



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

SECOND SECTION

CASE OF MEHMET EMIN YÜKSEL v. TURKEY

(Application no. 40154/98)

JUDGMENT

STRASBOURG

20 July 2004

FINAL

20/10/2004

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 Yüksel v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr R. TÜRMEŒ,

Mr C. BİRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 2 December 2003 and on 29 June 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 40154/98) 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 a Turkish national, Mr Mehmet Emin Yüksel (“the applicant”), on 19 January 1998.

2. The applicant was represented by Mr M. S. Tanrıkulu, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicant alleged under Article 3 that he had been subjected to various forms of ill-treatment, which amounted to torture, during his detention in police custody. He further complained that he had no effective remedy in respect of his allegation of torture as required by Article 13 of the Convention. He finally contended that he had been denied the right to intervene in the criminal proceedings against the police officers in violation of Article 6 § 1.

4. The application was 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).

5. The application was allocated to the Second 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. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 2 December 2003, the Court declared the application partly admissible. It retained the applicant's complaints concerning the alleged ill-treatment in police custody and the lack of an effective remedy and declared the remainder of the application inadmissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1972 and lives in Diyarbakır. He was a student at the Medical Faculty of the Diyarbakır Dicle University at the time of the events described below.

10. On 4 April 1997 the applicant was arrested and placed in custody by police officers from the Diyarbakır Security Directorate. He was accused of membership of an illegal organisation, the YEKBUN (Kurdistan United People's Party).

11. The police officers interrogated the applicant in relation to his alleged involvement in the YEKBUN. The applicant alleged that he had been subjected to ill-treatment by the officers during the interrogation which caused an oedema, a bruised nose and a broken tooth. According to the Government, the applicant's injuries occurred when, due to lack of sleep, he inadvertently fell and hit his nose on a sink.

12. On 6 April 1997 the applicant signed a statement according to which he hit his nose on a sink while washing his face. The applicant claims that he was forced to sign the statement. He was then taken to the Diyarbakır State Hospital and examined by Dr. R.C. who noted the following:

"An oedema and an ecchymosed lesion as a result of trauma have been identified on the nose.

..."

13. On the same day, the applicant was brought before the Diyarbakır State Security Court. Before the court, he denied being a member of an illegal organisation. He stated that he had been subjected to various forms of ill-treatment during his detention in police custody and that the statement which he had signed did not reflect the truth of what had happened to him. The court ordered his release pending trial.

14. On 8 April 1997 the applicant filed a criminal complaint with the chief public prosecutor's office in Diyarbakır against the police officers who had allegedly ill-treated him. The chief public prosecutor ordered that the applicant be examined by a medical expert from the Forensic Medicine Institute. On the same day, he was examined by a forensic medical expert. The expert's report stated the following:

“...

There is an abrasion of 1 x 0,5 cm on the left side of the tip of the nose. Furthermore, there is a minimal fracture on the front of the 8th of the lower teeth.

There is no danger to the individual's life. However, the injuries render him unfit for work for two days.”

15. On 15 April 1997 the Diyarbakır public prosecutor issued a decision of non-jurisdiction in respect of the applicant's allegations of ill-treatment and referred the investigation file to the Diyarbakır District Administrative Council in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

16. On 13 June 1997 the Diyarbakır State Security Court acquitted the applicant of the charges against him. The court took note in its judgment of the applicant's statement that he had been interrogated by police officers under duress.

17. On 26 June 1997 the Diyarbakır Administrative Council decided that, due to lack of evidence, the police officers who had allegedly ill-treated the applicant should not be prosecuted.

18. On 6 August 1997 the applicant filed an objection with the Supreme Administrative Court against the decision of the Diyarbakır Administrative Council. He also lodged a petition with the Diyarbakır Administrative Council and requested a copy of the investigation file. He received no response to his petition.

19. On 14 May 1999 the Supreme Administrative Court confirmed the Administrative Council's decision of non-prosecution.

20. On 26 July 1999 the Supreme Administrative Court's decision was served on the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. A description of the relevant domestic law at the material time can be found in *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 96-100, 3 June 2004, and *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 186-197, 8 April 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

1. The parties' submissions

22. The applicant complained that he had been subjected to various forms of ill-treatment and that there had been no adequate or effective investigation in respect of his complaint under Article 3 of the Convention, which provides:

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

23. The applicant alleged that the suffering to which he had been subjected, taken as a whole, amounted to torture. He contended that he had been beaten up by police officers during the interrogation which had resulted in a lesion to his nose and a broken tooth. He submitted that he had been forced by police officers to sign a statement affirming that he had hit his nose on a sink while washing his face. The applicant maintained that he had suffered psychological damage as a result of the ill-treatment inflicted on him.

24. The Government contended that the applicant had failed to provide a detailed description of the alleged ill-treatment. They maintained that the applicant had not given a credible explanation as to how the injuries described in the medical report had been caused by the police officers. They also pointed out that the medical reports did not contain any indication as to when and how the injuries had occurred. The Government relied on a written statement signed by the applicant which stated that the applicant had hit his nose on a sink while washing his face.

2. The Court's assessment

25. 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 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; and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 61).

26. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (*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).

27. In the instant case, the Court notes that the applicant was not medically examined at the beginning of his detention and did not have access to a lawyer or doctor of his choice while in police custody. On 6 April 1997, two days after being taken into custody, he was examined by Dr R.C. who noted the presence of an oedema and ecchymosed lesion on the applicant's nose caused by trauma (see paragraph 12 above). Following his release from police custody and subsequent to his complaint to the Diyarbakır chief public prosecutor, the applicant underwent a further medical examination which indicated, in addition to an injury to his nose, that one of the applicant's teeth had been broken (see paragraph 14 above). The forensic medical expert found that these injuries were such that the applicant was unfit for work for two days (see paragraph 14 above).

28. In response to the above findings in the medical reports, the Government claimed that the applicant had sustained these injuries as a result of hitting his nose on a sink while washing his face. The Court observes that the Government's explanation sits ill with the nature of the applicant's injuries as recorded in the medical reports. While the Court does not exclude the possibility of accidents occurring in detention, it does not find it convincing that the applicant could have broken one of his back teeth and sustained injuries to his nose at the same time through accidentally coming into contact with a solid object. The Court must also have regard to the fact that the applicant, in his statements to the Diyarbakır chief public prosecutor and later to the State Security Court, was unequivocal in his account that he had been ill-treated by police officers while in custody (see paragraphs 14 and 16 above). Furthermore, the applicant has consistently denied the accuracy of the statement which he had signed in police custody and claimed that it was obtained under duress (see paragraphs 13 and 16 above).

29. As regards the Government's argument that the medical reports did not indicate the cause of the injuries to the applicant's face, the Court considers that this cannot be regarded in itself as a confirmation of their version of the facts. It points out in this connection that an opinion by medical experts on a possible relationship between physical findings and ill-treatment is a requirement for the effective investigation of ill-treatment

under international human rights law standards (see the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Istanbul Protocol”, submitted to the United Nations High Commissioner for Human Rights, 9 August 1999, para. 82, cited in the above-mentioned *Bati* judgment, § 100).

30. The Court reiterates that a State is responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them. Bearing in mind the authorities’ obligation to account for injuries caused to persons within their control in custody and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that the injuries recorded in the medical reports of 6 and 8 April 1997 were the result of treatment for which the Government bore responsibility.

31. Accordingly, there has been a violation of Article 3 of the Convention.

32. The Court does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the alleged deficiencies in the investigation. In the circumstances, this matter is more appropriately examined under Article 13.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

1. The parties’ submissions

33. The applicant alleged that he was denied an effective domestic remedy in respect of his complaint of ill-treatment in violation of Article 13 of the Convention, which provides:

“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.”

34. The applicant complained that there had been no thorough and effective investigation capable of leading to the identification and punishment of the persons responsible for the ill-treatment inflicted on him while in police custody. He further contended that the Diyarbakır Administrative Council’s decision had rendered it impossible for him to bring civil proceedings against the police officers. The applicant finally alleged that the Diyarbakır Administrative Council could not be regarded as an independent body since it was composed of civil servants.

35. The Government maintained that, in addition to a criminal prosecution, the victim of alleged ill-treatment by State agents could request compensation for pecuniary and non-pecuniary damage from the civil or

administrative courts. They contended that, if persistent enough, a victim of ill-treatment or torture could seek a remedy in Turkish law.

2. The Court's assessment

36. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (see *Aksoy*, cited above, § 98).

37. The Court further reiterates that for an investigation into torture or ill-treatment by State officials to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see, among other authorities, *Oğur v. Turkey*, [GC], no. 21594/93, judgment of 20 May 1999, § 91).

38. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 of the Convention for the ill-treatment suffered by the applicant in police custody. The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 in connection with Article 3 of the Convention (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 64, 29 April 2003, and *Yasa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2442, § 112).

39. The Court notes that, upon his release from custody, the applicant complained of ill-treatment to the chief public prosecutor in Diyarbakır. The latter issued a decision of non-jurisdiction and sent the investigation file to the Diyarbakır Administrative Council. It appears from the documents submitted to the Court that neither the accused police officers nor the applicant were requested to testify in the course of the investigation. It also transpires that no other investigative steps were taken by the Administrative Council, which eventually decided to discontinue the criminal proceedings against the police officers for lack of evidence. Moreover, the applicant's representative received no written reply from the Administrative Council to his petition although he specifically requested the latter in that petition to give him a copy of the investigation file.

40. The Court further notes that it has already found in a number of cases that the investigation carried out by the Administrative Councils cannot be regarded as independent since they are chaired by the governors, or their deputies, and composed of local representatives of the executive, who are hierarchically dependent on the governors (see, among other

authorities, *Oğur*, cited above, § 91; *Yöyler v. Turkey*, no. 26973/95, § 93, 24 July 2003; and *Kurt v. Turkey* (dec.), no. 37038/97, 12 June 2003).

41. In the light of the foregoing, the Court does not consider that the above proceedings can properly be described as thorough, effective and independent such as to meet the requirements of Article 13 of the Convention.

42. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed the sum of 40,000 euros (EUR) for non-pecuniary damage.

45. The Government did not express any opinion on the applicant's claim.

46. The Court considers that the applicant must have suffered distress, which cannot be compensated solely by the Court's finding of a violation. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, it awards the applicant EUR 10,000 under the head of non-pecuniary damage.

B. Costs and expenses

47. The applicant claimed a total of EUR 3,000 for his costs and expenses.

48. The Government did not make any comment on the applicant's claim.

49. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). It notes that the fees and expenses claimed by the applicant's representative do not in the circumstances appear unreasonable. It therefore awards the amount claimed in full.

C. Default interest

50. 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* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, together with any tax that may be applicable, to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President