



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

SECOND SECTION

CASE OF KARAYİĞİT v. TURKEY

(Application no. 63181/00)

FINAL

20/12/2005

JUDGMENT

This version was rectified on 31 January 2006
under Rule 81 of the Rules of the Court

STRASBOURG

20 September 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 Karayığit 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 R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 63181/00) 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 Mr Baki Karayığit.

2. The applicant, who had been granted legal aid, was represented by Mrs. M. Avci¹ and Mrs. D. Bayır, 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 applicant alleged, in particular, that he was subjected to ill-treatment in police custody and that he had no effective remedy under domestic law for his allegation of ill-treatment.

4. 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.

5. By a decision of 5 October 2004, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other’s observations. The Chamber, after consulting the parties, decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

¹ Rectified on 31 January 2006. The name of M. Avci read M. Tepe in the former version of the judgment.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1979 and lives in Istanbul.

A. The detention in police custody and the medical certificates concerning the alleged ill-treatment of the applicant

9. On 6 February 1999 the applicant was arrested and taken into police custody by police officers from the Anti-Terror Branch of the Istanbul Security Directorate on suspicion of his membership of an illegal organisation, namely the PKK (the Workers' Party of Kurdistan).

10. On the same day the public prosecutor granted the request of the Anti-Terror Branch to place the applicant in police custody for four days at the Anti-Terror Branch of the Istanbul Security Directorate.

11. On 10 February 1999 the Istanbul State Security Court extended the custody period for a further two days.

12. On 10 February 1999 the applicant was taken to Haseki Hospital, where he was issued with a medical report. In the report 'surface erythema and scrapes on the proximal part of both arms' were noted. On the same day the applicant was allegedly forced to sign a statement explaining that the bruises on his arms had been caused by a dust allergy.

13. On 12 February 1999 the applicant was brought before the public prosecutor of the Istanbul State Security Court and then before a judge at the Istanbul State Security Court, where he stated that he had been subjected to physical and emotional violence. The court ordered the applicant's detention on remand.

14. On the same day, a doctor at the Forensic Medical Institute of the Istanbul State Security Court examined the applicant and reported bruises of 30-40 cm x 7-8 cm on both upper arms and an ecchymose under his left arm joint, as well as a complaint of backache. In the report, it was also noted that the signs of physical violence were sufficient to prevent the applicant from working for three days.

15. On 16 February 1999 the public prosecutor of the Istanbul State Security Court filed a bill of indictment, charging the applicant with the criminal offence of being a member of an illegal organisation described in

Article 168 § 2 of the Criminal Code and section 5 of the Prevention of Terrorism Act (Law no. 3713).

16. At the first hearing of 27 April 1999 the applicant repeated his allegation of ill-treatment before the Istanbul State Security Court. He also requested an allergy test and an examination of his signature. The court rejected his requests.

17. On 13 August 1999 the applicant was able to consult a dermatologist, who examined the applicant and found no indication of any allergies.

B. Criminal proceedings against police officers

18. On 29 April 1999 the public prosecutor filed an indictment with the Istanbul Assize Court, charging the two police officers whose signatures were on the applicant's statement made in custody with a criminal offence proscribed by Article 243 of the Criminal Code. In his indictment the public prosecutor cited the two medical reports drawn up in respect of the applicant, which mentioned the bruises on his arms.

19. On 3 May 1999 the Assize Court ordered that a letter be sent to the applicant inviting him to take part in the proceedings.

20. At the hearings on 23 June and 23 September 1999, the court issued bench warrants for the applicant in order to consider his testimony as a witness. The responses to these warrants from the local authorities revealed that the applicant was detained in Üsküdar E Type Prison.

21. At the hearings on 30 November and 14 December 1999, the court ordered that written notifications be sent to Üsküdar Prison in order to secure the presence of the applicant before the court.

22. The prison administration informed the court that the applicant had refused to attend the hearings and provided letters to this effect. These documents did not bear the applicant's signature.

23. On 30 December 1999 the Assize Court heard the defendant police officers. It took note of the documents sent by the prison administration, and subsequently dispensed with the applicant's testimony on the grounds that the applicant had chosen not to attend the hearing, and that taking his testimony would not affect the verdict. The court further stated that the applicant had not brought a specific complaint regarding his allegations; the criminal proceedings were instituted by the public prosecutor on his own initiative based upon the information he had obtained from the State Security Court. It took note of the applicant's previous statements and acquitted the police officers of the offence on account of a lack of evidence.

24. On 8 May 2000 the applicant filed another complaint with the Fatih Public Prosecutor's Office against the same police officers.

25. On 9 May 2000 the Public Prosecutor's Office issued a decision of non-prosecution, referring to the trial that had already been held before the Istanbul Assize Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. A description of the relevant domestic law at the material time can be found in *Bati and others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that the treatment to which he was subjected during his detention in police custody amounted to torture and inhuman treatment in violation of Article 3 of the Convention, which reads as follows:

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

28. The Government contested the applicant's allegation. They submitted that, during his interrogation on 10 February 1999, the applicant complained of irritation and itching on his arms, requesting that a doctor should see him for his dust allergy. He was taken to the hospital on the same day, where ‘surface erythema and scrapes on the proximal part of both arms’ were reported. They further maintained that there was a clear disproportionality between the described torture alleged by the applicant and the findings of the two medical reports, which described similar findings on the arms. Furthermore, these cannot be regarded as demonstrating the level of severity required for a violation of Article 3 of the Convention.

29. The applicant contended that during his seven days of interrogation physical and mental violence were inflicted on him. He maintained that he was suspended by his elbows, which were tied behind his back, and electric shocks were administered to his body.

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 corroborated 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 the instant case, the applicant was examined by a medical expert at Haseki Hospital on 10 February 1999 during his detention in police custody, and on 12 February 1999 by a medical expert at the Forensic Medical Institute of the Istanbul State Security Court. The reports issued on each occasion described significant bruising on the applicant's arms (see paragraphs 12 and 14 above).

32. It has not been alleged that the injuries observed on the applicant's body in these reports dated from the period prior to his arrest.

33. The Court notes that the criminal proceedings against the police officers did not shed any light on the origin of the bruises noted on the applicant's body, which had appeared during the applicant's seven day detention. The parties did not dispute the fact that the applicant had ecchymoses on his arms, as shown by the medical evidence. However, they put forward different versions as to how the applicant had actually sustained them. The Court notes that the applicant provided a medical report showing that he did not have a dust allergy as had been alleged by the Government.

34. Reiterating the authorities' obligation to account for injuries caused to persons within their control in custody, the Court considers that the acquittal of the police officers cannot absolve the State of its responsibility under the Convention (see, *mutatis mutandis*, *Berktaş v. Turkey*, no. 22493/93, § 168, 1 March 2001, and *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 168, 8 January 2004).

35. Considering the circumstances of the case as a whole, and the absence of a plausible explanation from the Government as to the cause of the injuries sustained by the applicant while in custody, the Court finds that these injuries were the result of treatment for which the Government bore responsibility.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant alleged that he did not have an effective remedy in respect of his complaints of torture and ill-treatment in breach of Article 13 of the Convention, which reads as follows:

“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.”

38. The Government submitted that, upon the applicant's statement concerning his allegation of ill-treatment in custody, the public prosecutor immediately initiated criminal proceedings and filed an indictment with the Assize Court against two police officers. The applicant was invited to the court from the prison to give evidence as the principal witness in the case. However, he chose not to appear, thus refusing to testify before the court. Consequently, the police officers were acquitted for lack of evidence. They maintained that by refusing to testify before the domestic court in the case of alleged torture to which he was subjected, the applicant disregarded the domestic remedy and instead sought redress from the Strasbourg Court.

39. The applicant maintained that he brought his complaints of ill-treatment before the judicial authorities. In particular during his trial before the State Security Court he had raised the issue of his being tortured while in police custody many times, that he is not allergic to dust as was alleged by the police officers and that he refuted the signature on the protocol stating that he was allergic to dust. His request for an examination of that signature was dismissed by the court.

He further stated that, during the criminal proceedings against the police officers, he was in Üsküdar Prison and that he was not informed of the proceedings. In this connection, he referred to the written notifications issued by the court to him and the letters issued by the prison administration in response to them, which stated that the applicant did not want to attend the hearings of his own will. The applicant insisted that he did not sign these letters. In this connection, he maintained that he would have shown no hesitation in attending the hearings, if he had known.

He finally maintained that the Assize Court, which tried and acquitted the police officers, did not examine the medical reports, did not take evidence from the doctors who drew up these reports or seek an opinion from the Forensic Medicine Institute as to whether the findings in those reports supported the allegation of torture and ill-treatment.

40. 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. The authorities were therefore under an obligation to conduct an effective investigation fulfilling the requirements of this provision (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 64, ECHR 2003-V, and *Bati and Others*, cited above, §§ 133-138).

41. In the instant case, the Court observes that, when the public prosecutor filed the indictment against the police officers, he relied on the medical reports of the applicant's injuries. However, the ensuing criminal proceedings failed to provide any explanation as to the origin of those injuries. The Assize Court apparently did not take these reports into account

or the report showing that the applicant did not suffer from any allergy, even though they were brought to the court's attention by the prosecution.

The Court further notes that, indeed, the documents sent by the prison authorities to the Assize Court do not bear the applicant's signature. Furthermore, the Court cannot imagine why the applicant would refuse to attend the hearings before the Assize Court to give evidence which would have been to his advantage, especially when he later lodged another complaint with the public prosecutor against the same police officers, albeit unsuccessful.

The Court finds, therefore, that the domestic court failed to secure the basic, available evidence as to the applicant's allegation of ill-treatment, by not obtaining a detailed statement from the applicant himself, being the key witness. Thereby, the Assize Court failed to conduct an adequate investigation.

42. The Court concludes that these proceedings did not provide the thorough, effective remedy required by Article 13 of the Convention.

43. There has accordingly been a violation of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant argued that, just before his arrest, he was a worker at a textile factory in Istanbul. He had lost his job because of the financial problems of the factory and was looking for work. In his previous job he had earned about 250 euros (EUR) per month. Relying on these elements, the applicant claimed pecuniary loss of EUR 18,000 for five years, the period which he had spent in detention.

As regards non-pecuniary damages the applicant claimed EUR 40,000.

46. The Government maintained that the claim for pecuniary damages had no basis whatsoever. They considered the claim for non-pecuniary damages as excessive and unjust.

47. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it cannot therefore allow the claim under this head. However, it considers that the applicant must have suffered pain and 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 ruling on an equitable basis, the Court awards the applicant EUR 15,000 for non-pecuniary damage.

B. Costs and expenses

48. The applicant claimed a total of 22,890,000,000 Turkish liras (TRL) (the equivalent of approximately EUR 39,560 at the material time) in legal costs. This sum included administrative costs, totalling TRL 430,000,000 (EUR 743), incurred in the domestic proceedings and those before the Court, such as telephone calls, postage, photocopying and stationary.

49. The Court may make an award in respect of costs and expenses in so far that they 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 awards the sum of EUR 3,500, less the sum of EUR 685 received in legal aid from the Council of Europe.

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;
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, to be converted into the national currency of the respondent State at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, less EUR 685 (six hundred and eighty-five euros) granted by way of legal aid;
 - (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;

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

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President