



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

SECOND SECTION

CASE OF AHMET METE (2) v. TURKEY

(Application no. 30465/02)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

23/05/2007

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 Ahmet Mete (2) 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 M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĒ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 30465/02) 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 Ahmet Mete (“the applicant”), on 22 October 2001.

2. The applicant, who had been granted legal aid, was represented by Mr A. Terece, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that he had been subjected to torture and ill-treatment while in police custody and that there had been no adequate or effective investigation into his complaints. He invoked Articles 3 and 13.

4. On 11 October 2005 the Court decided to give notice of 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

5. The applicant was born in 1950 and lives in Izmir.

6. On 8 July 2001 at about 11 a.m., the applicant was arrested in Nusaybin by policemen from the Anti-Terrorism Department of the

Nusaybin Security Directorate on suspicion of being a member of the illegal PKK (the Kurdistan Workers' Party). He was handcuffed and taken to the Security Directorate Building.

7. The same day, the applicant was taken to the Nusaybin Hospital where he was examined by a doctor. No signs of injury were found on his body.

8. The applicant was blindfolded and interrogated in the security directorate. During his interrogation, the applicant was allegedly beaten, insulted, hosed with pressurised water, given electric shocks and raped with a truncheon.

9. On 10 July 2001 the applicant was once again examined by a doctor and no signs of ill-treatment were found on his body.

10. The same day at about 7 p.m., the applicant was handed over to the Izmir Security Directorate for further investigations. During his detention in Izmir, the applicant was allegedly blindfolded, insulted and threatened with ill-treatment.

11. On 13 July 2001 the applicant was taken to the Atatürk Hospital, where he was examined by a doctor. In his report, the doctor noted the presence of an old bruise, measuring 1x1 cm, on the front part of the applicant's left arm and another bruise, measuring 1x1 cm, on the front part of his right arm.

12. Subsequently, on the same day, the applicant was taken before the investigating judge at the Izmir Magistrate's Court, who ordered his detention on remand. Before the judge, the applicant complained that he had been ill-treated during his police custody in Nusaybin.

13. On 17 July 2001 the applicant filed an objection against the remand decision. In his petition, the applicant maintained that he had been ill-treated during his detention.

14. On 14 August 2001 the Izmir State Security Court Public Prosecutor initiated criminal proceedings against the applicant in the Izmir State Security Court, accusing him of being a member of an illegal organisation.

15. During the first trial, which was held on 18 October 2001, the applicant repeated his allegations of ill-treatment. Upon the order of the court, the Izmir Public Prosecutor initiated an investigation into the applicant's allegations.

16. On 16 November 2001 Mr M.Ç., a police officer from the Anti-Terrorism Department acting as a rapporteur, submitted his report to the Izmir Security Department. He advised that no proceedings be initiated against the accused police officers as the applicant's allegations were unsubstantiated. The rapporteur further contended that the accusations were deceitful and were part of a scenario used by the terrorist organisation to dishonour the fight against terrorism.

17. On 27 November 2001 the İzmir Public Prosecutor concluded that the applicant's allegations concerning his police custody in Nusaybin should

be separated from the file. He accordingly transferred this part of the case to the Nusaybin Public Prosecutor for further investigation. On the same day, the prosecutor further decided that no prosecution should be brought against the accused police officers as there was insufficient evidence in support of the applicant's allegations.

18. On 12 December 2001 the applicant appealed against this decision. He requested a detailed medical examination to prove that he had been ill-treated in custody. On 19 February 2002 the Karşıyaka Assize Court dismissed his appeal, upholding the reasoning of the Izmir public prosecutor.

19. On 29 January 2002 the Nusaybin Public Prosecutor took statements from the two doctors who had examined the applicant on the first and last days of his custody in Nusaybin. Mr Ramazan Kaya, who had drafted the first medical report dated 8 July 2001, explained to the prosecutor that there had been no signs of ill-treatment on the applicant's body. The second doctor, Ms Sevda Mecit, also stated that she had examined the applicant and asked him whether he had any complaints. In the absence of any finding, she had drafted the medical report dated 10 July 2001.

20. Between 4 February 2001 and 6 March 2002, the eight police officers, who had been involved in the applicant's arrest and interrogation, gave statements to the public prosecutor. They all refuted the allegations against them and stated that they had not ill-treated the applicant.

21. On 1 March 2002 the Nusaybin Public Prosecutor delivered a decision of non-prosecution. In his decision, the prosecutor referred to the two medical reports dated 8 July 2001 and 10 July 2001, which indicated that there were no signs of ill-treatment on the applicant's body. Consequently, the prosecutor found the applicant's allegations to be unsubstantiated.

22. On 25 July 2002 the applicant appealed against this decision. He requested a detailed medical examination to prove his allegations.

23. On 7 August 2002 the Mardin Assize Court rejected the applicant's appeal.

II. RELEVANT DOMESTIC LAW

24. A description of the relevant domestic law at the material time can be found in *Batu and Others v. Turkey* (no. 33097/96 and 57834/00, § 96-100, 3 June 2004) and *Elçi and Others v. Turkey* (nos. 23145/93 and 25091/94, §§ 573 and 575, 13 November 2003).

THE LAW

25. The applicant alleged that he had been subjected to torture and ill-treatment while in police custody, and that there had been no adequate or effective investigation into his complaints. He invoked Articles 3 and 13, which read as follows.

Article 3

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

Article 13

“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.”

I. ADMISSIBILITY

26. The Court considers that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant alleged that while he was in held in police custody in Nusaybin, he was beaten, insulted, hosed with pressurised water, given electric shocks and raped with a truncheon. He further complained that, during his detention in İzmir, he was blindfolded, insulted and threatened with ill-treatment.

28. The Government submitted that the applicant’s allegations were baseless. They contended that the medical reports showed that there were no traces of ill-treatment on the applicant’s body.

29. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and

Assenov and Others v. Bulgaria, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

30. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (*Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII, extracts; *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (*Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

31. 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 v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). 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 v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

32. In the instant case, the ill-treatment complained of by the applicant consisted of threats, insults, beatings, electric shock treatment, being hosed with pressurised water, and raped with a truncheon. Nonetheless, several elements cast doubt on the veracity of the applicant’s claims.

33. The Court notes that the applicant has not produced any conclusive evidence in support of his allegations of ill-treatment. It is observed that the applicant was examined by a doctor three times - on 8 July 2001, 10 July 2001 and 13 July 2001. The first two reports indicate that there were no signs of ill-treatment on the applicant’s body (see paragraphs 7 and 9 above). The only concrete evidence submitted to the Court is the medical report dated 13 July 2001, which noted the presence of an old bruise, measuring 1x1 cm, on the front part of the applicant’s left arm and another bruise, measuring 1x1 cm, on the front part of his right arm (see paragraph 11 above). The Court notes the lack of details in this report. However, it considers that such indications are insufficient to substantiate the severe ill-treatment described by the applicant. Thus, there is nothing in the case file to show that the applicant was ill-treated as alleged.

34. 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 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. 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.

36. The Government contested that argument.

37. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigatory procedure (see *Talat Tepe*, cited above, § 81).

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

39. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that the applicant had been ill-treated by police officers. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 3 from being an “arguable” one for the purposes of Article 13 (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2442, § 112, and *Talat Tepe*, cited above, § 83).

40. In the instant case, the Court observes that, when the Izmir public prosecutor filed the indictment against the police officers, he relied on the medical reports of the applicant. However, the ensuing criminal proceedings failed to provide any explanation as to the origin of the bruises, which were recorded in the report dated 13 July 2001. It appears from the case file that, when delivering their respective non-prosecution decisions, neither the Nusaybin Public Prosecutor nor the Izmir Public Prosecutor tried to establish how these injuries were caused. The Court also finds it regrettable that no additional medical examination was ordered during the domestic investigation although the applicant had repeatedly made this request to the domestic authorities (see paragraphs 18 and 22 above). As a result of the failure to perform an additional medical examination and having regard to the lack of details in the three medical reports, the Court finds that the applicant was deprived of the fundamental guarantees to which persons in detention are entitled (see *Bati and Others*, cited above, §143).

41. As to the investigation made by the Izmir Public Prosecutor, the Court notes that the public prosecutor did not summon any of the police officers who had been involved in the interrogation of the applicant during his custody between 10 and 13 July 2001; nor was a statement taken from the doctor who had drafted the medical report dated 13 July 2001. As to the investigation held by the Nusaybin Public Prosecutor, the Court finds it striking that neither the applicant nor his representative were ever given an opportunity to meet the accused police officers face to face during the course of the investigation.

42. In view of the above, the Court concludes that the domestic proceedings did not provide the thorough, effective remedy required by Article 13 of the Convention.

There has accordingly been a violation of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

44. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government submitted that this claim was excessive.

46. The Court considers that the applicant must have suffered some moral damage 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 5,000 for non-pecuniary damage.

B. Costs and expenses

47. The applicant also claimed a total of EUR 7,500 for the costs and expenses incurred before the domestic courts and the Strasbourg Court.

48. The Government contested the claim.

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 global sum of EUR 1,500, less the sum of EUR 850 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. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 New Turkish Liras at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, less EUR 850 (eight hundred and fifty euros) received in 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.- P. COSTA
President