



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

SECOND SECTION

CASE OF EMİRHAN YILDIZ AND OTHERS v. TURKEY

(Application no. 61898/00)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Emirhan Yıldız and Others 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 I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĒ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 61898/00) 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 four Turkish nationals, Mr Emirhan Yıldız, Ms Selvi Dönmez, Ms Leyla Lüle and Ms Meral Şahin (“the applicants”), on 26 February 2000.

2. The applicants, who had been granted legal aid, were represented by Ms G. Altay, Ms F. G. Yolcu and Mr H. Karakuş (the second and the fourth applicants) and Mr Z. Polat and Mr M. Çöpür (the first and the third applicants), lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 25 April 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1974, 1974, 1973 and 1977 respectively and live in Istanbul.

A. The applicants' detention in police custody, the criminal proceedings against them and the medical certificates concerning their alleged ill-treatment

5. In connection with an investigation into the activities of an illegal organisation, namely the TKP/ML¹, police officers from the Anti-terror branch of the Istanbul Security Directorate searched several houses and arrested several suspects, including Selvi Dönmez, Emirhan Yıldız and Leyla Lüle on 26 and 27 March 1998 respectively.

6. In the meantime, on 25 March 1998, Meral Şahin, together with another suspect, had been arrested at a café and taken into police custody. The arrest protocol drafted by the police officers and signed by the applicant mentioned that the applicant had resisted arrest.

7. On 28 March 1998 the applicants were interrogated by police officers.

8. The applicants allege that they were subjected to ill-treatment during their stay in custody².

9. On 31 March 1998 Leyla Lüle was taken to the Haseki Hospital for an X-ray. No documents or explanations were submitted by the parties in this respect.

10. On 1 April 1998 the applicants were examined, together with nineteen other suspects, by a doctor from the Forensic Medicine Department of the Istanbul State Security Court who found no signs of ill-treatment on the body of Meral Şahin. As to the remaining applicants, the doctor noted the following.

11. Selvi Dönmez had a hyperaemia³ of 10 cm on her left arm and an extensive hyperaemia on her thighs.

12. Emirhan Yıldız had a scabbed wound of 10 cm on his right wrist.

13. Leyla Lüle had two ecchymoses of 20 cm and 3 cm on her back and a 3 cm ecchymose on the left side of her face. The doctor, referring to the X-ray report, noted that there was no bone pathology.

14. On 1 April 1998, the applicants were brought before the public prosecutor at the Istanbul State Security Court where they denied the accusations against them and, in particular, the contents of their statements given to the police. Leyla Lüle and Meral Şahin claimed that they had signed their statements under duress.

15. On the same day, Emirhan Yıldız was released. No criminal proceedings were brought against him. The other applicants were brought before a judge at the Istanbul State Security Court together with other suspects.

1. Turkish Communist Party/ Marxist-Leninist.

2. The applicants submitted witness statements of two other co-accused dated 22 July 2004.

3. Hyperaemia is the increase in organ blood flow.

16. Before the court Selvi Dönmez, Leyla Lüle and Meral Şahin repeated their statements to the public prosecutor. Leyla Lüle further maintained that she had been subjected to torture in police custody and showed her bandaged arm to the court. The latter ordered the remand in custody of Leyla Lüle and Meral Şahin and the release of Selvi Dönmez.

17. On 2 April 1998, upon their request, Leyla Lüle and Meral Şahin were examined by the prison doctor at the Ümraniye prison. The provisional report issued by the prison doctor referred to the following findings.

18. Meral Şahin had a 1x1 cm brown lesion on her back and loss of strength in her right arm. She also complained of pain under her armpits.

19. Leyla Lüle had a yellow coloured lesion on her back, ecchymoses on her left leg and loss of strength in her left arm. She had also complained of head and neck pains.

20. On 6 July 1998 Leyla Lüle was released pending trial. According to the medical report issued by the Turkish Human Rights Association on 20 September 2000, Leyla Lüle was suffering from lumbar strain¹, cervical strain², cubital tunnel syndrome³ and loss of strength in her shoulders. The report further noted that she also presented symptoms of post traumatic stress syndrome and depression. The doctors concluded that the findings were consistent with the applicant's story of ill-treatment and prison life.

B. Investigation instigated into the applicants' alleged ill-treatment

21. On an unspecified date, the applicants' representative, Mr M.Ç., lodged a formal complaint with the Istanbul Public Prosecutor's Office, accusing the police officers at the Istanbul Anti-terror directorate of having ill-treated the applicants while they were held in police custody.

22. On an unspecified date, the Fatih public prosecutor (hereinafter: "the prosecutor") instigated an investigation into the allegations of the applicants.

23. On 1 September 1998 the prosecutor requested from the Istanbul Security Directorate documents pertaining to the arrest and detention of the applicants as well as the identities of the police officers who had interrogated them.

24. On 9 December 1998 the prosecutor heard five police officers who had arrested and/or interrogated the applicants. On 15 July 1999 the prosecutor heard another police officer who had taken part in the interrogation of Emirhan Yıldız and Leyla Lüle. They all denied the accusations.

1. Lumbar strain is a stretching injury to the ligaments, tendons, and/or muscles of the lower back.

2. Cervical strain is an irritation and spasm of the neck and upper back muscles.

3. Cubital tunnel syndrome occurs when there is compression or injury of the ulnar nerve in the cubital tunnel at the elbow.

25. On an unspecified date, the applicants' representative, Mr Z.P., requested information as to the developments in the investigation. On 7 July 2000 the prosecutor informed him that Mr M.Ç had only provided the applicants' addresses on 22 June 2000 and that the necessary notification had been dispatched to secure their statements.

26. On 3 August 2000 the prosecutor heard Leyla Lüle who claimed, in particular, that she would be able to identify only the police officer who had pulled her hair and beaten her up on the very first day since she had been blindfolded on the other days. She gave a brief description of this police officer. The applicant suggested that she had been ill-treated by five or six police officers and stated, in particular, that she had been suspended and pulled by her feet. She claimed that they had tried to suffocate her by putting a plastic bag over her head.

27. On 11 September 2000 the prosecutor heard Meral Şahin, who alleged that she had been ill-treated and threatened with rape. She further complained that her family members had also been threatened. She affirmed that she would be able to recognise the police officers who had ill-treated her.

28. On 3 October 2000 the prosecutor heard Emirhan Yıldız, who submitted that the police officers had thrown cold water over him and squeezed his testicles. He further alleged that he had been suspended and sworn at. He stated that he would be able to recognise only one police officer since he had been blindfolded the whole time. He alleged that he had twice been taken to a doctor but had never been properly examined and that he had marks on his arms. Finally, he submitted that the police usually tortured in such a way so as not to leave any marks.

29. On 13 October 2000 the prosecutor heard Selvi Dönmez, who claimed that she had been blindfolded, beaten and sexually harassed. She maintained that she would be able to recognise one of the police officers and gave his description. She alleged that when she was taken to Haseki Hospital on 30 March 1998 the doctor had not recorded the marks on her body but that these had later been recorded by a doctor at the Forensic Department on 1 April 1998.

30. On 23 December 2002 the prosecutor decided not to prosecute the accused police officers on account of lack of evidence.

31. On 30 December 2003 the applicants objected to this decision. In their petition, they maintained that there was sufficient evidence to indicate that they had been subjected to ill-treatment in police custody. In this regard, they relied, in particular, on the medical reports issued in respect of Leyla Lüle and Meral Şahin at the prison clinic and medical reports issued in respect of Leyla Lüle by the Turkish Human Rights Association.

32. On 19 April 2004 the Beyoğlu Assize Court dismissed the applicants' objections.

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

33. 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, ECHR 2004-IV (extracts)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained that the treatment to which they were subjected while they were held 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.”

A. Admissibility

35. The Government asked the Court to dismiss the application as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They argued that the applicants could have sought reparation for the harm they had allegedly suffered by instituting an action in the civil or administrative courts.

36. The applicants disputed the Government’s argument.

37. The Court reiterates that it has already examined and rejected the Government’s argument in previous cases (see, in particular, *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004). The Court finds no particular circumstances, in the present application, which would require it to depart from that conclusion. Consequently, the Court rejects the Government’s preliminary objection.

38. The Court considers that the applicants’ complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. The parties' submissions

39. The Government contested the applicants' allegations. In particular, they maintained that the applicants' allegations did not match the findings of the medical reports and that the physical findings noted in these reports did not attain a sufficient level of severity to fall within the scope of Article 3 of the Convention.

40. The applicants maintained their allegations. In this respect, they submitted that they were blindfolded, threatened with death, sexually harassed, beaten, suspended and hosed with pressurised cold water, as well as being stripped naked and prevented from going to the toilet. They claimed that the medical reports established at the end of their stay in custody proved that they had been ill-treated in custody. In this respect, they complained that these reports were not sufficient since they did not contain all the physical findings.

2. The Court's assessment

(a) General principles

41. The Court reiterates that where an individual is taken into custody in good health but is found to be injured by 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).

42. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). 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 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).

(b) Application of the above principles in the present case

(i) As regards the applicants Sevgi Dönmez, Leyla Lüle and Meral Şahin

43. In the instant case, the Court observes that none of the applicants was examined medically following the respective arrests. However, medical reports drawn up either at the end of their stay in custody or at the beginning of their detention in prison showed that they had sustained several injuries (see paragraphs 11, 13 and 18). The findings of the medical reports, in the Court's opinion, match at least the applicants' allegations of having been beaten. The Court observes that the Government failed to provide an explanation as to the manner in which the injuries noted in the applicants' medical reports were sustained by them.

44. 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 these applicants, the Court finds that these injuries were the result of treatment for which the Government bore responsibility.

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

(ii) As regards the applicant Emirhan Yıldız

46. In the case of Emirhan Yıldız, the Court observes that the medical report drawn up by the doctor showed that the applicant only bore a scabbed wound on his wrist at the end of his stay in police custody (see paragraph 12). However, the findings of that medical report do not match the applicant's description of ill-treatment. On this point, the Court reiterates that any ill-treatment inflicted in the way alleged by the applicant would have left marks on the applicant's body which would have been observed by a doctor who examined him at the end of his detention in police custody, some seven days later, before he was released from custody (see *Tanrikulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002). The Court is aware of the lack of details in this medical report. However, bearing in mind that the applicant was released the very same day by the prosecutor, the Court considers that it would have been possible for him to provide both the authorities and the Court with medical evidence which would have contradicted the findings of the medical report contained in the case-file.

47. In view of the above, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to ill-treatment. Accordingly, there has been no violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicants each claimed 5,000 euros (EUR) in respect of pecuniary and EUR 20,000 in respect of non-pecuniary damage.

50. The Government disputed the amounts.

51. As regards the alleged pecuniary damage sustained by the applicants, the Court notes that they failed to produce any receipts or documents in support of their claim. The Court accordingly dismisses it. On the other hand, the Court finds that the applicants, Selvi Dönmez, Leyla Lüle and Meral Şahin 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 EUR 10,000 each to Leyla Lüle and Selvi Dönmez and EUR 7,000 to Meral Şahin in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicants also claimed EUR 4,000 for the costs and expenses incurred before the Court. In support of their claims, the applicants submitted a schedule of costs prepared by their representatives and the Istanbul Bar Association’s recommended minimum fees list for 2005. However, they did not submit any receipts.

53. The Government contested the amount.

54. The Court may make an award in respect of costs and expenses in so far as 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 applicants, Selvi Dönmez, Meral Şahin and Leyla Lüle jointly, the sum of EUR 2,000 less EUR 715 received by way of legal aid from the Council of Europe.

C. Default interest

55. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicants Selvi Dönmez, Meral Şahin and Leyla Lüle;
3. *Holds* that there has been no violation of Article 3 of the Convention as regards the applicant Emirhan Yıldız;
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 the national currency of the respondent State at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) to Selvi Dönmez, EUR 10,000 (ten thousand euros) to Leyla Lüle, and EUR 7,000 (seven thousand euros) to Meral Şahin in respect of non-pecuniary damage;
 - (ii) EUR 1,285 (one thousand two hundred and eighty five euros) to Selvi Dönmez, Leyla Lüle and Meral Şahin, 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 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President