



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

THIRD SECTION

CASE OF ERIKAN BULUT v. TURKEY

(Application no. 51480/99)

JUDGMENT

STRASBOURG

2 March 2006

FINAL

03/07/2006

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 Erikan Bulut v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 51480/99) 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 a Turkish national, Mr Erikan Bulut (“the applicant”), on 6 August 1999.

2. The applicant was represented by Ms Arzu Kır Durmuş and Mr Kenan Aşık, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. The applicant alleged, in particular, that his fall from the fifth floor of the Pendik Security Directorate Building constituted a violation of his right to life. He invoked Articles 2, 3, 6 and 13 of the Convention.

4. The application was allocated to the Third 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. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

6. By a decision of 23 June 2005, the Court declared the application partly admissible.

7. 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 FACTS

8. The applicant was born in 1961 and lives in Istanbul.

9. On 26 August 1998 at about 6 p.m. the applicant was arrested in Istanbul by policemen from the Anti-Terrorism Branch of the Pendik Security Directorate on suspicion of aiding and abetting the PKK. Subsequently, the police officers carried out a search of the applicant's office and of his flat with his permission. The same day at about 10 p.m. the applicant was examined by a doctor, who reported that there were no signs of injury on his body. The applicant was then taken to the Pendik Police Station to be interrogated.

10. On 27 August 1998 the public prosecutor verbally ordered the applicant's release as there was no evidence against him. Consequently, at about 10.30 a.m. the applicant was handed over to the police officers from the Anti-Terrorism Branch of the Pendik Security Directorate to be released. He was initially taken to the Pendik Hospital where he was examined by a doctor, who stated that there were no signs of ill-treatment on his body. The applicant was then taken to the Pendik Security Directorate building. While he was waiting in a room with window guards, the police officers started preparing the report for his release. The applicant alleged that while he was waiting, the police officers made him drink drugged tea as a result of which he lost consciousness. According to the applicant, when he regained his consciousness, he was in the hospital. He had fallen out the window of the office which was on the fifth floor of the Security Directorate Building. The Government maintained that when the applicant was taken to an office to sign the release report, he had run and jumped out the window. According to the Government, this office, which was solely used by police officers, had no window guards. After the incident, the applicant was immediately taken to the hospital. The medical report of 28 August 1998 indicates that the applicant had several fractures. He had to stay in the hospital for three months before he recovered from his injuries.

11. The same day, the police officers prepared an incident report, drew a sketch map and took statements from eye-witnesses to the event. Police officers Mustafa Sezer, Burhanettin Tekler, Mustafa Yüksel, and İsmail Kaya Horta confirmed that the applicant had jumped out the window of the office which was on the fifth floor of the Security Directorate building. The police further took statements from Mr Ibrahim Nih and Mr Ali Aydın, two civilians, who happened to be in the same office at the time of the incident. They stated that as soon as the applicant entered the office, he had run towards the window and jumped out.

12. The applicant's statement was taken on the same day at about 5 p.m. He confessed that he had run and jumped out the window at his own will. He stated that he had no complaints against anyone.

13. On 4 September 1998 the applicant's representative filed a criminal complaint with the Pendik public prosecutor. In his petition, the applicant's representative maintained that on 26 August 1998 the applicant had been subjected to ill-treatment by three police officers at the Pendik Security Directorate Building during his interrogation, before being taken to the Pendik police station to spend the night. The lawyer stated that one of the police officers was called Sezai Çetin. The applicant's lawyer further maintained the applicant had been deliberately thrown out the window of the office situated on the fifth floor of the Security Directorate Building.

14. On 9 September 1998 the prosecutor took statements from Sezai Çetin and Ramazan Hokvan, the police officers who had arrested the applicant on 26 August 1998. They denied the ill-treatment allegations.

15. On 23 September 1998 the public prosecutor further took statements from police officers Mustafa Yüksel, Burhanettin Tekler and Mustafa Sezer, who had been on duty on the day of the applicant's fall from the fifth floor. These officers stated that as soon as the applicant was taken to the office on the fifth floor to sign his release report, he had run towards the window and jumped out. They maintained that the applicant was very nervous and sweating.

16. On 28 September 1998 the public prosecutor took statements from the applicant and his wife. The applicant stated that he had been insulted and threatened while he was in custody at the police station. However he indicated that he had not been subjected to any physical ill-treatment. In particular, he stated that the police officer, Sezai Çetin, who was named by the applicant's lawyer as one of the officers that had ill-treated the applicant, had in fact been very kind to him during his custody. The applicant explained that on the day of the incident, while he was waiting to be released, he drank a cup of tea and lost his consciousness. He subsequently woke up in the hospital. The applicant stated that he did not remember whether he had jumped or had been thrown out the window.

17. In her statement, the applicant's wife explained that on 27 August 1998 at about 11 a.m. she had gone to the Pendik Police Station to visit the applicant. At first, the police officers refused to show the applicant to her. She overheard a police officer say to his superior that a liquid had been given to the applicant. She insisted, and the officers allowed her to see the applicant. According to the applicant's wife, the applicant was lying on the floor, unconscious.

18. On 23 October 1998 the Pendik public prosecutor decided that no prosecution should be brought against the accused police officers on the ground that there was no sufficient evidence in support of the allegations. The public prosecutor concluded that the applicant had tried to commit suicide.

19. On 24 February 1999 the applicant's representative challenged this decision before the Kadıköy Assize Court. In his petition, the lawyer stated that the applicant had been ill-treated during his custody at the police station. It was alleged that the applicant had been hosed with water, hung from his arms and subjected to electric shocks. The applicant's representative further complained that the applicant had been deliberately thrown out the window. The applicant's representative finally maintained that the applicant had lost his consciousness after drinking a cup of tea, which in his opinion had been drugged.

20. On 24 May 1999 the Kadıköy Assize Court, upholding the reasoning of the public prosecutor, dismissed the case.

21. On 12 July 2001 a forensic doctor attached to the Human Rights Foundation delivered a report about the applicant. Referring to the absence of a psychiatric report and a toxic examination, he concluded that the applicant had not been thoroughly examined at the hospital after his fall. He indicated that the applicant had been inscribed in a special recovery programme by the Istanbul Branch of the Foundation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

22. Referring to his fall from the fifth floor of the Security Directorate Building, the applicant complained of a violation of his right to life under Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

A. The parties' arguments

1. The applicant

23. The applicant alleged that he had been forced to drink drugged tea and was deliberately thrown out the window by the police officers. As a result of this incident, he was seriously wounded and had to stay in the hospital for three months. The applicant further maintained that the domestic authorities had failed in their obligation to conduct an effective investigation into his allegations.

2. *The Government*

24. The Government denied the allegations. They stated that the applicant's allegations were investigated thoroughly by the domestic authorities. The Government further maintained that the applicant's allegations were baseless and that the application was an abuse of the right of petition.

B. The Court's assessment

1. *Applicability of Article 2*

25. In the present case, the force used against the applicant was not in the end lethal. This, however, does not exclude in principle an examination of the applicant's complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life (see *İlhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII, and *Makaratzis v. Greece* [GC], no. 50385/99, § 49, ECHR 2004-...). In fact, the Court has already examined complaints under this provision where the alleged victim had not died as a result of the impugned conduct.

26. The Court observes that although the applicant's fall from the fifth floor of the Pendik Security Directorate Building was not in the end lethal, the applicant suffered from grave injuries and had to stay in the hospital for three months. Moreover it was only fortuitous that he was not killed by the fall. The Court therefore concludes that Article 2 of the Convention is applicable in the instant case.

2. *As to the authorities' alleged responsibility in the applicant's fall*

27. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

28. 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 facts, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic authorities, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those authorities (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 18, §§ 29-30). Nonetheless, where allegations are made under Article 2 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII) even if certain domestic proceedings and investigations have already taken place.

29. The Court observes that there are divergent versions as to the circumstances which led to the applicant's fall from the window. While the applicant maintained that he has jumped out the window himself, the applicant's lawyer claimed that he had been thrown out by the police officers. Moreover the eyewitnesses confirmed the fact that the applicant jumped out the window and tried to commit suicide. Accordingly, the public prosecutor concluded that there was no sufficient evidence in support of the lawyer's allegation.

30. In light of the above, the Court considers that there is an insufficient factual and evidentiary basis on which to conclude that the applicant was thrown out the window by the police officers.

31. As to the allegation concerning the authorities' alleged failure to protect the applicant's right to life, the Court recalls that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36). This extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 115).

32. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed

risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise in the context of where the risk to a person derives from self-harm, such as a suicide in custody, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 92, ECHR 2001-III; *Margaret Younger v. the United Kingdom* (dec.), no. 57420/00, 7 January 2003).

33. In the context of prisoners, the Court has had previous occasions to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent where that individual dies (see, for example, *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII, § 99).

34. The Court has recognised that the prison authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual prisoner concerned. There are general measures and precautions which will be available to diminish the opportunities for self-harm, without infringing personal autonomy. Whether any more stringent measures are necessary in respect of a prisoner and whether it is reasonable to apply them will depend on the circumstances of the case (see *Keenan*, cited above, § 91).

35. In view of the principles above, the Court is called to determine whether the authorities knew or ought to have known that Erikan Bulut posed a real and immediate risk to his life, and if so, whether they did all that reasonably could have been expected of them to prevent that risk.

36. The Court recalls that after spending one night in custody, the applicant was seen by a doctor on the day of the incident before being brought to the Pendik Security Directorate Building to be released. There is no mention of a psychological distress in the medical report and it is undisputed that the applicant was aware of the fact that he was about to be released. As a result, the Court concludes that there is no evidence about the applicant's actions or behaviour that ought to have put the authorities on notice that he posed a danger to his life. As regards the allegation that the applicant was brought to an office with no window guards, the Court notes that although it welcomes and encourages authorities to make the greatest efforts to ensure that all detainees are kept in a safe custodial environment, this action of the police officers cannot in itself give rise to a violation of Article 2 of the Convention in the absence of any evidence that the applicant carried a real and immediate suicide risk.

37. Bearing in mind the particular circumstances of the present case, the Court concludes that it can be reasonably inferred that the relevant authorities did not fail in their positive obligation as required by Article 2.

38. The Court, therefore, considers that the State's responsibility is not engaged in the present case and finds that there has been no violation of Article 2 in that regard.

3. Alleged inadequacy of the investigation

39. The Government contended that there had been no shortcomings in the investigation and that the authorities had taken all the necessary steps to conduct an effective investigation.

40. The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have died as a result of the use of force. The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Buldan v. Turkey*, no. 28298/95, § 83, 20 April 2004; *Velikova v. Bulgaria*, no. 41488/98, § 80).

41. Turning to the facts of the present case, the Court notes that immediately after the incident, the authorities commenced an investigation to clarify the circumstances surrounding the applicant's fall from the fifth floor of the Pendik Security Directorate Building.

42. In this connection, it is observed that following the applicant's fall, the police officers prepared an incident report, drew a sketch map and took statements from the eye-witnesses to the event, namely from four police officers and two civilians (see paragraph 11 above). All of these witnesses gave consistent statements and explained that they had seen the applicant run and jump out the window. Again on the same day, the applicant's statement was taken at the hospital, in which he confirmed that he had run and jumped out the window and that he had no complaints against anyone.

43. The Court takes note of the fact that it was on 4 September 1998 that the applicant's representative made known his concerns to the Pendik Public Prosecutor that police officers might have thrown the applicant out the window. Upon this complaint, the investigation was broadened and further statements were taken from the police officers, the applicant and the applicant's wife. While the police officers repeated once again that the applicant had run and jumped out, the applicant stated that he did not recall what had happened. The applicant's wife was not an eye-witness to the events (see paragraphs 15-17 above). Basing himself on these statements,

the public prosecutor concluded that the applicant had made an attempt to commit suicide and gave a decision of non-prosecution.

44. It is further observed that the applicant's representative's appeal to the Kadıköy Assize Court was also rejected, as the domestic court found no reason to depart from the findings of the public prosecutor's conclusions (see paragraph 20 above). The Court would like to emphasize at this point that the allegation that the applicant had been given drugged tea was not brought to the attention of the authorities until 28 September 1998. It should also be noted that the applicant's wife had stated that she had overheard the police officers at the police station that the applicant had been given a liquid. The Court therefore finds that lack of a toxicological examination one month later cannot be considered as negligence on the part of the authorities.

45. In view of the above, the Court concludes that the investigation carried out by the national authorities was effective. It concludes therefore that there has been no violation of Article 2 in this respect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. In respect of the applicant's fall from the fifth floor of the security directorate building

46. The applicant complained that his fall from the fifth floor of the Pendik Security Directorate Building constituted a violation of Article 3 of the Convention.

47. In view of the grounds on which it has found no violation of Article 2 (see paragraphs 25-35 above), the Court considers that no separate issue arises under Article 3.

B. In respect of the applicant's ill-treatment under police custody

48. The Government, beyond denying the factual basis of the applicant's allegations, did not specifically deal with the complaint under Article 3.

49. The Court recalls that, in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt" (*Avşar*, cited above; *Sevgin and İnce v. Turkey*, no. 46262/99, §52, 20 September 2005). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

50. The Court is sensitive to the subsidiary nature of its task 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 (see, for example, *McKerr*, cited above). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

51. In the instant case, the applicant stated in his application form that he had been subjected to psychological and physical ill-treatment on the day of his arrest at the Pendik Security Directorate Building. He did not mention the details of the treatment. The Court also notes that the applicant first brought his ill-treatment allegations to the attention of the authorities on 4 September 1998, in his petition to the Pendik Public Prosecutor. In this petition, the applicant's representative complained that the applicant had been ill-treated at the Pendik Security Directorate. No particulars about the alleged treatment were provided to the authorities. The applicant's lawyer however named Sezai Çetin as one of the police officers who had inflicted ill-treatment on the applicant. It is further observed that in a statement dated 28 September 1998, taken by the Pendik Public Prosecutor, the applicant denied that he had been ill-treated in custody. He explicitly stated that he had been insulted but not been subjected to any physical ill-treatment and explained that the accused police officer Sezai Çetin had been very kind to him during his custody. Finally, the applicant's representative filed another petition with the Pendik Assize Court on 24 February 1999 challenging the non-prosecution decision delivered by the Pendik Public Prosecutor. In this petition, the applicant's representative stated that the applicant had been insulted, threatened, hosed with pressurised water, subjected to Palestinian hanging and electric shocks at the police station.

52. Having regard to these submissions and the doctor reports dated 26 and 27 August 1995 (see paragraphs 9 and 10 above), the Court notes that there are a number of elements in this case which cast doubt on whether the applicant suffered treatment prohibited by Article 3 when he was in police custody.

53. Firstly, the submissions of the applicant's representative before the domestic authorities are not consistent. While in his petition dated 4 September 1998 the applicant's lawyer stated that the applicant had been ill-treated at the Pendik Security Directorate Building, in his petition dated 24 February 1999 he stated that the applicant had been ill-treated at the police station. Secondly, the applicant himself explicitly said before the domestic authorities that he had not been subjected to any ill-treatment during his custody. Furthermore, he maintained that the accused officer, Sezai Çetin, had been particularly kind to him during his custody. Thirdly, the medical reports dated 26 and 27 August 1998 revealed no traces of ill-treatment on the applicant's body.

54. In conclusion, since the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to ill-

treatment, the Court does not find it proven that there has been a violation of Article 3.

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

55. The applicant complained that he had been denied an effective remedy concerning his allegations against the police officers. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

and 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.”

A. Article 6 § 1 of the Convention

56. The Court observes that the essence of the applicant’s complaint under Article 6 § 1 of the Convention concerns the domestic authorities’ failure to mount an effective criminal investigation into his fall from the fifth floor of the Pendik Security Directorate Building. In the Court’s view, it is therefore more appropriate to examine the applicant’s Article 6 complaint in relation to the more general obligation on Contracting States under Article 13 of the Convention to provide an effective remedy in respect of violations of the Convention (see amongst other authorities, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998 I, p. 329, § 105, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996 VI, p. 2286, § 93).

57. The Court therefore finds it unnecessary to determine whether there has been a violation of Article 6 § 1.

B. Article 13 of the Convention

58. The parties referred to their submissions on the effectiveness of the investigation from the standpoint of Article 2 of the Convention.

59. In view of its findings above (see paragraphs 37-42 above) and having regard to its case-law (*Nesibe Haran v. Turkey*, no. 28299/95, § 91, 6 October 2005, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 120-123, 6 July 2005, and *Makaratzis*, cited above, § 86), the Court considers that no separate issue arises under Article 13.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 2 of the Convention in respect of the authorities' alleged responsibility in the applicant's fall;
2. *Holds* that there has been no violation of Article 2 of the Convention in respect of the alleged failure of the authorities to conduct an adequate and effective investigation;
3. *Holds* that no separate issue arises under Article 3 of the Convention in respect of the applicant's fall;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicant's allegations of ill-treatment in police custody;
5. *Holds* that it is unnecessary to determine whether there has been a breach of Article 6 § 1 of the Convention;
6. *Holds* that no separate issue arises under Article 13 of the Convention.

Done in English, and notified in writing on 2 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President