



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

THIRD SECTION

CASE OF ÇOLAK and FİLİZER v. TURKEY

(Applications nos. 32578/96 and 32579/96)

JUDGMENT

STRASBOURG

8 January 2004

FINAL

08/04/2004

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

In the case of Çolak and Filizer v. Turkey,

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

Mr G. RESS, *President*,

Mr P. KŪRIS,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 4 December 2003,

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

PROCEDURE

1. The case originated in applications (nos. 32578/96 and 32579/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr Abdullah Çolak and Mr Ömer Filizer ("the applicants"), on 28 December 1995.

2. The applicants were represented by Mr M. Iriz, a lawyer practising in Istanbul. The Turkish Government did not designate an Agent for the purposes of the proceedings before the Court

3. The applicants alleged that they had been subjected to various forms of ill-treatment during their detention in police custody.

4. By a decision of 30 June 1997, the Commission joined the applications, communicated the applicants' complaints concerning the alleged ill-treatment to the respondent Government and declared the remainder of the applications inadmissible. The applications were then transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case. (Rule 28 of the Rules of Court). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court.)

5. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 25 May 2000 the Court declared the applications admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The arrest and detention in police custody of the applicants

9. The applicants were born in 1969 and 1964 respectively and live in Şanlı Urfa, Turkey.

10. Police officers from the anti-terrorist branch of the Istanbul Security Directorate arrested the applicants on suspicion of membership of an illegal organisation, the PKK (*Kurdistan Workers' Party*), and placed them in custody on 28 and 29 April 1995 respectively. Both applicants alleged that they had been beaten and insulted by policemen on the way to the Security Directorate Building.

11. On 29 April 1995 the public prosecutor attached to the Istanbul State Security Court ordered the extension of the applicants' custody period until 9 May 1995.

12. The applicants alleged that during their interrogation by the police, they had been kept blindfolded and forced to give information about persons they did not know. They were allegedly subjected to various forms of ill-treatment by police officers. They claimed they were beaten, strung up by the arms, threatened with death and given electric shocks.

13. On 2 May 1995 the applicants were allegedly forced to sign police statements about their activities in the PKK and their connections with other PKK members.

14. On 5 May 1995 the applicants were examined by the Istanbul Forensic Medicine Institute's medical expert along with fourteen other detainees. In his report, the institute's doctor noted that there were no signs of beating, force or violence on the bodies of the applicants, whereas he had spotted certain signs of injury on the bodies of two other detainees.

15. On 22 May 1995 the first applicant underwent a second medical examination in prison. According to the prison doctor's report, the applicant

had fading bruises on his body and ecchymoses on his left foot. The applicant was later transferred to Fatih Forensic Medicine Institute where another medical expert examined him. In a report dated 20 June 1996, it was concluded that the applicants' injuries, as cited in the report of the prison doctor, would prevent him from carrying out his work for two days.

16. On 18 May 1995 the prison doctor also examined the second applicant. In his report, the doctor noted the presence of abrasions on the penis, pain in the chest and ecchymoses under the left eye. He also noted that the applicant had described a feeling of pain while chewing and pain on both shoulders.

B. Criminal proceedings against the applicants

17. On 5 May 1995 the applicants were brought before the public prosecutor attached to the Istanbul State Security Court. In their questioning they denied their police statements and rejected the allegations against them.

18. On 6 May 1995 they were brought before the State Security Court, where they repeated their denials in relation to the statements taken by the public prosecutor. The court ordered the applicants' detention on remand on account of the nature of the accusations against them and of the evidence already available.

19. On 22 June 1995 the public prosecutor initiated criminal proceedings against the applicants in the Istanbul State Security Court and charged them with carrying out acts aimed at the separation of a part of the State territories.

C. Criminal proceedings against the police officers

20. On 1 June 1995 the applicants filed a complaint with the Fatih public prosecutor's office alleging that they had been subjected to various forms of ill-treatment during their detention in police custody.

21. By decisions of 19 and 21 September 1995 the Fatih public prosecutor declined to bring any criminal proceedings against the police officers, because of a lack of evidence against them.

22. On 13 October 1995 the applicants filed an appeal with the Istanbul Beyoğlu Assize Court against this decision.

23. On 14 December 1995 the Assize Court dismissed the appeal lodged by the second applicant on the ground that there was insufficient evidence to commit the police officers for trial. The court, however, upheld the appeal in respect of the first applicant.

24. On 8 June 1998 the Istanbul Chief Public Prosecutor filed an indictment with the Istanbul Assize Court accusing two police officers from the Istanbul Security Directorate of inflicting ill-treatment on the first applicant.

25. On 27 October 1999 the Istanbul Assize Court acquitted the two police officers on the ground that there was no sufficient and convincing evidence which would enable the court to convict the accused. The court reasoned that the complainant could not identify the police officers since he had allegedly been kept blindfolded while being tortured and that the Istanbul Forensic Medical Institute's report stated that no lesions had been seen on his body. It further noted that the Fatih Forensic Medicine Institute's report had been given fifteen days after the alleged incident and that the accused had denied the allegations.

II. RELEVANT DOMESTIC LAW

26. The Criminal Code makes it a criminal offence to subject an individual to torture or ill-treatment (Articles 243 and 245 respectively).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicants complain that they have been subjected to various forms of ill-treatment in violation of Article 3 of the Convention, which provides:

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

28. The applicants allege that the suffering they experienced, taken as a whole, amounts to torture. In this connection, the first applicant submits that, while in detention in the anti-terrorist branch of the Istanbul Security Directorate for six days, he was throttled, beaten, kicked, strung up by his arms and threatened by police officers, who told him that he might share the destiny of others who disappeared in custody. The second applicant maintains that while in police custody for seven days, he was blindfolded, punched severely on his head, stomach, abdomen and kidneys, strung up by his arms and his testicles were squeezed,. He further asserts that he was made to sit on a chair while policemen connected electrodes to his sexual organs and his toes, whereby electric shocks were administered to him. He finally contends that he was forced to listen to music at an extremely high volume in his cell. The applicants both refer to the medical reports issued by the prison doctor who noted the bruises and the after effects of wounds. As regards the discrepancies between the first medical report and the other reports, the applicants note that they spent one more day in police custody after their examination by the Istanbul Forensic Medicine Institute's medical

expert on 5 May 1995 and were transferred from police custody to detention on remand on 6 May 1995 (see paragraph 18 above).

29. The Government submit that the applicants' allegations are unsubstantiated. They maintain that the applicants failed to adduce any concrete evidence in support of their allegations of torture. They note that the medical expert of the Istanbul Forensic Medical Institute found no sign of violence on the bodies of the applicants. The injuries found by the prison doctor must have been due to other circumstances for which the authorities bear no responsibility. In this connection, the Government point out that the applicants underwent the second medical examination sixteen and thirteen days after the first one, respectively. This corresponds to a period during which they were held in the E-type Bayrampaşa prison together with other PKK members. In their opinion, these allegations aim at dishonouring the security forces in their struggle against terrorism.

30. The Court 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 victim's allegations, particularly if those allegations were backed up by medical reports, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 62; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

31. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

32. In the instant case, the Court notes that the applicants were not medically examined at the beginning of their detention and did not have access to a lawyer or doctor of their choice while in police custody. After their transfer from police custody they underwent three medical examinations which resulted in contradictory reports. Having regard to the applicant's submissions that they spent one more day in the custody of the police officers following their first medical examination and in the absence

of any convincing explanation by the Government for the discrepancies, the Court attaches no particular weight to the first medical report, in which no signs of violence were found on the applicants' person. In this connection, the Court notes that no plausible explanation has been provided for the bruises and ecchymoses found on the body of the first applicant and the abrasions and ecchymoses identified on the body of the second applicant (see paragraphs 15 and 16 above). Moreover, the Government did not suggest that the signs of violence found on the applicants' bodies could have predated their arrest.

33. The Court reiterates that a State is responsible for any person in detention, who is in a vulnerable situation while in its charge, and that the authorities have a duty to protect such a person. Bearing in mind the State authorities' obligation to account for injuries caused to persons within their control in custody, the Court considers that the acquittal of the police officers suspected of inflicting ill-treatment cannot absolve the State of its responsibility under the Convention (see *Esen v. Turkey*, no. 29484/95, § 28; *Yaz v. Turkey*, no. 29485/95, § 30; and *Ayşe Tepe v. Turkey*, no. 29422/95, 22 July 2003).

34. In the light of the above and in the absence of a plausible explanation by the Government, the Court considers that the symptoms noted in the prison doctor's reports were the result of treatment for which the Government bore responsibility.

It follows that there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicants each claimed 42,240 French francs (FRF) (6,440 euros (EUR)), for pecuniary damages and FRF 550,000 (EUR 83,847) for non-pecuniary damages.

37. The Government contended that the applicants failed to submit any evidence in support of their claims. They maintained that the applicants' claims were exaggerated and likely to lead to unjust enrichment.

38. The Court notes that the applicant failed to substantiate the existence of pecuniary damage; it cannot therefore allow the claim under this head. However, it considers that both applicants must have suffered distress,

which cannot be compensated solely by the Court's finding of a violation. The Court, having regard to the nature of the violation found in the present case and deciding on an equitable basis, awards each of the applicants 12,000 euros under the head of non-pecuniary damage.

B. Costs and expenses

39. The applicants claimed FRF 668,380 (EUR 101,894) in respect of their costs and expenses.

40. The Government submitted that the applicants' claims under this heading were excessive and unsubstantiated.

41. The Court considers that the applicants failed to a large extent to substantiate their claims in relation to their costs. Deciding on an equitable basis, the Court awards the applicants jointly the sum of EUR 2,500.

C. Default interest

42. 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. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to 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) to each applicant EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) to both applicants jointly EUR 2,500 (two thousand five hundred euros) for costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President