



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

THIRD SECTION

CASE OF GÜVEN AND OTHERS v. TURKEY

(Application no. 68694/01)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Güven and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMESEN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 68694/01) 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 twelve Turkish nationals, Mr Ahmet Güven, Mr Ramazan Akdağ, Mr Kadri Sönmez, Mr Metin Göktepe, Ms Neslihan Göktepe, Mr İzzettin Koç, Mr Kadri Issı, Mr Mehmet Kışanak, Mr Rıdvan Karatay, Mr Ali Kemal Yıldız, Mr Yaşar Avcı and Ms Emsihan Karatay (“the applicants”), on 30 October 2000.

2. The applicants were represented by Mr T. Fırat, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 23 September 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**

4. The applicants were born in 1968, 1972, 1964, 1966, 1973, 1962, 1976, 1962, 1963, 1971, 1970 and 1969 respectively. They were detained in the Buca prison, in İzmir, at the time of the events giving rise to the present application.

A. Events in Buca Prison

5. On 20 July 1995 the applicants, along with ten other prisoners, were taken from their cells to an area of the prison in order to be brought before the İzmir State Security Court for trial. According to the applicants, while they were waiting to be collected, they were attacked by prison administrators, prison warders and gendarmes using truncheons and wooden planks, because they had objected to being searched. According to the Government the applicants had resisted the search, attached themselves to one another and subsequently fallen down the stairs and injured themselves. The applicants were then taken to the İzmir State Security Court in prison vehicles.

6. At the hearing before the State Security Court, the applicants' complained that they had been beaten before being brought before the court. The court noted the applicants' condition and decided to postpone the proceedings on the ground that it was impossible to hold a hearing in such circumstances. It ordered that the applicants be medically examined and that the results be sent to the İzmir public prosecutor's office with a view to the opening of an investigation. A letter to that effect was sent the same day to the public prosecutor.

B. The investigation concerning the incident in Buca prison

7. A preliminary investigation was instigated by the İzmir public prosecutor's office into the allegations of the applicants. On 20 July and 14 August 1995 the prosecutor took statements from the applicants who reiterated that they were beaten by the gendarmes and the prison wardens.

8. On 20 July 1995 a forensic expert examined Ahmet Güven, Kadri Sönmez, Metin Göktepe, Neslihan Göktepe, İzzettin Koç, Kadir Issı, Mehmet Kışanak, Rıdvan Karatay, Ali Kemal Yıldız and Ms Emsihan Karatay in prison.

9. In his report, the doctor noted that Emsihan Karatay complained of a pain in her head and her left leg. The doctor decided that the applicant be referred to the orthopaedist at the İzmir State Hospital.

10. As regards Neslihan Göktepe, he observed that there were swellings on her head, behind her left ear and an erythema on her back as a result of blows. He also noted a graze on her neck. The doctor concluded that Neslihan Göktepe should be re-examined by a forensic expert at the İzmir Forensic Medicine Institute in seven days.

11. In respect of Kadri Issı, the doctor noted erythemas on the upper left part of his back and on his left arm. He further observed a wound and haemorrhage under his left ear. Kadri Issı further complained of pain in the lower right part of his back. The doctor considered that the injuries rendered the applicant unfit for work for fifteen days.

12. As to İzzettin Koç, the medical report referred to wounds over his eyebrows and nose and several ecchymoses, erythemas and grazes on his back and his left knee which had been caused by blows. The doctor concluded that the injuries rendered İzzettin Koç unfit for work for ten days and that he would recover within twenty days following a medical treatment.

13. As regards Mehmet Kışanak, the doctor observed swellings and erythemas on the upper part of the back, underneath the chin and around the nose and mouth as a result of blows. He further noted an erythema on the applicant's right leg. The doctor concluded that the injuries rendered Mehmet Kışanak unfit for work for ten days and that he would recover within twenty days following a medical treatment.

14. As regards Rıdvan Karatay, the medical report referred to an erythema and a swelling on the right eye orbit, erythemas and ecchymoses on the upper part of the back as a result of blows. The applicant further complained of pain in his head. The doctor decided that Rıdvan Karatay should be referred to the ophthalmologist at the Izmir State Hospital.

15. With regard to Kadri Sönmez, the forensic expert noted erythemas and swellings on the upper part of his back, on both his arms and his right ear. The applicant also complained of pain in his left leg. The doctor observed that the injuries rendered the applicant unfit for work for five days.

16. As to Ali Kemal Yıldız, the report referred to swellings and erythemas on the applicant's back, neck, and head and to an ecchymosis behind his ear as a result of blows. There were also erythemas on the applicant's left arm and left leg. The doctor further noted that the applicant complained of pain in his head and his chin. He concluded that the injuries rendered him unfit for work for seven days and considered that he would recover within five days.

17. As regards Metin Göktepe, the doctor observed swellings, erythemas and ecchymoses behind the applicant's head, on his chin, back, neck and arms as a result of blows. The forensic expert concluded that the injuries rendered him unfit for work for ten days and considered that he would recover within twenty days following medical treatment.

18. Finally, as regards Ahmet Güven, the medical report referred to pain in the applicant's head, wounds on the right eye orbit and around the eyebrows, to swellings and pain in his right arm and to ecchymoses and grazes on his back and around his ribs. The doctor decided that the applicant be referred to the orthopaedist at the Izmir State Hospital.

19. On 18 August 1995 an expert from the Forensic Medicine Institute examined Ramazan Akdağ and sent the medical report to the Izmir public prosecutor's office. According to this report this applicant sustained the following injuries: haemorrhage on the right sclera, swelling of 4 x 4 cm on the post-parietal bone on the scalp, erythemas on the forehead, swellings and ecchymoses on the zygomas, the orbits and the left ear, swelling and a

scar on the lower lip, a trauma on the left clavicle, ecchymosis of 10 cm in diameter on the left hemithorax and ecchymotic lesions on the right hemithorax. The forensic expert considered that the injuries were not life threatening but rendered him unfit for work for seven days and that he would recover within twenty days.

20. On 17 November 1995 a doctor from the Forensic Medicine Institute reported that Yaşar Avcı, who was hospitalised on 20 July 1995 with the diagnosis of “general body trauma”, had sustained the following injuries at the time of the hospitalisation: ecchymoses on the back and on both shoulders, a graze of 2 x 2 cm on the right zygoma, erythemas in the forehead, sensitivity on the left tibia. The doctor considered that the applicant should wear a cervical collar. According to the report of 17 November 1995 the applicant was discharged from the hospital on 28 July 1995 and was re-examined on 9 October 1995. The expert concluded that the injuries had not been life threatening but had rendered him unfit for work for ten days and that he would recover.

21. On 9 April 1996 the prosecutor decided not to prosecute the Director of Buca Prison and his staff for alleged ill-treatment of the applicants. The applicants objected to this decision. On 25 June 1996 the Karşıyaka Assize Court dismissed the applicants' objection.

22. On 11 April 1996 the prosecutor transferred the investigation file concerning the gendarmes to the İzmir Administrative Council. However, the case file subsequently went astray after it was sent to the Divisional Gendarme Command at Buca Prison.

23. On 1 May 2000 İzmir Administrative Council decided to open an investigation against three gendarme officials in connection with the disappearance of the above-mentioned case file. It however decided not to bring proceedings against the gendarmes responsible for the transfer of the applicants to court on 20 July 1995.

24. The Government informed the Court that the proceedings against the gendarmes who had lost the file were terminated by a decision of non-prosecution on 15 January 2002 on account of the expiry of the statutory time-limit.

25. The applicants claimed that they were never informed of the outcome of the proceedings and that they learned of the decision of the İzmir Administrative Council when the Court delivered its judgment in the case of *Satık and Others* (no. 31866/96, 10 October 2000) which had been lodged by ten other prisoners who had been injured on 20 July 1995 in Buca prison.

C. The detention conditions of Ahmet Güven

26. The applicant was convicted of carrying out activities for the purpose of bringing about the secession of a part of the national territory

under Article 125 of the Criminal Code and sentenced to death on 2 December 1998. This judgment became final on 17 April 2000 after the Court of Cassation upheld the judgment of the first-instance court. On 6 September 2002 the applicant's sentence was commuted to life imprisonment by the İzmir Assize Court.

27. It appears from the case-file that the applicant took part in hunger strikes on various occasions and that as a result his health deteriorated.

28. According to the medical report issued by Bitlis State Hospital on 26 June 2003 the applicant suffered from hypertension, anxiety and slight amnesia. On 15 July 2003 the Bitlis State Hospital Medical Commission issued an additional report in which it concluded that the medical condition of the applicant did not necessitate the suspension of his sentence.

29. On 28 July 2003 the applicant requested the suspension of his sentence pursuant to Article 399 of the Criminal Code on Procedure. On 17 July 2003 the Bitlis public prosecutor, relying on the aforementioned reports of the Bitlis State Hospital, dismissed the applicant's request. No document has been submitted by the parties as to whether the applicant objected to this decision.

30. According to a medical report issued by Bitlis State Hospital on 24 June 2004 the applicant suffered from hypertension, depression, vertigo (light-headedness) and head pains. The applicant was prescribed medication as well as a special diet. Following this report the prison authorities decided that the applicant be given a special diet.

31. According to a medical report issued by two doctors, Mr U.O. and Mr N.S., on 1 November 2005, the applicant was diagnosed in 2003 as suffering from hypertension and amnesia. They noted that he was receiving drug treatment and that he could physically continue to take care of himself within a prison facility.

32. The Government submitted a number of documents as regards the applicant's transfer to various medical centres for check-up and the results of his analyses.

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, 3 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION

34. The applicants complained that the treatment to which they were subjected by the prison authorities and gendarmes on 20 July 1995 in Buca Prison amounted to torture and inhuman treatment, in violation of Article 3 of the Convention. In their observations dated 11 May 2006 the applicants further complained, without any elaboration, that the incident at Buca prison and subsequent developments also violated their rights under Articles 2 and 13 of the Convention.

35. The Court considers that the applicants' complaint should be examined from the standpoint of Article 3 alone, which provides:

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

A. Admissibility

36. The Government maintained that since the applicants failed to take part in any civil and administrative proceedings, the Court was precluded from examining the applicants' complaints of a substantive violation of Article 3 due to the alleged ill-treatment. On this point they referred to the Court's case-law, in particular to *Kelly and Others v. the United Kingdom*, no. 30054/96, § 110, 4 May 2001).

37. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Satik and Others v. Turkey* (dec.), no. 31866/96, 31 August 1999). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned application.

38. In these circumstances, the Court rejects the Government's preliminary objection.

39. The Court further considers that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint 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 and it must, therefore, be declared admissible.

B. Merits

40. The Government disputed the applicants' version of events and maintained that the incident was caused by the applicants' conduct since they had resisted the officials. They further stated that a meticulous investigation had been conducted into the circumstances of the case.

41. The applicants maintained their complaints and stated, in particular, that they did not consider that their case was any different from the judgment of *Satık and Others v. Turkey* (no. 31866/96, 10 October 2000) since it concerned the same events.

42. The Court recalls that in its judgment of *Satık and Others* (cited above, §§ 61-62) it found that the applicants in that case had been beaten and injured by State agents and concluded that the treatment to which they had been subjected amounted to a violation of Article 3 of the Convention. It further held that the investigation carried out by the national authorities in respect of the incident in Buca Prison had been inadequate.

43. The Court does not consider there to be any material difference between that case and the present one.

44. Accordingly, the Court finds that in the present case there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

45. The applicants complained that they were not informed by the national authorities of the outcome of the investigation into their allegations in breach of Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

46. The Court observes that the applicants' application was lodged within six months of the date on which the Izmir Administrative Council delivered its decision, which was the date of the final decision in their case for the purposes of Article 35 § 1 of the Convention. Furthermore, the applicants have in no way substantiated that the non-communication of the Council's decision was designed either directly or indirectly to hinder the effective exercise of the applicants' right of petition. In these circumstances the Court considers that no issue arises under Article 34 of the Convention. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. By a letter dated 14 October 2004 one of the applicants, Ahmet Güven, complained that the authorities' refusal to release him despite his ill-health constituted a violation of his right to life.

48. The Court considers that Ahmet Güven's complaint should be examined under Article 3, which provides:

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

49. The Court reiterates that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention (see *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX). However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79).

50. In the instant case, the Court observes that apart from the initial letter where the applicant laid out his complaints, neither he nor his representative provided the Court with additional submissions or updated information as regards his health and conditions of his detention. Having examined the materials provided by the Government, the Court considers that, as matters stand at present, the applicant's situation has not attained a sufficient level of severity to fall within the scope of Article 3 of the Convention (see *Saydam v. Turkey* (dec.), no. 26557/04, ECHR 2006-..., *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001, and, *a contrario*, *Tekin Yildiz v. Turkey*, no. 22913/04, 10 November 2005). Consequently, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants, Ahmet Güven, Neslihan Göktepe, Rıdvan Karatay and Emsihan Karatay each claimed 75,000 euros (EUR) for non-pecuniary

damages. Ramazan Akdağ, Metin Göktepe, İzzettin Koç, Kadri Issı, Mehmet Kışanak, Ali Kemal Yıldız and Yaşar Avcı each claimed EUR 60,000 and Kadri Sönmez claimed EUR 50,000 for non-pecuniary damage.

53. The Government contested the amounts.

54. Ruling on an equitable basis, the Court awards each of the applicants the sum of EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicants also claimed EUR 30,000 for the costs and expenses incurred before the Court. They submitted a fees note prepared by a translator and receipts for two stamps.

56. The Government contested the amount.

57. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants, jointly, the sum of EUR 500 for the proceedings before the Court.

C. Default interest

58. 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 complaint concerning the applicants' allegations of having been subjected to ill-treatment on 20 July 1995 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of the settlement and exempt from all taxes and duties:

- (i) EUR 8,000 (eight thousand euros) to each applicant in respect of non-pecuniary damage;
- (ii) EUR 500 (five hundred euros), jointly, in respect of costs and expenses;
- (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President