



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

SECOND SECTION

CASE OF NEVRUZ KOÇ v. TURKEY

(Application no. 18207/03)

JUDGMENT

STRASBOURG

12 June 2007

FINAL

12/09/2007

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 Nevruz Koç 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 I. CABRAL BARRETO,

Mr R. TÜRMESEN,

Mr M. UGREKHEDIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 18207/03) 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 Nevruz Koç (“the applicant”), on 22 May 2003.

2. The applicant, who had been granted legal aid, was represented by Ms K. Doğru, 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 alleged, in particular, that he had been subjected to ill-treatment in police custody and that there had been no effective remedy in respect of his complaints. He relied on Articles 3 and 13 of the Convention.

4. On 2 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 1954 and lives in Istanbul.

6. On 30 November 1997 the applicant, who at the time was working as a cook in a restaurant, had been drinking alcohol after his shift. After

leaving the restaurant, on his way home, he got into an argument with a group of people waiting at a bus stop in the Sarıyer district. He was immediately arrested by a patrolling police officer (H.Ö.), who allegedly kicked and punched the applicant during the arrest. He was taken into custody at the Sarıyer Police Station, where he was allegedly subjected to ill-treatment for a day.

7. On the same day, a deputy superintendent and H.Ö drew up a police report. It stated that the applicant had insulted H.Ö, and had pushed and head-butted him in the face, when he had intervened in the incident. It also noted that the applicant had continued to behave aggressively towards police officers at the station and had insulted them.

8. Furthermore, the police took statements from three persons who had been at the scene of the incident. They all confirmed that the applicant had got into an argument with the minibus driver at the bus stop. H.Ö had been trying to calm everyone down, when the applicant started swearing at him. H.Ö then tried to handcuff the applicant but he pushed the officer away and head-butted him in the face. The doctor who examined H.Ö on that day recommended that H.Ö be seen by a specialist at Sişli State Hospital. The same witnesses also signed the police report, stating that the applicant had continued to act aggressively at the police station. Specifically, he had thrown himself onto the floor, tried to harm himself and attack the police officers on duty. On account of his continuing truculence, the police officers handcuffed him with the help of witnesses who were at the police station.

9. On 1 December 1997 the applicant was examined by a doctor who noted no injuries on his body. Later that day, he was brought before the public prosecutor and then the investigating judge, who ordered the applicant's detention on remand. He was remanded in custody in Sağmalcılar prison. On the same day, H.Ö was the subject of a medical report which described the bleeding and swelling of his nose, justifying four days' sick leave. H.Ö filed a complaint against the applicant on account of the insults and physical assault.

10. On 3 December 1997, the Sarıyer public prosecutor filed an indictment with the Sarıyer Criminal Court, accusing the applicant of obstructing and insulting a police officer on duty and aggressive drunkenness.

11. On 9 December 1997 the applicant was examined by the doctor of the Sağmalcılar prison, who noted the following marks on his body: oedema on the left ankle, scab-covered wounds surrounding both wrists and a scab-covered lesion in the left scapular region. He also complained of pain in his shoulders. The applicant was referred to Sağmalcılar State Hospital.

12. On 10 December 1997 a doctor at Sağmalcılar State Hospital noted an oedema on the applicant's left ankle.

13. On 14 December 1997 the applicant was examined again by a doctor, who referred him to the orthopaedic clinic of the same hospital

because of the oedema and scab-covered lesions on his left ankle, caused by a blunt instrument.

14. On 15 December 1997 the applicant was examined by a doctor at the emergency clinic of the hospital, who noted a large swelling on the left ankle caused by the infection of the soft tissue.

15. On 16 December 1997 he was examined by an expert at the Forensic Medicine Institute, who noted a graze of 0,5 x 4 cm on the left wrist, and a prominent oedema of 15 cm on the left ankle. However, the expert considered that a final report could only be drawn up once the applicant had been treated at a hospital.

16. On 25 December 1997 the applicant was released from prison.

17. On 28 December 1997 he provided a statement to the Istanbul branch of the Human Rights Foundation in Turkey regarding the ill-treatment to which he had been subjected whilst in custody.

18. On 6 January 1998 he was admitted to Okmeydanı Hospital. On 12 January 1998 he had an operation on his left foot. On 2 February 1998 he was discharged from the hospital. The applicant received treatment as an outpatient until 30 April 1998.

19. On 9 February 1998 the applicant filed a complaint with the Sarıyer public prosecutor claiming that he had been subjected to torture while he was in custody at the Sarıyer Police Station. He relied on the medical report of 16 December 1997 issued by the Forensic Medicine Institute, stating that he had sustained injuries.

20. On 10 February 1998 the Sarıyer public prosecutor took a statement from the applicant in relation to his complaint. The applicant stated that he was a member of HADEP (the *People's Democracy Party*) and that some people residing in the Sarıyer district were antagonistic towards him because of his Kurdish origin. He presumed that it was for this reason that he had been attacked by four or five people whilst waiting at the bus stop. Then the police arrived and arrested him. During the night, the police officers had taken him to a room and blindfolded him. They had beaten and punched him and kicked him on his legs and ankles. The next day, he had been detained on remand. His pain had worsened in prison. He was examined by the prison doctor and sent to hospital for further reports and treatment.

21. On 5 March 1998 the Sarıyer Criminal Court convicted the applicant of obstructing an officer on duty and aggressive drunkenness, and sentenced him to a fine, the enforcement of which was suspended.

22. On 6 March 1998 the Sarıyer public prosecutor took statements from three persons, two of whom had been held in police custody at the same time as the applicant, and one of whom had been at the police station for administrative reasons. The applicant's two co-detainees stated that there had been some ten to fifteen people, including the applicant, in police custody. The applicant had been drunk. However, they could not testify as

to whether the police officers had beaten him. The third witness stated that he did not notice that the police officers had beaten anyone while he was at the police station.

23. In an indictment lodged on 20 May 1998, based on the medical report of 16 December 1997, the public prosecutor at the Sarıyer Criminal Court initiated criminal proceedings against the police officers who had been on duty at the Sarıyer Police Station on 30 November 1997.

24. On 24 June 1998 doctors from the Istanbul Human Rights Foundation issued a report confirming the applicant's account of what had happened to him while in police custody. They noted that the applicant's custody story and his medical record were consistent with the alleged beating by truncheons and stamping on his feet. The report also opined that, because of the delay in medical treatment, the applicant's condition had deteriorated.

25. On 18 June 1999 the Sarıyer Criminal Court heard the statement of a witness who had shared the same cell as the applicant, together with some twenty other people in police custody. The witness stated that he was already in the cell when the applicant was placed there. After half an hour, the applicant had been taken away by two police officers and returned about an hour and a half later. The applicant had then told him that he had been beaten by the police officers, that his foot was hurting badly, and that he was in great pain. He had asked to be taken to hospital. Lastly, the witness said that the applicant had again been taken out of the cell by the same police officers and brought back within the hour.

26. On 4 October 2000 the Sarıyer Criminal Court requested an expert report on the applicant's medical condition while he was in custody and on his release.

27. On 30 October 2000 the Forensic Medicine Institute submitted a report to the court. After giving the applicant's whole medical history, referring to the above-mentioned facts, the report briefly stated that on 1 December 1997 he had been examined by a doctor who had noted no marks of physical violence on his body, but that his examinations on 9 and 16 December 1997 had revealed, in particular, an oedema on the left ankle and scab-covered wounds on the right ankle. The report concluded, without determining an exact date, that these lesions must have occurred between 1 and 9 December 1997. They had been inflicted by a blunt instrument and the applicant's medical condition at the relevant time would have rendered him unfit for work for 15 days.

28. On 21 December 2000 a law on conditional release (Law no. 4616 on the suspension of proceedings or execution of sentences in respect of crimes committed before 23 April 1999) was enacted. Accordingly, on 16 March 2001 the Sarıyer Criminal Court decided that the proceedings against the suspected perpetrators of the injuries to the applicant be suspended and subsequently discontinued if no offence of the same or a

more serious kind were committed by the offenders within a five-year period.

29. On 10 February 2002 the Court of Cassation dismissed the applicant's appeal against this judgment, of which the applicant was notified on 25 November 2002.

THE LAW

I. ADMISSIBILITY

30. The Government argued that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. In this connection, they submitted that there were various kinds of civil, criminal and administrative remedies provided by domestic law in respect of persons claiming to be the victims of ill-treatment in police custody, and that the applicant could have sought reparation for the harm he had allegedly suffered.

31. 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). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned case. The Court therefore rejects the Government's preliminary objection.

32. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that he had been subjected to ill-treatment in violation of Article 3 of the Convention, which provides:

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

A. Submissions of the parties

1. The applicant

34. The applicant alleged that he had been blindfolded and severely beaten, punched, kicked and struck with truncheons and batons on the legs

by police officers while he was in their custody. He maintained that officers had stamped on his feet and crushed them. He maintained that because of this and the blows to his left leg, he had been unable to walk for a considerable time. He referred to the findings of the medical reports in support of his allegations.

2. The Government

35. The Government contested these claims. They maintained that the applicant had been arrested because he had been extremely inebriated, cursing, shouting and behaving aggressively towards the people around him. They alleged that the applicant had also started swearing at the police officer who had prevented him from attacking an individual. The officer had tried to calm him down and told him that he had to accompany him to the police station. On their way to the police car, the applicant had taken the officer by the collar and pushed him roughly. In response, the officer had twisted the applicant's right arm backwards and handcuffed his right hand. While he was handcuffing the applicant's left hand, the applicant swore and butted the officer in the face. The officer had forced the applicant into the car with help of other people at the scene of the incident, and had taken him to the police station. The Government pointed out that, later that day, the police officer had been the subject of a medical report which noted injuries on and around his nose, rendering him unfit for work for four days. They added that the witness statements taken from the people at the scene confirmed their submissions (paragraph 8 above).

36. The Government accepted the findings of the applicant's medical reports. They highlighted the fact that, according to the medical report dated 30 October 2000 by the Forensic Medicine Institute, the applicant's injuries were estimated to have occurred at some time between 1 and 9 December 1997. However, the applicant's police detention ended on 1 December and the medical report issued on that day recorded no injuries. Furthermore, the persons who were in custody with the applicant at the relevant time all testified that the policemen had not subjected the applicant to any form of ill-treatment (paragraph 22 above).

37. The Government also drew attention to the applicant's conduct at the police station. They recounted that the symptoms had first appeared in the report of 9 December 1997, when the applicant had been examined in prison. They submitted that, taking into account the applicant's reckless conduct, it was highly likely that his symptoms had been self-inflicted after the police custody period in order to avoid further detention.

38. They maintained that the applicant should have informed the public prosecutor or the investigating judge of the alleged ill-treatment because they were the first authorities he had encountered after the custody period. However, he had failed to do so. Instead, he had filed a petition with the Sarıyer public prosecutor's office on 10 February 1998, considerably later,

thus casting doubt on his good faith. They added that, in his petition to the public prosecutor, the applicant had stated that some people residing in the Sarıyer area were antagonistic towards him as he was of Kurdish origin, and that this was the reason for the police intervention – a struggle between him and these people. However, in the Government's view, this was pure fiction on the applicant's part, exploiting a popular but illusory argument which was rebutted by the witness statements in the case file.

39. Lastly, they submitted that, in the same petition, the applicant had also mentioned that his left foot had been disabled when the officers had hit and kicked him. However, anyone who had experienced such serious injury would not have waited for ten days (until 9 December 1997) to be examined and treated. Eight days was a long time for such a serious injury, which could lead to a loss of consciousness or other grave health problems. They wondered how the applicant, who could not remember anything about the incident of 30 November as he was too drunk, could remember being ill-treated.

B. The Court's assessment

40. 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. Otherwise, a clear issue will arise 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; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

41. 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). 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 under 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).

42. In the instant case, the Court notes that the applicant was not medically examined at the beginning of his detention before he was taken

into police custody. After the end of his police custody, on 1 December 1997, he was examined by a doctor at the Sariyer State Hospital who noted no signs of ill-treatment on his body. However, the subsequent medical examinations and reports dated 9, 10, 14, 15 and 16 December 1997 (while he was still in custody on remand) showed that he had sustained injuries to his foot and wrists. Ultimately, the applicant had to undergo an operation. The findings of these reports, in the Court's opinion are consistent with the applicant's allegation of having been subjected to several beatings, kicking on the legs and stamping on his feet.

43. The Court notes that the information contained in the reports of 1 December and 9 December 1997 is contradictory. It observes that the Government did not dispute the medical findings in the report of 9 December 1997, but put forward a different version as to the cause of the injuries. They first explained that the lesions could have been inflicted by the applicant himself, considering his reckless conduct on that day in order to avoid further detention (see paragraph 37 above). They alleged that the injuries may have been the result of the acts of those individuals who had assisted the police officer in forcing the applicant into the police car. They also maintained that the force used by the police officer to ensure the applicant's arrest was no more than necessary as the applicant had posed a threat to the people around him.

44. The Court reiterates that, in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch*, cited above, § 38). However, the use of force in the context of an arrest, even if it entails injury, may fall outside Article 3, particularly in circumstances resulting from an applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 64, 20 June 2002).

In this regard, the Court takes note of the applicant's reckless, drunken and aggressive behaviour on the day of the incident. It observes that he resisted the policeman during the arrest, injuring the officer, who was reported to be unfit for duty for four days. However, the applicant was not examined medically upon his arrest. In the Court's view, such an examination would have been the appropriate step for the authorities to have taken, especially as one of their agents, in the Government's submission, had to resort to force during the arrest. Such a report could also have provided clarification of the acts of third parties which might have contributed to the applicant's condition.

Furthermore, considering the gravity and nature of the injuries (particularly the injury to the applicant's left foot which required an operation and rendered him unfit for work for 15 days), the Court does not deem it likely that they were self-inflicted. Therefore, the Court attaches no weight to the findings of the first medical report of 1 December 1997, in

which no signs of violence were found on the applicant's person. Consequently, the Court is not satisfied with the Government's explanations as to the manner in which the injuries found at the end of the detention period were sustained by the applicant (see *Yavuz v. Turkey*, no. 67137/01, § 41, 10 January 2006).

45. In these circumstances, and in the absence of a plausible explanation by the Government, the Court considers that the symptoms noted in the prison doctor's report of 9 December 1997, confirmed by further medical reports, were the result of treatment for which the State bore responsibility.

46. Accordingly, there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

47. The applicant complained that the authorities had failed to conduct an effective investigation into his complaints of ill-treatment, and that the criminal proceedings against the police officers were later suspended by virtue of Law no. 4616 (the Law on conditional release, suspension of proceedings or execution of sentences). He relied on Articles 6 and 13 of the Convention.

48. The Court considers that these complaints should be examined solely from the standpoint of Article 13, which provides:

“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.”

49. The Government contested this claim. They submitted that, in the present case, the domestic authorities had carried out an effective investigation into the applicant's allegation of ill-treatment. The Sarıyer public prosecutor had immediately initiated a preliminary investigation and had taken all necessary steps to shed light on the matter. He had heard statements from the applicant, the accused persons and the witnesses, and had examined the applicant's medical reports. Subsequently, he had lodged an indictment with the Sarıyer Criminal Court, accusing five policemen of having ill-treated the applicant, under Article 245 of the Criminal Code. The Government maintained that the fact that the proceedings against these officers had been suspended owing to the application of Law no. 4616 did not suggest that the applicant had not had an effective remedy, as the domestic court had conducted a thorough, adequate trial.

50. The Court reiterates that the nature of the right safeguarded by Article 3 has implications for Article 13. Where an individual has an arguable claim of having been 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 *Aksoy*, cited above, § 98).

51. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 of the Convention for the ill-treatment suffered by the applicant while in custody. The applicant's complaints in this regard are therefore “arguable” for the purposes of Article 13 of the Convention in connection with Article 3 (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 64, 29 April 2003; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, § 112).

52. The Court notes that the applicant complained of ill-treatment to the Sarıyer public prosecutor. Initially, the public prosecutor filed an indictment against the accused police officers with the Sarıyer Assize Court. The prosecutor relied on the medical reports describing the applicant's injuries. On 16 March 2001 the Assize Court suspended the proceedings by virtue of Law no. 4616. This Law also provided for the discontinuance of the criminal proceedings if no offences of the same kind were committed by the offenders within a five-year period from the suspension decision. The applicant challenged that decision before the Court of Cassation, albeit unsuccessfully.

53. The Court reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical and illusory. Therefore, investigations of the present kind must be able to lead to the identification and punishment of those responsible. However, the proceedings in question did not produce any result due to the application of the Law no. 4616, which created virtual impunity for the perpetrators of the acts of violence, despite the evidence against them (see, *mutatis mutandis*, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 147, ECHR 2004-IV; *Abdülşamet Yaman v. Turkey*, no. 32446/96, § 59, 2 November 2004).

54. Consequently, the Court considers that the criminal-law system, as applied in the applicant's case, has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant (see, *mutatis mutandis*, *Okkalı v. Turkey*, no. 52067/99, § 78, ECHR 2006-...).

55. In the light of the foregoing, the Court does not consider that the above proceedings can be described as thorough and effective so as to meet the requirements of Article 13 of the Convention.

56. There has consequently been a violation of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 10,000 new Turkish liras (YTL), approximately 5,429 euros (EUR), in respect of pecuniary damage and YTL 50,000 (EUR 27,146) in respect of non-pecuniary damage.

59. The Government contested these claims. They contended that the applicant had failed to substantiate the former and that the latter was excessive and unacceptable.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, having regard to the violations found and ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant also claimed YTL 7,500 (EUR 4,086) for his representation costs. In support of his claim, he submitted the Istanbul Bar Association's recommended fees for 2006. He did not claim any other costs and expenses.

62. The Government contested that amount.

63. According to the Court's case-law, an applicant is entitled to reimbursement of 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 to the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for legal expenses, less the sum of EUR 850 received in legal aid from the Council of Europe.

C. Default interest

64. 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;
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 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:
 - (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros) granted by way of 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 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President