of two others in a police patrol car in the Ümraniye district of Istanbul.

31. According to the first report, which had the title "Arrest, search and seizure report", police officers arrested a suspect, namely M.Ç., in relation to the aforementioned terrorist attack. The suspect told the police officers that he could show them the flat where members of the [PKK] terrorist organisation were staying. The police officers then raided that flat and arrested three people, namely Şabettin Yeşilmen, who was the owner of the flat, A.B. and H.D. The police officers searched the flat with the permission of Şabettin Yeşilmen but did not find anything illegal.

32. According to the second and third reports, the suspects, Şabettin Yeşilmen and M.Ç., told the police officers that they could show them the locations where they had hidden the weapons used during the said attack. At a construction site shown to them by Şabettin Yeşilmen, the police officers found weapons, ammunition and hand grenades and seized them. The police officers then searched a house with the permission of the owner, A.B. They found more weapons, ammunition and a number of documents belonging to the illegal organisation, and seized them.

2. Relevant pages of the custody logbook

33. The relevant pages of the custody logbook kept at the anti-terrorist police department of the Istanbul Security Department contain the names of the people taken into custody between 25 November 1997 and 3 December 1997. The list does not contain the names of the applicants.

3. The police duty logbook

34. The relevant pages of the police duty logbook contain the names of the police officers who were on duty at the police station each day and night between 27 November 1997 and 1 December 1997.

4. Witness statements provided by the applicants

(a) M.Ç.'s statement dated 18 April 2008

35. M.Ç., who was arrested on 27 November 1997 and spent seven days in custody at the anti-terrorist police department, alleged that he had seen both applicants in custody. He had seen them being tortured, insulted and sworn at during their transfer from their cell to the interview room. He stated that from his cell he had been able to hear the applicants' screams while being tortured. This witness's name appears in the custody log provided by the Government.

(b) Statement by A.Y.

36. The witness is the father-in-law of Şabettin Yeşilmen and the father of the second applicant. In November 1997, he had been with Şabettin Yeşilmen when police officers had raided the latter's flat. He stated that his son-in-law *and daughter had been beaten, arrested and severely beaten up by fifteen to twenty police officers* and that they had then been taken to the anti-terrorist police department on Vatan Street. He had later learned that they had been subjected to further torture during their detention.

(c) Statement by Mehmet M.O.

37. The witness, who is the nephew of Şabettin Yeşilmen, was at the latter's flat on the night of the incident. He claimed that on the morning of 28 November 1997, at around 3.30 a.m., police officers had raided his uncle's flat and, after severely ill-treating him and his wife (the second applicant), had taken them away by car. He had heard that his uncle and the second applicant had been subjected to torture while in police custody.

(d) Ş.B.'s statement dated 24 April 2008

38. The witness lives in the same neighbourhood as the second applicant. She is also a friend of the second applicant. She stated that on the

morning of 28 November 1997, at 10 a.m., she had gone to visit the second applicant but there had been no one at home. When she had enquired as to the whereabouts of the second applicant, she had been told by the neighbour of the second applicant living on the second floor of the building that police officers had arrested Maşallah Yeşilmen along with Gülçin Bozdemir, her uncle, A.B., and Şabettin Yeşilmen. When released from custody, the aforementioned persons had borne the marks of severe torture.

(e) Şabettin Yeşilmen's statement dated 18 April 2008 and his allegations before the Istanbul State Security Court (in file no. 1997/512)

39. The witness, who is currently serving his sentence in prison, is the brother of the first applicant and husband of the second applicant. He alleged that early in the morning of 28 November 1997 a number of police officers had broken into his flat, where he, his wife, children, father-in-law, sister, brother-in-law, and two nephews had been sleeping. He claimed that the police officers had severely beaten him and manhandled his guests. He had been arrested together with his sister Gülçin Bozdemir and his wife Maşallah Yeşilmen and had been taken to the anti-terrorist department. He had been insulted and severely tortured by the police officers during his detention. The police officers had tortured his wife and sister in front of him. They had further threatened to rape them if he did not confess to the charges against him.

40. The witness alleged at the first hearing of the Istanbul State Security Court that while in police custody his sister and wife had been tortured in front of him in order to compel him to confess to the charges.

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. The Criminal Code, in force at the material time, makes it a criminal offence to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants). It further proscribes torture and ill-treatment in Articles 243 and 245, which read as follows:

Article 243

“Any ... public official who, in order to extract a confession of guilt in respect of a criminal offence, tortures or ill-treats any person, engages in inhuman conduct or violates human dignity, shall be punished by up to five years' imprisonment and disqualified from holding public office temporarily or for life.

Where such conduct causes death, the sentence incurred under Article 452 ... shall be increased by between one third and one half.”

Article 245

“Any law enforcement officer ... who, in the course of duty ... and in circumstances other than those prescribed by law ..., ill-treats, injures or strikes a person or does them bodily harm shall be sentenced to between three months’ and three years’ imprisonment and temporarily barred from public service. ...”

THE LAW

I. ADMISSIBILITY

42. The Government argued that the applicants had failed to exhaust the domestic remedies available to them, as required by Article 35 § 1 of the Convention. In this connection, they submitted that the applicants had not availed themselves of the civil- and administrative-law remedies which could have provided reparation for the harm they had allegedly suffered.

43. The Court reiterates that it has already examined and rejected such preliminary objections by the Government in similar cases (see, in particular, *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It finds no particular circumstances in the instant case which would require it to depart from its findings in those cases. It therefore rejects the Government’s preliminary objection.

44. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

II. THE COURT’S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. Arguments of the parties

1. The applicants

45. The applicants argued that the evidence before the Court proved that they had been taken from their home, kept in unacknowledged detention and tortured by police officers, and that the authorities had failed to carry out an adequate investigation into these matters. They requested the Court to find that the Government had violated Articles 3, 5 § 1 and 13 of the Convention.

2. *The Government*

46. The Government denied the applicants' allegations and averred that the investigation conducted by the prosecuting authorities had shown that the applicants' allegations were ill-founded and that there had been no violation of any Article of the Convention.

B. General principles

47. The Court refers to its case-law confirming the application of the standard of proof "beyond reasonable doubt" in its assessment of evidence (*Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (*Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

48. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made in respect of unacknowledged detention of individuals, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Orhan*, cited above, § 265), even if certain domestic proceedings and investigations have already taken place.

C. The Court's evaluation of the facts in the present case

49. The Court notes that the facts of the case are in dispute between the parties. While the applicants claimed that they had been detained and subjected to ill-treatment by the police officers, the Government contended that the applicants had never been taken into custody and thus had not been subjected to ill-treatment. In the light of the foregoing, the Court observes that the verification of the applicants' allegations of ill-treatment hinges upon the prior establishment of whether the applicants were indeed taken into custody early in the morning of 28 November 1997, as alleged. Thus, with the above considerations in mind, the Court will proceed to the examination of the written evidence furnished by the parties.

50. In this connection, the Court notes that the applicants gave a detailed account of the events leading to their alleged arrest, detention and ill-treatment by police officers from the anti-terrorist department of the Istanbul Security Department (see paragraphs 6-9, 19, 21 and 25 above).

51. In support of their allegations concerning their arrest and detention, the applicants submitted to the Court witness statements which they had

obtained in April 2008. Among these witnesses, A.Y., Mehmet M.O. and Şabettin Yeşilmen claimed that they had seen the applicants being arrested by force and being taken away by police officers from the anti-terrorist branch on the night of 27 November 1997 or early in the morning of 28 November 1997 (see paragraphs 36, 37 and 39 above).

52. M.Ç., whose name appears in the custody logbook as a suspect arrested on 27 November 1997 and who spent seven days in the custody of the anti-terrorist police, alleged that he had seen both applicants being ill-treated by police officers (see paragraph 35 above). Likewise, Şabettin Yeşilmen, who is the brother of the first and husband of the second applicant, claimed that he had witnessed the applicants' arrest, detention and ill-treatment by the police officers and that the treatment suffered by the applicants had been inflicted on them in order to compel him to confess to the charges against him (see paragraphs 39 and 40 above).

53. Finally, the witness Ş.B. stated that she had learned about the arrest and detention of the applicants from her neighbours when she enquired as to their whereabouts (see paragraph 38 above).

54. In view of the foregoing, the Court notes that in their written statements, the witnesses all made affirmations broadly in line with the applicants' account of the facts set out in their original application form and in the statements which they made to the domestic authorities, namely that the police officers had raided their flats, had arrested them using force and had taken them to the anti-terrorist department of the Istanbul Security Department on Vatan street, where they had been kept in unacknowledged detention and ill-treated on the night of 27 November 1997 or early in the morning of 28 November 1997.

55. In the Court's opinion, although the statements given by the applicants' witnesses cannot be overlooked, it is not clear why the applicants waited so long to submit them to the Court. These statements must also have been conveyed to the prosecuting authorities at the relevant time with a view to assisting them in their investigation. Moreover, the statements in question were either given by the applicants' close relatives or family friends (see paragraphs 36-39 above) with the exception of the statements made by M.Ç. (see paragraph 35 above), the veracity of which has never been tested. Furthermore, the statements given by Ş.B., who is a family friend, do not go beyond hearsay evidence since she did not witness the alleged events in person but heard them from her neighbours (see paragraph 38 above). Accordingly, there is no independent eyewitness evidence to lend support to the applicants' allegations.

56. Turning to the Government's submissions, the Court notes that they relied on the findings of the Fatih public prosecutor and asserted that the applicants had never been taken into custody. In order to verify the applicants' allegations of detention the public prosecutor had confined himself to checking the entries in the custody logbook containing the names

of detainees and questioning the police officers who had been on duty on that day (see paragraphs 22, 24 and 26 above). Relying on the statements given by the police officers and the absence of documents noting the applicants' arrest and detention, he terminated the investigation on the ground that there was no evidence corroborating the applicants' allegations (see paragraph 15 above).

57. However, the Court considers that the public prosecutor failed to broaden the investigation by following up on the possible leads given by the applicants and took no steps on his own initiative to identify possible witnesses. In the Court's view, the public prosecutor could have taken statements from those who were present in the applicants' flats during their alleged arrest or from neighbours who might have seen the applicants being taken away by the police officers. Likewise, the public prosecutor had the entire list of detainees to hand when he received the custody logbooks of the anti-terrorist police. Thus he could have questioned the detainees, such as M.Ç. (see paragraph 35 above), who were in the custody of the anti-terrorist police at the same time as the applicants.

58. Accordingly, given the Fatih public prosecutor's readiness to accept the police officers' version of events and his failure to broaden the investigation by identifying possible witnesses, the Court cannot accept his conclusion that the applicants' allegations were not corroborated by any documentary evidence or eyewitnesses. The Court finds that the conclusion in question rests entirely on the assertion that there was no record of the applicants' detention. However, it is led to observe that the absence of the names of the applicants from the custody records cannot be seen as conclusive proof that they were not detained. The Court notes in this connection that it has recorded deficiencies relating to entries in custody logbooks in previous cases (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 206, 6 April 2004; *Tepe v. Turkey*, no. 27244/95, § 148, 9 May 2003; *Timurtaş v. Turkey*, no. 23531/94, § 105, ECHR 2000-VI; *İrfan Bilgin v. Turkey*, no. 25659/94, § 130, ECHR 2001-VIII; *Çakıcı v. Turkey* [GC], no. 23657/94, § 105, ECHR 1999-IV; *Çiçek v. Turkey*, no. 25704/94, §§ 137-138, 27 February 2001; *Orhan*, cited above, § 313; and *Osmanoğlu v. Turkey*, no. 48804/99, § 48, 24 January 2008).

59. The Court is thus faced with a situation where it is unable to establish what happened on the night of 27 November 1997 or early in the morning of 28 November 1997. This inability emanates from, on the one hand, the failure of the applicants to submit sufficient evidence in support of their allegations, and, on the other, the incomplete investigation file submitted by the Government.

60. The Court finds it more appropriate to deal with the consequences of these failures when examining the applicants' complaints concerning the Government's alleged failure to carry out an effective investigation into their complaints (see paragraphs 69-72 below).

III. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

61. The applicants complained that they had been subjected to various forms of ill-treatment and that there were no effective remedies for their complaints. They relied on Articles 3, 6 and 13 of the Convention, which provide, in so far as relevant:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Submissions of the parties

1. The applicants

62. The applicants alleged that they had been subjected to severe ill-treatment by the police officers during their arrest and unacknowledged detention at the anti-terrorist police department. They maintained that the prosecuting authorities had failed to conduct an effective investigation into their complaints.

2. The Government

63. The Government contested those claims. They contended that the investigation carried out by the authorities had shown that the applicants had not been arrested or detained, or ill-treated by the police officers. Therefore the applicants’ allegations were unsubstantiated.

B. The Court's assessment

1. General principles

64. The Court reiterates that Article 3 of the Convention ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. It also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human rights requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII (extracts)).

65. The Court further reiterates that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, 18 December 1996, § 61, *Reports of Judgments and Decisions* 1996-VI; and *Ribitsch v. Austria*, 4 December 1995, § 34 Series A no. 336).

66. Lastly, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII).

2. Application of the above principles to the circumstances of the present case

(a) Alleged ill-treatment suffered by the applicants

67. In the instant case, the Court has not found it established that the applicants were arrested and kept in the custody of the anti-terrorist police on the night of 27 November 1997, as alleged (see paragraph 59 above). In view of the applicants' failure to submit sufficient evidence in support of their allegations, the Court cannot but conclude that they have failed to make out their case to the extent necessary for the burden to shift onto the Government to explain how their injuries were caused and produce evidence casting doubt on the veracity of the victims' allegations.

68. The Court thus concludes that there has been no violation of Article 3 of the Convention in its substantive aspect in respect of the ill-treatment to which the applicants were allegedly subjected.

(b) Alleged ineffectiveness of the domestic remedies

69. The Court reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical and illusory. Therefore, investigations of the present kind must be able to lead to the identification and punishment of those responsible. In the instant case, however, the proceedings in question did not produce any concrete result owing to the public prosecutor's preparedness to accept the police officers' assertion that the applicants had not been taken into custody or ill-treated, as well as his failure to broaden the investigation by following up on possible leads given by the applicants and to take the necessary steps on his own initiative to identify possible witnesses (see paragraphs 57 and 58 above).

70. In the light of the foregoing, and given the authorities' failure to pursue criminal proceedings against the police officers in order to obtain a determination of their responsibility, and their punishment in the event of a conviction, the Court does not consider that the investigation into the applicants' complaints can be considered to have been sufficiently thorough and effective to meet the procedural requirements of Article 3 of the Convention.

71. There has accordingly been a procedural violation of that provision.

72. In these circumstances, the Court considers that no separate issue arises under Articles 6 and 13 of the Convention (see *Timur v. Turkey*, no. 29100/03, §§ 35-40, 26 June 2007).

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

73. The applicants submitted that they had been kept in unacknowledged detention in police custody, in violation of Article 5 of the Convention, which provides, as relevant:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

74. The applicants argued that this provision had been violated since they had been taken into custody without their detention being officially recorded.

75. The Government submitted that there was no basis for finding that the applicants had been taken into custody and it was therefore impossible to find any violation of Article 5 of the Convention.

76. The Court notes that it has been unable to establish whether the applicants were arrested and held in unacknowledged detention on the basis of the documents submitted by the parties.

77. In view of these considerations, the Court concludes that there has been no violation of Article 5 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicants each claimed 3,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

80. The Government considered that no award should be made for just satisfaction. They submitted, in the alternative, that any award to be made under this head should not lead to unjust enrichment.

81. The Court notes that the applicants have not specified any particular sum or produced any arguments or documents in support of their claim for pecuniary damage. The Court accordingly makes no award under this head.

82. Having regard to the nature of the violations found in the present case and ruling on an equitable basis, the Court awards each applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

83. The applicants also claimed the total amount of EUR 7,000 for costs and expenses incurred before the Court.

84. The Government submitted that the claims were unsubstantiated.

85. The Court notes that the applicants have not submitted any relevant documents in support of their costs and expenses claims, as required by Rule 60 of the Rules of Court. It accordingly makes no award under this head.

C. Default interest

86. The Court considers it appropriate that the default interest 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. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 3 of the Convention under its substantive aspect;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural aspect;
4. *Holds* that there has been no violation of Article 5 of the Convention;
5. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President