



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

THIRD SECTION

CASE OF HAZIRCI AND OTHERS v. TURKEY

(Application no. 57171/00)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

07/07/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

This version was rectified on 27 May 2008 under Rule 81 of the Rules of Court.

In the case of Hazircı 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. BİRSAN,

Mr R. TÜRMEŖ,

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 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 57171/00) 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 seven Turkish nationals, Mr Ercan Hazircı, Mr Sadık Günel, Mr Ercan Başkan, Ms Lütfiye Uluk, Mr Kemal İyit, Mr Uğur Parlak and Mr Erkal Balçık (“the applicants”), on 17 February 2000.

2. The applicants, who had been granted legal aid, were represented by Ms G. Altay, Ms F. G. Yolcu and Mr H. Karakuş (in respect of the first, the second, the fourth and the sixth applicant) and Mr Z. Polat and Mr M. Çöpür (in respect of the third, the fifth and the seventh applicant), lawyers practising in İstanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 March 2003 the Court decided to communicate the application to the Government. In a letter of 12 July 2005, the Court informed the parties that, in accordance with Article 29 § 3 of the Convention, it would decide on both the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1961, 1974, 1971, 1974, 1967, 1962 and 1967 respectively. The first two applicants live in İzmit. The third applicant lives in Germany and the remainder of the applicants reside in İstanbul.

A. The applicants' detention in police custody

5. On 11 January 1998 around 350-400 people gathered at the Ümraniye Sarıgazi Cemevi¹ to commemorate the death of members of the TKP-ML/TIKKO.² The commemoration turned into a violent clash between some of the participants and the security forces. Thirty-five people were arrested, including the applicants. The applicants were first taken to Sarıgazi Gendarmerie. Later on the same day they were transferred to the İstanbul Provincial Gendarmerie Command as there was not enough space at the Sarıgazi Gendarmerie.

6. On various dates between 11 January and 14 January 1998 two gendarmes at Sarıgazi Gendarmerie, Mr E.G. and Mr Ö. K. took the applicants' statements with the exception of Ercan Başkan who stated that he wished to give his statement before a prosecutor.

7. On 15 January 1998 the applicants were released pending trial.

B. The applicants' medical certificates

8. On various occasions between 12 and 15 January 1998 the applicants were medically examined.

1. *Ercan Hazırcı*

9. On 12 January 1998 the applicant was examined by a doctor, Dr O.A. at Sarıyer State Hospital who noted that he had a slight ecchymosis on his nose and an ecchymosis of 5x4 cm on his right tibia.

10. On 15 January 1998 the applicant was examined by another doctor, Dr Ç.A. at Sarıyer State Hospital. This doctor noted that he had an ecchymosis on his right tibia and right femoral region and a number of old

¹ An Alevi meeting place for social and religious events.

² Communist Party of Turkey/ Marxist-Leninist, Turkish Workers' and Peasants' Liberation Army.

ecchymoses on various parts of his back. Dr Ç.A. mentioned that the applicant complained of pain in his chest.

11. On the same day, the Üsküdar Forensic Medicine Department (hereinafter: “FM department”), relying on the aforementioned medical reports, concluded that the injuries rendered the applicant unfit for work for a week.

2. Kemal İyit¹

12. On 13 January 1998 the applicant was examined by Dr O.A. who noted grazes on the skin of his right knee joint.

13. On 15 January 1998 the applicant was examined by Dr Ç.A. who found no signs of ill-treatment on his body.

14. On the same day, the FM department, referring to the aforementioned medical reports, concluded that the injuries rendered the applicant unfit for work for three days.

3. Erkal Balçık

15. On 13 January 1998 the applicant was examined by two doctors at Şişli Etfal Hospital. The first doctor noted an ecchymosis of 10x10 cm and 3x3 cm as well as pain and sensitivity on the right and the left of his lower back respectively. The second doctor found widespread ecchymoses on the right side of the back.

16. On 15 January 1998 the applicant was examined by Dr Ç.A. who found no signs of ill-treatment on his body.

17. On the same day, the FM department, taking into account the medical reports dated 13 January 1998, concluded that the injuries rendered the applicant unfit for work for a week.

4. Uğur Parlak

18. On 13 January 1998 the applicant was examined by Dr O.A. who noted a graze on the skin of the left knee joint.

19. On 15 January 1998 the applicant was examined by Dr Ç.A. who found no signs of ill-treatment on his body.

20. On the same day, the FM department, referring to the medical report of 13 January 1998, concluded that the injuries rendered the applicant unfit for work for 3 days.

5. Sadık Günel

21. On 12 January 1998 the applicant was examined by Dr A.T. who noted that he had pain in his right periorbital region (around the eyes) and

¹ The applicant's name “Yiğit” was changed as “İyit”.

left leg. The doctor found a slight ecchymosis on the right periorbital region.

22. On 15 January 1998 the applicant was examined by Dr Ç.A. who found no signs of ill-treatment on his body.

23. On the same day, the FM department, in view of the medical report of 12 January 1998, concluded that the injuries rendered the applicant unfit for work for a week.

6. Lütfiye Uluk

24. On 13 January 1998 the applicant was examined by Dr O.A. who found a traumatic ecchymosis on her right femoral (thigh) region and left scapula (shoulder blade). He transferred her to Şişli Etfal Hospital where she was examined by two doctors. The first doctor found a traumatic ecchymosis on top of her right femoral region, on top of her left scapula and underneath her right scapula. He noted that the applicant had pain in her neck and right crural region (back of upper legs). The second doctor (an orthopaedist) found an ecchymosis of 7x10 cm on the right lateral side of the femur region as well as subjective pain in this region. No pathology was noted in the X-rays.

25. On 15 January 1998 the applicant was examined by Dr Ç.A who indicated that the applicant complained of numbness in her right arm and legs. He found that the applicant had ecchymoses on her right femoral region and left scapula region. He further noted a number of ecchymoses on her back. The doctor concluded that these lesions were old.

26. On the same day, the FM department, as a result of the medical reports of 13 and 15 January 1998, concluded that the injuries rendered the applicant unfit for work for a week.

7. Ercan Başkan

27. On 13 January 1998 the applicant was examined by two doctors at Şişli Etfal Hospital. According to the two medical reports issued on the same day the applicant had a superficial graze on the left side of his nose and his left eyebrows. His left cheek was swollen. The applicant's scalp had multiple hyperaemic areas and he had an ecchymosis of 5x7 cm on his left gluteal region (buttocks) and multiple superficial grazes on the inside of his femoral region. Dr U.D. noted that the applicant complained of pain in his scrotum and penis. However, he found no ecchymoses, laceration or hyperaemia in the anal region.

28. On 15 January 1998 the applicant was examined by Dr Ç.A. who found no signs of ill-treatment on his body.

29. On the same day, the FM department, in view of the medical reports dated 13 January 1998, concluded that the injuries rendered the applicant unfit for work for a week.

C. Investigation instigated into the applicants' alleged ill-treatment

30. On 15 January 1998 the applicant, Mr Başkan was brought before the Üsküdar public prosecutor where he denied the accusations against him. In particular, he submitted that he had been subjected to ill-treatment while he was held in custody. He claimed that they had inserted a truncheon in his anus, hit his penis with a stick and squeezed his testicles. In addition, he alleged that they put a plastic bag over his head and that he was blindfolded and threatened.

31. On the same day, the applicants were brought before the Üsküdar Criminal Court of First Instance where they refuted the accusations that they had taken part in the violent clash on 11 January 1998. In particular, Mr Hazırcı stated that he was coerced to sign the deposition taken by the security forces. Mr İyit¹ and Mr Başkan said that their statements given to the security forces were not true. Ms Uluk stated that her police deposition was not given of her own free will and that they tore up her initial statement and re-wrote, and made her sign, another one. She also stated that she had been sexually harassed and given electric shocks. The court ordered their release.

32. On the same day, the representatives of the thirty-five people arrested, including the applicants, submitted a petition to the Üsküdar public prosecutor's office claiming that their clients had been subjected to ill-treatment during their interrogation, that they had not been properly medically examined and that they had also been subjected to ill-treatment after their medical examination. They submitted that their clients had been beaten and deprived of food. They requested an urgent medical examination.

33. The Üsküdar public prosecutor decided to transfer the applicants to the Haydarpaşa Numune Hospital for a medical examination. According to the report drafted by the prosecutor at the Üsküdar Criminal Court of First Instance on 15 January 1998, the complainants left the court house after the hearing despite his request, and therefore could not be taken to a hospital for a medical examination.

34. On an unspecified date, the Üsküdar public prosecutor decided that his office lacked competence *ratione loci* and transferred the case file to the Şişli public prosecutor's office on 29 January 1998.

35. On 13 February 1998 Mr T.O., the prosecutor at the Şişli public prosecutor's office, requested the identities of the gendarmes who had participated in the interrogation of the complainants.

36. On 11 March 1998 the İstanbul Provincial Gendarmerie Command informed the Şişli public prosecutor's office that Mr E.G. and Mr Ö.K. were the gendarmes who had interrogated the complainants.

¹ The applicant's name "Yiğit" was changed as "İyit".

37. On 8 July 1998 Mr E.G. and Mr Ö.K. were heard by a prosecutor. They denied the accusations against them.

1. Decision no. 1998/18096

38. On 15 July 1998 the prosecutor, Mr T.O. gave a decision of non-prosecution against Mr E.G. and Mr Ö.K. on the ground that there was no evidence that they had ill-treated the complainants during interrogation. The prosecutor considered that the physical findings noted in the medical reports were the result of lawful use of force by the gendarmes during arrest.

39. The applicants' objection against this decision was dismissed by the 2nd Chamber of the Beyoğlu Assize Court on 29 September 1999.

2. Decision no. 1998/25637

40. On 6 July 1998 the applicants, with the exception of Mr Balçık, filed an official complaint with the Üsküdar public prosecutor's office against the gendarmes at the İstanbul Provincial Gendarmerie Command. They submitted that, on various dates, they had been tortured by plain clothes officers.

41. On 21 October 1998 Mr T.E., another prosecutor at the Şişli public prosecutor's office, decided that there was no need to investigate the applicants' allegations of ill-treatment since the matter had been investigated and a decision not to prosecute Mr Ö.K. and Mr E. G. had already been given in this respect.

42. The applicants objected. They submitted that they did not know that an investigation into their allegations had been held, or that a decision of non-prosecution had been rendered, as the decision had never been served on them. They further stated that, in any event, they were subjected to ill-treatment at the İstanbul Provincial Gendarmerie Command and not at the Sarıgazi Gendarmerie where Mr Ö.K. and Mr E. G. were stationed.

43. On 11 June 1999 the First Chamber of the Beyoğlu Assize Court dismissed the applicants' objection.

D. Subsequent developments

44. The criminal proceedings instigated against the applicants in respect of their involvement in the violent clashes on 11 January 1998 ended with their acquittal.

45. According to the report issued by the Human Rights Association of Turkey on 14 November 2003, Mr Başkan applied to them on 7 May 1998 for treatment. He gave a description of the alleged ill-treatment he had been subjected to while held in custody in 1994, 1995, and 1996 and in January 1998 at the İstanbul Provincial Gendarmerie Command. The report indicates

that the applicant was diagnosed as suffering from gingivitis, sinusitis and haemorrhoids and was given appropriate treatment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

46. A description of the relevant domestic law at the material time can be found in *Batı and others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicants complained that they had been subjected to torture while they were held at the İstanbul Provincial Gendarmerie Command in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

48. The Government maintained under Article 35 § 1 of the Convention that the applicants had failed to comply with the six-month rule. They submitted in this respect that the applicants should have lodged their application with the Court within six months following the First Chamber of the Beyoğlu Assize Court's decision of 11 June 1999 (see paragraph 43).

49. As to the merits, the Government stated that the injuries noted in the medical reports were sustained by the applicants during their arrest. In this respect, they pointed out that the applicants were apprehended in the course of a violent demonstration and that, as acknowledged by the applicants, the security forces had used force during their arrest. The Government stated that the applicants' allegations of ill-treatment did not match the physical findings noted in the medical reports. They noted that the applicants, after their release, could have undergone a detailed medical examination in order to substantiate their allegations.

50. The applicants maintained that they had complied with the six-month rule.

51. As to the merits, the applicants submitted, in their observations dated 12 September 2005, that they were ill-treated during their arrest and throughout their detention in custody. They claimed that the physical

findings noted in the medical reports were consistent with their allegations of ill-treatment. They submitted that, during custody, they were subjected to treatment such as being beaten, given electric shocks, hit with hard objects, sexually harassed, having their testicles squeezed and having a bag put over their heads. They pointed out that they should have been examined by a doctor immediately after their arrest and they also challenged the veracity of the medical reports issued in their respect on 15 January 1998.

B. The Court's assessment

1. Admissibility

(a) The Government's preliminary objection

52. The Court recalls that the six month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies.

53. In the present case, the Court considers that the final effective decision concerning the applicants' complaints was that of the Second Chamber of the Beyoğlu Assize Court's decision of 29 September 1999, dismissing the applicants' objections against the public prosecutor's decision of 15 July 1998, since the latter was the decision on the merits of their complaint (see, *mutatis mutandis*, *Ete and Ete v. Turkey* (dec.), no. 29315/02, 13 June 2006). The application was lodged with the Court on 17 February 2000. In view of the above, the Court considers that the application was introduced within the six-month time-limit provided for in Article 35 § 1 of the Convention. It therefore rejects the Government's objection under this head.

(b) Other points on admissibility

54. At the outset, the Court notes that in their observations post communication, the applicants alluded to the fact that they were ill-treated during arrest. However, the Court notes that, even assuming that this was raised as a new complaint, it relates to events or decisions which intervened more than six months before being lodged with the Court on 12 September 2005, and the Court therefore rejects it in accordance with Article 35 §§ 1 and 4 of the Convention.

55. As regards the applicants, Mr İyit¹ and Mr Parlak, the Court finds that there is no indication in the case file to demonstrate that they were subjected to any kind of ill-treatment, the severity of which was above the

¹ The applicant's name "Yiğit" was changed as "İyit".

Article 3 threshold. In this connection, the Court notes that the medical reports established at the end of their stay in custody contain no indication of ill-treatment (see paragraphs 12 and 18) and that the findings noted in their medical reports of 13 January 1998 are insufficient to substantiate their allegations (see paragraphs 11 and 17). Bearing in mind that the applicants were released pending trial, it would have been possible for them to provide the Court with medical evidence which would have contradicted the medical reports contained in the case-file. Accordingly, the Court concludes that these applicants have not laid the basis of an arguable claim that they were ill-treated at the hands of the gendarmes. For these reasons, the Court finds that their complaint under Article 3 of the Convention is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

56. As to the remaining applicants, the Court notes that their application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. Their application must therefore be declared admissible.

2. Merits

(a) Mr Başkan, Mr Günel and Mr Balçık

57. The Court observes that the medical reports drawn up around one or two days after the applicants' arrest and placement in custody (12 and 13 January 1998) contain a number of physical findings (see paragraphs 14, 20 and 26). The parties do not dispute these findings. However, they do put forward different versions as to how the applicants had actually sustained them.

58. The Court notes that the medical reports established at the end of the applicants' stay in custody (15 January 1998) mention no physical findings of ill-treatment. The applicants, despite having been released, failed to provide the Court with medical evidence which contradicted the findings of the medical reports of 15 January 1998. The Court also notes that the applicants did not provide any details to the Court as regards the alleged ill-treatment until 12 September 2005, i.e. five years after having lodged the application (see paragraph 51). These facts lend more credibility to the Government's argument as regards the cause of the injuries noted in the medical reports of 13 January 1998 (see paragraph 49) particularly since the applicants do not dispute that they were arrested in the course of a violent demonstration during which the police used force in order to arrest them.

59. In light of the foregoing, the material submitted by the applicants are not sufficient to enable the Court to find beyond all reasonable doubt that they were subjected to treatment which amounted to torture, inhuman or degrading treatment while they were detained at the İstanbul Provincial Gendarmerie Command.

60. It follows that there has been no violation of Article 3 of the Convention.

(b) Ms Uluk and Mr Hazırcı

61. The Court does not find it necessary to determine whether the injuries noted in the applicants' medical reports of 12 and 13 January 1999 respectively, were sustained during arrest since, in any event, the medical reports drawn up at the end of their stay in custody refer to a number of ecchymoses on their backs and an ecchymosis on Mr Hazırcı's right femoral region which did not exist at the time of the previous reports (see paragraphs 9 and 24). As the Government failed to provide any plausible explanation as to the cause of these injuries, the Court finds that they were the result of treatment for which they bear responsibility (see, in particular, *Sunal v. Turkey*, no. 43918/98, §§ 47-50, 25 January 2005).

62. It follows that there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed, in total, 35,000 euros (EUR) in respect of pecuniary damage and EUR 160,000 in respect of non-pecuniary damage.

65. The Government contested the amounts.

66. As regards the alleged pecuniary damage sustained by them, the Court notes that Ms Uluk and Mr Hazırcı failed to produce any receipts or documents in support of their claim, which is accordingly dismissed. On the other hand, the Court finds that the applicants must have suffered pain and distress which cannot be compensated solely by the Court's finding of a violation. Ruling on an equitable basis, the Court awards EUR 5,000 each to Ms Uluk and Mr Hazırcı.

B. Costs and expenses

67. The applicants, who received legal aid from the Council of Europe, also claimed EUR 3,950 for the costs and expenses incurred before the Court. The applicants relied on the İstanbul Bar Association's recommended

minimum fees list and a schedule of costs prepared by their representatives. They, however, did not submit any receipts or any other relevant documents.

68. The Government contested the amounts.

69. Since the applicants, Ms Uluk and Mr Hazırcı, submitted no justification as regards costs and expenses as required by Rule 60 of the Rules of Court, the Court makes no award under this head.

C. Default interest

70. 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 UNANIMOUSLY¹

1. *Declares* the complaint concerning the alleged ill-treatment of Ms Uluk, Mr Başkan, Mr Günel, Mr Balçık and Mr Hazırcı when they were held at the İstanbul Provincial Gendarmerie Command admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of Ms Uluk and Mr Hazırcı;
3. *Holds* that there has been no violation of Article 3 of the Convention in respect of Mr Başkan, Mr Günel and Mr Balçık;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, Ms Uluk and Mr Hazırcı, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), each, in respect of non-pecuniary damages, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;

¹ Rectified on 27 May 2008. The former version of the operative part read as follows:

“1. *Declares* the complaint concerning the alleged ill-treatment of Ms Uluk and Mr Hazırcı when they were held at the İstanbul Provincial Gendarmerie Command admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;”.

(b) that from the expiry of the abovementioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President