



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

SECOND SECTION

CASE OF HÜRRİYET YILMAZ v. TURKEY

(Application no. 17721/02)

JUDGMENT

STRASBOURG

5 June 2007

FINAL

12/11/2007

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 Hürriyet Yılmaz v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr R. TÜRMESEN,

Mr M. UGREKHEDIDZE,

Mr V. ZAGREBELSKY,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 17721/02) 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 Hürriyet Yılmaz (“the applicant”), on 8 January 2002.

2. The applicant, who had been granted legal aid, was represented by Mr Hancıoğlu, a lawyer practising in İstanbul. 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 ill-treated by the police and that the investigation into his allegations of ill-treatment had not been effective. He relied on Article 3 of the Convention.

4. On 6 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**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1960. He is currently detained in Isparta Prison.

6. The applicant was suspected of being involved in an armed robbery. On 1 August 1996 police officers from the organised crime unit of the İstanbul Security Directorate conducted an operation and the applicant was arrested. At the time of his arrest, the applicant was at a real estate office, owned by one of his relatives. Many of his relatives, including his children, were in this office at the relevant time. The applicant was allegedly beaten severely on his neck and back during his arrest. He was subsequently taken to the Security Directorate Building in Gayrettepe, without having a medical examination.

7. The applicant was allegedly blindfolded and interrogated in the security directorate building. During his interrogation, it is alleged that the applicant was stripped naked, punched, beaten with a truncheon, and had his testicles squeezed. However, the Government maintained that the applicant's statement was taken in the presence of his lawyer, Mr Gürkan Atabay.

8. On 3 August 1996 the applicant was taken to Haydarpaşa Hospital where he was examined by a doctor. According to his report, the doctor found no signs of injury on the applicant's body. The same day, he was placed in detention on remand.

9. In September 1996, complaining of a stiff neck and facial paralysis, the applicant went to see the prison doctor. The doctor transferred him to Kartal Hospital.

10. On 16 September 1996 the applicant filed a complaint with the public prosecutor and maintained that he had been severely beaten during his arrest.

11. Following certain medical tests, on 15 October 1996 the Kartal Hospital delivered its report, in which it was stated that the applicant was suffering from post-traumatic vertebral disorders and that he had an old fracture on his C6 vertebrae.

12. On 27 November 1996 the applicant gave a statement to the public prosecutor, and repeated his allegations. He maintained that he had been severely beaten on his neck during his arrest.

13. The public prosecutor took statements from the eye-witnesses to the applicant's arrest and the four police officers involved. In their statements taken on 8 January 1997, the applicant's son A.Y., his daughter E.Y, his brother-in-law N.Y. and sister-in-law H.S. explained to the prosecutor that they had seen the police officers beat the applicant heavily on the neck. On 23 June 1997 the prosecutor took statements from two officers, M.B. and M.K., who had been involved in the applicant's arrest. The officers denied the accusations. Subsequently, on 17 July 1997 and 26 August 1997, respectively, O.K. and M.K., the two other police officers involved in the applicant's arrest, gave identical statements to the public prosecutor and denied the allegations.

14. Upon the request of the public prosecutor, the İstanbul Forensic Medical Institution prepared a final report concerning the applicant's injuries. In its report dated 23 March 1998, the Forensic Medicine Institute concluded that, although the applicant's injuries did not constitute a danger to his life, he was unfit to work for twenty five days. The fracture on the applicant's C6 vertebrae and the disorders on his vertebrae were estimated to be at least three weeks old on 15 October 1996. It was also indicated that it had not been medically possible to determine the exact date of the incident. While drafting this report, the İstanbul Forensic Medicine Institute based itself solely on the report of the Kartal Hospital, dated 15 October 1996.

15. On 3 June 1998 the public prosecutor filed an indictment with the İstanbul Criminal Court and initiated criminal proceedings against the four police officers for ill-treatment.

16. In a hearing held before the İstanbul Criminal Court on 15 September 1998, the accused police officers M.B. and M.T. appeared before the court and denied the accusations. Neither the applicant nor his witnesses were present at this hearing.

17. On 9 February 1999 the applicant's children A.Y. and E.Y. appeared before the court. They explained that they had seen the police officers beat their father on the back and particularly on his neck. They told the court that they could identify the police officers who had beaten him if they met them face to face. The accused police officers were not present at this hearing.

18. On 9 March 1999 the applicant's statement was taken by the Isparta Criminal Court. He repeated his allegations of ill-treatment.

19. On 23 February 1999 the accused police officer O.K.'s statement was taken on commission before the Samsun Criminal Court. He denied the accusations.

20. On 29 December 1999 the İstanbul Criminal Court decided that it lacked jurisdiction and transferred the case file to the İstanbul Assize Court.

21. On 18 January 2000 the proceedings against the four accused police officers were resumed before the İstanbul Assize Court.

22. On 23 February 2000 the applicant's statement was taken once again before the Isparta Assize Court.

23. On 1 March 2000 the Samsun Assize Court took the statement of O.K. on commission.

24. On 10 March 2000 the İstanbul Assize Court heard the statements of the two accused officers, M.B. and M.T.

25. On 30 May 2000 the applicant's children A.Y. and E.Y. testified once again that they had seen their father being beaten during his arrest. However, they explained that, as a long time had passed, they would no longer be able to recognise the police officers.

26. On 14 September 2000 the Assize Court took a statement from M.K., the fourth accused police officer. Before the court, M.K. denied the allegations. On the same day, the court delivered its judgment and acquitted

the police officers of the charges against them on account of a lack of evidence.

27. On 3 July 2002 the Court of Cassation rejected the applicant's appeal request.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment during his arrest and subsequently during his custody at the Security Directorate Building. He also alleged that the domestic authorities had failed to carry out an effective investigation capable of leading to the punishment of the police officers responsible for the treatment. Article 3 of the Convention reads as follows:

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

29. The Government contested these arguments.

A. Alleged ill-treatment of the applicant during his police custody

30. The applicant maintained that he had been subjected to various forms of ill-treatment during his police custody at the Gayrettepe Security Directorate Building. In this connection, he stated that he had been stripped naked, punched, beaten with a truncheon, and his testicles had been squeezed.

31. The Government did not make any comments about this part of the application.

32. The Court notes in the first place that the applicant failed to submit this part of his allegation, either in form or in substance, before the national authorities. Secondly, it recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see, *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 unrebutted presumptions of fact (see, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

33. In the instant case, the applicant complained that, during his interrogation at the Security Directorate Building, he had been stripped naked, punched, beaten by a truncheon, and his testicles had been squeezed. Nonetheless, several elements cast doubt on the veracity of the applicant's

claims. The Court observes that on the last day of his police custody, the applicant was examined by a doctor at the Haydarpaşa Hospital. According to this report, there were no signs of ill-treatment on his body (see paragraph 8 above). The Court is aware of the lack of details in this report. However, the applicant has not adduced any material which could add probative weight to his allegations. Furthermore, from the Government's observations, it appears that the applicant's police statement was taken in the presence of his lawyer, Mr Gürkan Atabay (see paragraph 7 above). The Court therefore considers that there is nothing in the case file to show that the applicant was ill-treated as alleged during his police custody.

34. In view of the above, the Court concludes that the applicant has not laid the basis of an arguable claim and this part of the application should therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Alleged ill-treatment of the applicant during his arrest

1. 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 applicant could have sought reparation for the harm he had allegedly suffered by instituting an action in the civil or administrative courts.

36. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Karayığit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application. Consequently, it rejects the Government's preliminary objection.

37. The Court considers that the applicant's 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. It must therefore be declared admissible.

2. Merits

a) Concerning the alleged ill-treatment

38. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but notes that such

proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Labita*, cited above, § 121). The Court has held on many occasions that, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (*Matko v. Slovenia*, no. 43393/98, § 99, 2 November 2006, and *Bakbak v. Turkey*, no. 39812/98, § 47, 1 July 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

39. The Court notes, in the first place, that the medical certificates dated 15 October 1996 and 23 March 1998 showed that the applicant suffered from post-traumatic vertebral disorders and had an old fracture on his C6 vertebrae. It was also established that these injuries had been sustained at least three weeks prior to 15 October 1996. The Court notes that this corresponds to the date of the applicant's arrest.

40. Furthermore, the applicant's allegations submitted in his petition to the prosecutor and his subsequent statements before the Isparta Criminal Court and the Isparta Assize Court are consistent. His submissions are corroborated by witness statements and more importantly the findings in the medical reports match, in the Court's opinion, his allegation that he was beaten severely on his back and neck at the time of his arrest.

41. The Court further observes that the Government failed to provide an explanation as to the manner in which the injuries noted in the applicant's medical reports were sustained.

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

43. It follows that there has been a substantive violation of Article 3 of the Convention in this respect.

b) Concerning the alleged lack of effective investigation

44. The applicant further maintained, under Article 3, that the authorities had not conducted an adequate investigation into his complaints of ill-treatment.

45. The Government denied the allegations. They stated that the domestic authorities had conducted a serious investigation into the applicant's allegations.

46. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the

Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102, and *Labita*, cited above, § 131). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

47. Turning to the present case, the Court notes in the first place that the applicant complained before the domestic authorities that he had been severely beaten on his neck during his arrest. He had submitted a medical report which, and the names of witnesses who supported his allegations. Against this background, the Court considers that the medical evidence and the applicant's complaint together raised a reasonable suspicion that his injuries could have been caused by the police. The competent authorities were therefore under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

48. The Court notes that, following the applicant's complaint dated 16 September 1996, the İstanbul Public Prosecutor started an investigation into his allegations. However, it is not persuaded that this investigation was conducted diligently, or, in other words, that it was “effective”.

49. The Court finds it striking that, despite the seriousness of the allegations, the judicial authorities failed to conduct the investigation in a prompt manner. In this connection, it is observed that the public prosecutor took statements from the eye-witnesses to the applicant's arrest for the first time in January 1997. In their statements the witnesses explained that they had seen the police officers who had beaten the applicant on 1 August 1996 and would be able to identify them if they met face to face. The Court further finds it remarkable that it was not until 23 March 1998, i.e. eighteen months after the alleged incident, that the İstanbul Forensic Medicine Institute delivered its final report. At this point, it is important to note that when preparing this report, the Forensic Medicine Institute based itself solely on the medical report of 15 October 1996 given by the Kartal Hospital. Subsequently, while the public prosecutor initiated criminal proceedings against the four police officers, this was on 3 June 1998, almost two years after the incident. The witnesses were heard again by the İstanbul Criminal Court on 9 February 1999 but neither the applicant nor the witnesses were given an opportunity to confront the accused officers in person. When the criminal court gave a decision of non-jurisdiction on 29 December 1999, the proceedings had already been pending for more than three years. In the resumed proceedings before the İstanbul Assize Court in

January 2000, the same witnesses and the accused police officers were once again heard before the Assize Court. However, this time the witnesses explained that, although at the time of the events they had seen the police officers who had beaten the applicant, as a considerable time had passed they no longer felt that they would be able to recognise the officers, even if they met them in person. Having regard to all these facts, the Court cannot but conclude that the authorities failed to conduct the investigation with due expedition. Because of this delay, the applicant and his witnesses were deprived of the opportunity to meet the accused police officers face to face and identify them.

50. The Court further notes with concern that at no stage of the proceedings was a statement taken from the doctor who drafted the medical report dated 1 August 1996 or from the applicant's lawyer, Mr Gürkan Atabay, who had given legal assistance to the applicant during his police custody. It also appears from the investigation file that neither the prosecution authorities nor the domestic courts tried to provide an explanation as to how the applicant's vertebral disorders and the fracture on his C6 vertebrae were sustained.

51. In the light of the above, the Court concludes that the applicant's claim that he was ill-treated during his arrest was not subject to an effective investigation by the domestic authorities as required by Article 3 of the Convention.

52. There has therefore been a procedural violation of Article 3 on this regard.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

54. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged ill-treatment of the applicant during his arrest and the failure of the authorities to conduct an effective investigation into this claim admissible, and the remainder inadmissible;

2. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of the treatment he suffered during his arrest;
3. *Holds* that there has been a procedural violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated by the police.

Done in English, and notified in writing on 5 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President