



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

FOURTH SECTION

**CASE OF KARAKAŞ AND YEŞİLIRMAK v. TURKEY**

*(Application no. 43925/98)*

JUDGMENT

STRASBOURG

28 June 2005

**FINAL**

*28/09/2005*

*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 Karakaş and Yeşilirmak v. Turkey,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 7 June 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 43925/98) 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 two Turkish nationals, Mr Bülent Karakaş and Mr Yılmaz Yeşilirmak ("the applicants"), on 14 August 1998.

2. The applicants, who had been granted legal aid, were represented by Mr H.K. Elban and Mr A. Yazıcıođlu, lawyers practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court

3. The applicants alleged, in particular, that they were subjected to ill-treatment in police custody and that their right to presumption of innocence was violated by the authorities.

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 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 5 October 2004, the Court declared the application partly admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1974 and 1977 respectively and live in Istanbul.

10. On an unspecified date police officers from the anti-terror branch of the Bağcılar Security Directorate reported that an illegal organisation, namely Dev-Sol (Revolutionary Left), would organise a demonstration in front of the head office of a daily journal, namely *Hürriyet*, on 13 August 1994.

11. On 13 August 1994 the applicants, together with twelve other people, were arrested in front of the newspaper's head office and taken to police custody at the Bağcılar Security Directorate. According to the arrest report drafted by the police, Dev-Sol members were arrested following a chase and two warning shots. It was also noted that the police officers made the detainees lie on the floor and collected the pamphlets and banners that they carried.

12. On 15 August 1994 the Istanbul Criminal Police Laboratory provided an expert report where it concluded that Yılmaz Yeşilirmak's handwriting matched the writing on several of the banners seized by the police.

13. On 17 August 1994 the applicants were examined by a doctor from the Bakırköy Forensic Medical Institute. The doctor reported bruises on one hand of the first applicant and on both hands of the second applicant. The report stated that the applicants' injuries did not constitute a danger to life, but would prevent them from working for three days.

14. On the same day the Bağcılar Security Directorate held a press conference on the subject of the apprehension of members of the Dev-Sol organisation. There is no information in the case-file as to whether any declaration was made by the police during the conference. However, the next day the applicants' names and pictures appeared in two national newspapers, namely *Milliyet* and *Türkiye*, where they were described as members of the Dev-Sol organisation.

15. The news in the *Milliyet* newspaper, with the headline "Fourteen members of Dev-Sol arrested", read as follows:

“The members of Dev-Sol organisation, namely ..., Yılmaz Yeşilirmak, Bülent Karakaş, ..., who were getting ready to hold a demonstration in Güneşli, in order to protest against the *Hürriyet* newspaper, have been arrested. The police seized the following items from the accused: pamphlets and banners with slogans against journalists, publications with leftist points of view, and slings to smash the windows of the *Hürriyet* building.”

16. The information in the *Türkiye* newspaper, with the headline “Protesters with slings”, was accompanied by a photo, in which a group of accused was standing behind a table on which pamphlets, banners and rubber bands were displayed. The text was as follows:

“The police arrested fourteen people, (including five women), who were allegedly members of an illegal leftist organisation and were getting ready to hold a demonstration to protest about an article that was published in *Hürriyet* newspaper. The police seized banners, pamphlets, and rubber bands for slings which were found on the accused, namely ... Y.Y., Bülent Karakaş ...”

17. On 18 August 1994 the applicants were brought before the Public Prosecutor and then before a non-presiding judge at the Istanbul State Security Court, where they denied all charges. Both applicants rejected their statements given in police custody, contending that they had been forced to sign them. The court ordered their detention on remand.

18. On 23 August 1994 the applicants were examined by the prison doctor. The medical report indicated the presence of bruises on the right hand of the first applicant. Moreover a site of scarred tissue, approximately 0.5 x 0.5 cm in dimension, was identified on the back of his right hand.

At the end of the examination of the second applicant the doctor reported the presence of bruises on both hands and three sites of scarred tissue, each approximately 0.5 x 1 cm in dimension on the back of his left hand.

19. On 26 August 1994 the Public Prosecutor of the Istanbul State Security Court filed a bill of indictment, charging the applicants under Article 169 of the Criminal Code with aiding and abetting an illegal organisation. The summary of the relevant parts of the indictment provided as follows:

“... In view of the accused’s statements given at different stages of the criminal proceedings, the arrest report, the house search and seizure reports, the seized pamphlets, banners and slings which were found on the accused at the time of arrest, the expert report and the content of the case file, it has been established that:

1. The accused Yılmaz Yeşilirmak was a supporter of the ideology of the illegal Dev-Sol organisation ..., two months ago he started to visit the head office of the *Devrimci Gençlik (Revolutionary Youth)* periodical in Beyoğlu, together with his friend Bülent Karakaş ..., he was informed of the demonstration that was going to be held in front of the *Hürriyet* building, on 8 August 1994, by a person who approached him while he was reading the *Mücadele (Struggle)* periodical in a public park.

He assisted in the preparation of banners. ... According to the Istanbul Criminal Police Laboratory's report dated 15 August 1994 the characteristics of the applicant's handwriting were visible on three banners.

...

9. ... the accused Bülent Karakaş was a supporter of the ideology of the illegal Dev-Sol organisation. He was a reader of the *Mücadele* periodical. He met with his friend Yılmaz Yeşilirmak in Şişli and they arrived together at the scene of the incident. When he was arrested the police seized two banners which he was carrying."

20. On 7 and 8 September 1994 a doctor at the Forensic Medicine Institute examined the second and the first applicant respectively. The medical report reiterated the findings of the reports dated 23 August 1994 and indicated that the first applicant complained of pain in his waist and the second applicant complained of pain in his thighs.

21. At the first hearing held on 27 October 1994 before the Istanbul State Security Court, the applicants submitted the medical reports and written statements in which they alleged to have been subjected to torture in police custody. They did not give any details concerning their allegations of torture. They also maintained that, in police custody, they had been forced to sign statements before reading them. The court ordered the applicants' release pending trial.

22. At the hearing dated 21 February 1995 the Istanbul State Security Court decided that the police officers whose signatures appeared under the applicants' written statements given in police custody should be summoned to appear before the court.

23. On 5 September 1995 and 14 March 1996 the police officers confirmed before the court the content of the applicants' police statements and the authenticity of their signatures appearing on the bottom of these statements.

24. On the latter date, in view of the incident report, the witness statements, the seized banners, pamphlets and the content of the case-file, the court decided to acquit nine of the accused and convicted five of them, including the applicants, under Article 169 of the Criminal Code and Article 5 of the Law on Prevention of Terrorism. It sentenced the applicants to three years and nine months' and two years and six months' imprisonment respectively.

25. On 17 April 1996 the applicants' lawyer lodged an appeal with the Court of Cassation. In the petition the lawyer repeated the allegation that the applicants had been subjected to torture in police custody.

26. On 13 April 1998, at the hearing which took place before the Court of Cassation, the applicants repeated their allegations of torture in police custody and pleaded not guilty.

27. On 27 April 1998 the Court of Cassation upheld the decision of the Istanbul State Security Court in respect of three of the accused, including the applicants, and quashed it in respect of two of them. It quashed the decision regarding one of the accused on procedural grounds and the other one on account of lack of evidence.

28. On 27 May 1998 the Court of Cassation rejected the applicants' request to rectify the decision.

## II. RELEVANT DOMESTIC LAW

29. Article 169 of the Criminal Code provides:

“Any person, who knowing that an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons ammunition or clothes or facilitates its operations in any manner whatsoever shall be sentenced to not less than three and not more than five years' imprisonment...”

30. Article 4 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991) provides that the offence defined in Section 169 of the Criminal Code is classified in the category of “acts committed to further the purposes of terrorism”. According to Article 5, penalties laid down in the Criminal Code as punishment for the offences defined under Article 4 of the Act are increased by one half.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicants complained that they had been subjected to various forms of ill-treatment and torture in police custody, 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.”

#### A. Arguments before the Court

##### 1. *The applicants*

32. The applicants alleged that the treatment to which they had been subjected during their detention in police custody amounted to torture. They alleged, in particular, that they were blindfolded and kept standing facing a wall; they were not given water and not allowed to go to the bathroom for

some time. Moreover they were beaten on both hands (*el falakası*), insulted and threatened. They also complained in general of the conditions of the prison.

## 2. *The Government*

33. The Government contended that the applicants had failed to provide a detailed description of the alleged treatment to the domestic authorities contrary to the application form that they had submitted with the Court. They only stated before the public prosecutor and the court that they had been subjected to torture and that they had been forced to sign their statements in police custody.

Although the applicants alleged that the doctor did not note down in the medical report all their complaints, neither they nor their representative contested the reliability of these reports before the domestic authorities nor did they request the court to send them for another medical examination.

34. Furthermore the injuries of the applicants as shown by medical evidence had occurred in the course of the arrest when they had resisted the attempts of the policemen to apprehend them. The use of force had been necessary to make the applicants submit to the lawful requirements of the police officers and no excessive force had been used against them.

## **B. The Court's assessment**

35. 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).

36. In the instant case, the Court notes that, in their application to the Court, the applicants gave a detailed description of the forms of ill-treatment from which they had suffered. Nonetheless, a number of elements in the case raise doubts as to whether the applicants were subjected to the treatment as described by them in their application forms. It notes that, apart from an allegation that they were subjected to torture, the applicants did not provide any details of the alleged treatment before the domestic authorities. The Court further notes that the medical reports dated 17 and 23 August, and 7 and 8 September 1994 reveal no traces of ill-treatment on their bodies

consistent with that described by the applicants (paragraphs 13, 18 and 20 above).

37. The Court observes however that in all three medical reports it was recorded that the applicants had bruises and scarred tissue on their hands. It therefore considers that the findings in the reports confirm the applicants' allegations that they were beaten on their hands.

38. The Court notes that the parties did not dispute the fact that the applicants had sustained injuries on their hands as shown by the medical evidence. However, differing versions of how the applicants actually sustained the injury were put forward by the parties.

39. Although the Government contended that the injuries on the applicants' hands occurred while they were resisting the police officers who tried to apprehend them, the Court finds this explanation unconvincing. It considers that, even if the applicants resisted arrest, this provides a very insufficient explanation of the injuries concerned. On the basis of all the material placed before it, the Court concludes that the Government have not satisfactorily established that the applicants' injuries on their hands were caused otherwise than by the treatment they underwent while in police custody.

40. In the light of the above and in the absence of a plausible explanation by the Government, the Court considers that the injuries noted in the medical reports were the result of the treatment for which the Government bore responsibility.

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

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

42. The applicants complained under Article 6 § 1 of the Convention that they were denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Istanbul State Security Court which tried and convicted them. Article 6 § 1 of the Convention provides as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

43. The Court notes that it has examined similar grievances in the past and has found a violation of Article 6 § 1 (see, among other authorities, *Özel v. Turkey*, no. 42739/98, §§ 33-34, 7 November 2002 and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

44. The Court sees no reason to reach a different conclusion in the instant case. It is reasonable that the applicants who were prosecuted in a State Security Court for aiding and abetting an illegal organisation should have been apprehensive about being tried by a bench which included a

regular army officer and member of the Military Legal Service. On that account, they could legitimately fear that the Istanbul State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicants' fears as to the State Security Court's lack of independence and impartiality can be regarded as objectively justified (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1573, § 72 *in fine*).

45. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

46. The applicants complained under Article 6 § 2 of the Convention that their right to be presumed innocent was violated since, subsequent to their arrest, the police organised a press conference where they were presented to journalists as criminals. Article 6 § 2 of the Convention provides as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

#### A. Arguments before the Court

47. The Government alleged that no news or photos, describing the applicants as members of an illegal organisation, were published in the newspapers.

48. The applicants argued that the news about their arrest was not only published in the newspapers, but it was also broadcast on several TV channels.

#### B. The Court's assessment

49. The Court reiterates in the first place that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair trial that is required by paragraph 1. The presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty (see, among other authorities, *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, p. 30, § 56, *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, p. 15, §§ 27 and 37, and *Alenet de*

*Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, p. 16, §§ 35-36).

50. The freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Alenet de Ribemont*, cited above, § 38).

51. The Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X). It has also asserted the importance of respect for the presumption of innocence during press conferences by state officials (see *Butkevičius v. Lithuania*, no. 48297/99, §§ 50-52, ECHR 2002-II (extracts), *Lavents v. Latvia*, no. 58442/00, § 122, 28 November 2002, and *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, §§ 49-51, 28 October 2004). Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, *inter alia*, *Adolf v. Austria*, judgment of 26 March 1982, Series A no. 49, pp. 17-19, §§ 36-41).

52. The Court observes that in the present case the police organised a press conference, in a context independent of the criminal proceedings, where they gave information about the detainees to the journalists and allowed them to take pictures.

53. The Court notes that in the present case there is no evidence in the case-file to indicate what, if any, declarations were made by the police during the press conference. While it is true that, following the press conference, two newspapers published the names and photographs of the two applicants and stated that they had been arrested by the police as members of Dev-Sol when preparing to hold a demonstration, the Court does not find it established that the police stated that the applicants were guilty of the offences in respect of which they had been arrested or that in the press conference they had otherwise prejudged the assessment of the facts by the competent judicial authorities.

54. Having regard to the foregoing, the Court considers that the applicants' right to be presumed innocent has not been violated in the present case.

55. There has accordingly been no breach of Article 6 § 2 of the Convention in this respect.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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. Damages**

57. The applicants, arguing that they were unable to work and continue their education during their imprisonment, claimed the sum of 6,000 euros (EUR) for pecuniary damage.

As regards non-pecuniary damages the first applicant claimed the sum of EUR 8,000, while the second applicant, who was seventeen at the time of the incident, claimed the sum of EUR 10,000.

58. The Government maintained that the claim for pecuniary damages was without any basis whatsoever. Concerning the claims for non-pecuniary damages the Government denied once again the applicants' allegations of torture and contended that no compensation should be awarded.

59. The Court notes that the applicants 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. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, the Court awards each of the applicants EUR 5,000 under the head of non-pecuniary damage.

##### **B. Costs and expenses**

60. The applicants claimed a total of EUR 6,083.33 for fees and costs in the preparation and presentation of their case before the Convention institutions. This included administrative costs incurred by their representatives (EUR 5,933.33) for approximately 59 hours 20 minutes' legal work and expenses such as telephone calls, postage, photocopying, stationery, transportation and expert's fee (EUR 150).

61. The Government argued that no receipt or any other document had been produced by the applicants to prove their claims.

62. 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). Making its own estimate based on the information available, the Court considers that the claims made in respect of administrative costs and

expenses may be regarded as having been necessarily incurred and reasonable in their amounts.

63. In the light of the foregoing, the Court awards the sum of EUR 3,500, less EUR 685 received by way of legal aid from the Council of Europe.

### **C. Default interest**

64. 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 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 6 § 2 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicants, 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) EUR 5,000 (five thousand euros) to each applicant in respect of non-pecuniary damage;
    - (ii) EUR 3,500 (three thousand five hundred euros), less EUR 685 (six hundred and eighty-five euros) received by way of legal aid from the Council of Europe, to both applicants jointly in respect of 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President