



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

SECOND SECTION

CASE OF SACETTİN YILDIZ v. TURKEY

(Application no. 38419/02)

JUDGMENT

STRASBOURG

5 June 2007

DÉFINITIF

05/09/2007

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 Sacettin Yıldız 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. TÜRMEŒ,

Mr M. UGREKHELIDZE,

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. 38419/02) 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 Sacettin Yıldız (“the applicant”), on 3 October 2002.

2. The applicant was represented by Mr M. N. Ayhan, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained about his alleged ill-treatment in detention in police custody, the lack of an investigation into his allegations of ill-treatment and the unfairness of the criminal proceedings.

4. On 9 May 2006 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 1970 and lives in Istanbul.

6. On 18 August 2001 the applicant was taken into custody by police officers from the Peace and Order Department of the Istanbul Security Directorate, on suspicion of being involved in the murder of two sisters.

7. According to the applicant's version of the facts, during his questioning by the police, despite his request, he was not provided with the assistance of a lawyer. He was allegedly given electric shocks and beaten on the soles of his feet by police officers.

8. In his statements dated 19 August 2001, drafted by the police, the applicant confessed to his involvement in the murder and gave a detailed explanation as to the facts of the incident.

9. On 22 August 2001 the judge at the Kadıköy Magistrates' Court authorised the extension of the applicant's detention in police custody for three more days.

10. On 24 August 2001, upon the Public Prosecutor's request, the applicant was examined by a doctor from the Kadıköy Forensic Medicine Department. According to the medical report, the applicant had a purple and pink lesion of 15x13 cm under his right foot and two lesions of 3x5 cm and 8x10cm under his left foot. The report concluded that it would be appropriate for the applicant to rest for ten days.

11. Later the same day, the applicant was taken to the office of the Kadıköy Public Prosecutor, where he reiterated his earlier confessions and assured him that he had not been ill-treated by the police officers. When he was asked to comment on the medical report dated 24 August 2001, the applicant contended that his feet were in that condition due to the fact that he had been wearing his shoes for too long.

12. The applicant reiterated these statements before the judge at the Kadıköy Magistrates' Court, who ordered his detention on remand.

13. According to a forensic report dated August 2001, the applicant's fingerprints did not match those found at the crime scene.

1. Criminal proceedings against the applicant

14. On 18 September 2001 the Kadıköy Public Prosecutor filed an indictment against the applicant and joined him as the seventh accused in the murder case which was already pending before the Kadıköy Assize Court.

15. On 10 October 2001 the Istanbul Bar Association appointed a lawyer to represent the applicant.

16. On 25 October 2001 the applicant appeared before the Kadıköy Assize Court for the first time. He denied all allegations against him. He contended that during his detention in police custody he had confessed to the crime under coercion. Moreover, he maintained that the police had threatened to take him back to the police station if he did not also confess before the Public Prosecutor and the judge at the Magistrates' Court.

17. At the hearing on 8 August 2002, the intervening parties, who were the parents of the victims, maintained that they believed that the applicant was innocent.

18. On 4 December 2003 the Assize Court convicted the applicant and another accused, sentencing them to life imprisonment; it acquitted the other accused. When convicting the applicant the court relied mainly on his statements given at the police station, before the judge at the Kadıköy Magistrates' Court and before the Kadıköy Public Prosecutor.

19. On 6 May 2005 the Court of Cassation upheld the decision of the Assize Court. In its detailed decision, the Court of Cassation held that the applicant's statements, which were taken at the preliminary stage of the proceedings in accordance with the law, provided evidence of his involvement in the murder.

2. Criminal proceedings concerning the applicant's allegations of torture

20. On 7 January 2002 the applicant filed a complaint with the Kadıköy Public Prosecutor, complaining about the ill-treatment to which he had allegedly been subjected during his detention in police custody. He also submitted the medical report dated 24 August 2001.

21. On 5 April 2002 the Istanbul Public Prosecutor issued a decision of non-prosecution of the police officers. He held that the applicant, in his statements given at the Kadıköy Public Prosecutor's office, had confessed to having committed the murders and had maintained that he had not been subjected to any form of ill-treatment.

22. On 3 May 2002 the applicant objected to the decision of non-prosecution before the Eyüp Criminal Court.

23. On 25 July 2002 the Eyüp Criminal Court dismissed his objection.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained under Article 3 of the Convention that he was ill-treated during his detention in police custody and that there was no effective investigation in respect of his allegation. Article 3 of the Convention reads as follows:

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

A. Admissibility

25. The Government argued that it would have been open to the applicant to sue the Ministry of Interior for damages in accordance with Article 13 of Law no. 2577 on administrative procedure.

26. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies which are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52).

27. The Court has already held that this remedy cannot be regarded as sufficient for a Contracting State's obligations under Article 3 of the Convention in cases like the present one, in that it is aimed at awarding damages rather than identifying and punishing those responsible (see, among many others, *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports* 1998, p. 3290, § 102; *Kalın, Gezer and Ötebay v. Turkey* (dec.), nos 24849/94, 24850/94, 24941/94, 18 January 2000).

28. Consequently, it rejects the Government's preliminary objection of non-exhaustion.

29. The Court further concludes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Concerning the alleged ill-treatment

30. The Government maintained that, in his statements given to the Kadıköy Public Prosecutor, the applicant confessed to having committed the murders and had maintained that he had not been subjected to any form of ill-treatment. Nevertheless, the Public Prosecutor carried out an adequate and effective investigation into his allegations of ill-treatment by questioning the police officers.

31. The Court reiterates that, where an individual is taken into custody in good health but is found to be injured at 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 veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention

(see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004).

32. 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). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*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).

33. In the instant case, the Court notes that the applicant was not medically examined at the beginning of his detention. On 24 August 2000, at the end of his detention in police custody, he underwent a medical examination at the Kadıköy Forensic Medicine Department. According to the medical report there were serious lesions on the soles of his feet. The report concluded that it would be appropriate for the applicant to rest for ten days (see paragraph 10 above). The findings contained in the medical report were consistent with the applicant's allegations of ill-treatment. In this connection, the Court observes that the Government have not provided a plausible explanation for the lesions identified on the applicant's body.

34. In the light of the circumstances of the case as a whole and in the absence of a plausible explanation by the Government, the Court is led to conclude that the injuries noted in the medical report were the result of ill-treatment for which the State bore responsibility.

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

2. Concerning the alleged lack of an effective investigation

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

37. The Government submitted that, upon the applicant's petition concerning his allegation of ill-treatment in custody, the Kadıköy Public Prosecutor immediately initiated an investigation. He questioned the police officers and subsequently issued a decision of non-prosecution.

38. 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 v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

39. Turning to the present case, the Court notes that the Public Prosecutor started an investigation as soon as the applicant filed a petition, complaining that he was subjected to ill-treatment in police custody. However, it appears from the case file that, when giving the decision of non-prosecution, the Public Prosecutor only relied on the applicant's statements dated 24 August 2001, in which he had maintained that he had not been subjected to any form of ill-treatment and had claimed that his feet were in the condition described in the medical report due to the fact that he had been wearing his shoes for too long (see paragraph 21 above).

40. The Court observes that the Public Prosecutor disregarded the medical report which noted that there were serious injuries on the soles of the applicant's feet hardly compatible with wearing shoes for a long time. Moreover, the case file does not reveal whether the Public Prosecutor took the testimony of the applicant, the policemen or any other possible witnesses.

41. 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.

42. There has therefore been a procedural violation of Article 3 in this regard.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

43. The applicant complained that the proceedings against him were unfair, particularly as he was deprived of his right to have the assistance of a lawyer during the preliminary investigation.

The relevant parts of Article 6 of the Convention provide as follows:

“1. In the determination of ...any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law....

3. Everyone charged with a criminal offence has the following minimum rights...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require...”

A. Admissibility

44. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The Government contended that the police reminded the applicant of his rights. However, he maintained that he did not wish to have legal assistance during the preliminary investigation.

46. The Court reiterates that its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46).

47. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the “unlawfulness” in question and, where violation of another Convention right is concerned, the nature of the violation found (see, among others, *Jalloh v. Germany* [GC], no. 54810/00, § 95, 11 July 2006).

48. In this connection, as regards the nature of the Convention violation found, the Court recalls that it has already held that the use of evidence obtained in violation of Article 3 in criminal proceedings could infringe the fairness of such proceedings even if the admission of such evidence was not decisive in securing the conviction (see *Jalloh*, cited above, § 99; *Söylemez v. Turkey*, no. 46661/99, § 23, 21 September 2006; and, *mutatis mutandis*, *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006).

49. In the present case, the Court notes at the outset that it has already found that the applicant was subjected to ill-treatment in breach of

Article 3 of the Convention while he was in police custody (see paragraph 35 above). Furthermore, it is not disputed between the parties that the applicant did not receive any legal assistance during this custody period and that he had made statements at the police station, before the Public Prosecutor and before the judge at the Magistrate's Court in the absence of his lawyer. The Court further observes that the applicant denied the accuracy of those statements throughout the proceedings before the Kadıköy Assize Court, alleging that he had been subjected to ill-treatment.

50. In this connection, the Court observes that Turkish legislation does not usually attach to any confessions obtained during questioning but denied in court consequences which are decisive for the prospects of the defence (*Dikme v. Turkey*, no. 20869/92, § 111, ECHR 2000-VIII). However, not only did the Kadıköy Assize Court examine the admissibility of the applicant's statements made during the preliminary stage of the proceedings, before going on to examine the merits of the case, but also used these statements as the main evidence in its judgment convicting the applicant, despite his denial of their accuracy.

51. In these circumstances, the Court finds that the use of the applicant's statements obtained under torture during the preliminary investigation, in the absence of his lawyer, in the criminal proceedings brought against him rendered his trial as a whole unfair.

52. It follows that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

III. 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 within the specified time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

55. Nevertheless, the Court considers that where an individual, as in the instant case, has been convicted in unfair proceedings of the present type, a retrial or a reopening of the case, if requested, represents, in principle an appropriate way of redressing the violation (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of the ill-treatment to which the applicant was subjected in police custody;
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;
4. *Holds* that that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

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