



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

SECOND SECTION

CASE OF K.Ö. v. TURKEY

(Application no. 71795/01)

JUDGMENT

STRASBOURG

11 December 2007

FINAL

02/06/2008

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

In the case of K.Ö. 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,

Mrs D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 20 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 71795/01) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, K.Ö. (“the applicant”), on 23 February 2001.

2. The applicant was represented by Mrs E. Keskin and Mrs F.Karakaş, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 21 March 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1950 and lives in Adana.

A. The events of 19 and 28 November 1999 and the medical certificates concerning the alleged ill-treatment of the applicant

5. In 1995 the applicant's daughter joined the PKK (the Kurdistan Workers' Party), an illegal organisation. The applicant alleges that, since then, the police have raided her house and harassed and threatened her many times.

6. The applicant claims that on 19 November 1999, around midnight, three persons who introduced themselves as police officers from the anti-terrorism branch of the Adana Security Directorate had entered her house, stuffed her scarf in her mouth and beaten, threatened and sexually harassed her. She alleges that the officers had finally raped her by inserting a truncheon in her vagina and that she had passed out following the rape.

7. On 22 November 1999 the applicant went to the Human Rights Foundation of Turkey (hereinafter "the foundation") where she gave a description of the ill-treatment she had received at the hands of the police officers and complained in particular of pain in the genital area and vaginal bleeding. However, as the obstetrician was unavailable at the time, the applicant was given an appointment for 30 November 1999. She was nonetheless examined by a doctor who noted that there was a severe sensitivity on the applicant's abdomen.

8. The applicant claimed that on 28 November 1999 her house was raided again by police officers. She was told that they would kill her and her children if she were to lodge an official complaint about the previous incident. They then allegedly broke the picture frame in which the applicant kept her daughter's photograph and one of them had put a gun to the applicant's head and had taken her money.

9. On 30 November 1999 and 2 December 1999 the applicant was examined by Dr A.Ö. (the obstetrician) at the foundation. The doctor observed a perineal hernia and cysto-rectocele on the applicant's genital organs. She further observed that the applicant's uterus was bigger and harder than normal. The doctor noted that, given the lapse of time, it would not be possible to see any marks of rape on the body. She also noted that, indeed, there were no such traces.

10. On 30 November 1999 the applicant was examined by a psychiatrist at the foundation who diagnosed that she was suffering from an acute stress syndrome and major depression. The doctor opined that the applicant's psychological problems were linked to the trauma she had allegedly experienced.

B. The investigation instigated into the applicant's alleged ill-treatment

11. On 3 December 1999 the applicant lodged a complaint with the public prosecutor's office in Adana, requesting the prosecution of the three plain-clothed police officers at the anti-terrorism branch of the Adana Security Directorate. The applicant gave a description of the events of 19 and 28 November 1999 which she claimed had been perpetrated by the same three police officers. As regards the details, the applicant submitted that one of them had spoken to her in Kurdish only and had said that he was from Urfa. The applicant further noted that the police officer who had pointed a gun at her stomach was tall, thin and had thinning hair. Finally, the applicant maintained that she had been harassed by police officers since 1995, but she had been too afraid to lodge an official complaint.

12. On the same day, the Adana public prosecutor took statements from the applicant in which she reiterated her allegations of ill-treatment and complained about the police officers from the anti-terrorism branch.

13. On 7 December 1999 the applicant was examined by three doctors from the Department of Gynaecology and Obstetrics at Çukurova University Hospital in Adana, who noted that her genital organs did not bear any injury resulting from physical violence.

14. On 8 December 1999 a senior official of the anti-terrorism branch of the Adana Security Directorate took a statement from the applicant.

15. On 9 December 1999 the applicant was examined by Dr B.S. at the Adana Forensic Medicine Institute. The doctor noted that the applicant had *prolapsus uteri* and a few old tears in the hymen. However, he found no fresh traumatic lesions on the applicant's genital organs.

16. On 27 December 1999 the applicant applied to the Adana Security Directorate where she gave a statement with the help of her son, who acted as her interpreter. In her statement the applicant claimed that two persons claiming to be policemen - one with a walkie-talkie, the other with a rifle – had come to her house at around 6 p.m. and told her that they knew she had complained about them. She stated that she had never seen them before. They had entered her house, ripped up her medical reports, broken the framed picture of her daughter and destroyed her “green card”¹. They had then threatened her and beat her up. The applicant indicated that none of the photographs shown to her by the police were the perpetrators. In addition, the applicant gave a short description of the two men and stated that they both had beards. One of the men had spoken Kurdish to her and she thought he might be from Urfa. Finally, the applicant submitted that these persons

¹. The Ministry of Health provides a special card to people with a minimum level of income which gives free access to health care at the State and some university hospitals, and covers the cost of medicines for in-patients.

had not shown her their identification and that she was suspicious as to whether they really were policemen. She requested that these men be found.

17. On 3 February 2000 the applicant made statements before the Adana public prosecutor with the help of her lawyer, who acted as an interpreter. The applicant stated that, prior to the events in November 1999, the police officers who used to come to her house and ask about her daughter had never resorted to physical force, but that they had always given her misleading information about her daughter. As regards the impugned events, the applicant stated, *inter alia*, the following:

“On the night of 19 November 1999, I was tricked into opening the door as they said that they were Osman and Şefik, my brothers-in-law. The three people who entered the house said they were from the anti-terrorism branch and they pulled my headscarf over my mouth. They were carrying Kalashnikovs. They asked for my daughter and said they were going to kill me and my children... One of them spoke Kurdish and said that he was from Urfa. The one who was tall and thin, with white skin and black hair, strangled me with an iron cord. One of them, who I cannot describe, took off my baggy trousers and pants. I fainted from shame and fear when the other inserted a truncheon into my sexual organ... When I woke up they were searching the house. They found money underneath the bed and took it with them... When my son arrived he took me to a private doctor. This doctor did not draw up a report but gave me medicine and an injection. As I was not getting better he took me to the doctors at the Human Rights [foundation]... These same three people came to my house on 27 December 1999 and said that it was not good that I had complained about them... they called their superior and a police patrol came to pick us up. My son Teyfik was next to me... At the police station, an officer named Erkan was nice to us... I was sent to the hospital. The doctor said, without examining me, that there was nothing wrong with me. After this date I was not harassed.”

18. Between 21 and 22 February 2000, the prosecutor questioned two senior police officers at the anti-terrorism branch of the Security Directorate and a policeman who had taken the applicant's statement on 27 December 1999. The senior police officers denied the accusations regarding the anti-terrorism branch and affirmed that their personnel were ready to proceed with an identification procedure.

19. On 31 March 2000 the applicant was invited to the Adana Security Directorate to take part in the identification procedure. 108 police officers from the anti-terrorism branch of the Adana Security Directorate entered the identification room in groups of ten. The public prosecutor, the applicant and her son, the applicant's lawyer, a senior police officer, a paralegal and a police officer, Mr M.R.C., who was sworn in as the official interpreter, were present. According to the identification protocol the applicant and her son identified Mr R.G. as one of the people who had entered their house. However, at this point the prosecutor decided that the applicant's son should be taken out of the identification room since he was acting in an agitated manner. The applicant once again stated to the prosecutor that R.G. was one of the persons who had entered her house on 28 November 1999. She said that, as R.G. and the two others had claimed to be journalists, she had

opened her door. She further stated that she had seen R.G. but had not seen the others' faces. She maintained that R.G. took the money under her mattress. When asked about the contradictions with her previous submissions, the applicant stated that she might have been confused. She reiterated that R.G. had stolen her money on 28 November 1999, but he had not ill-treated her at all.

20. On 3 April 2000 the Adana public prosecutor sent a letter to the Istanbul University Hospital, requesting information regarding the applicant's state of health.

21. On 7 April 2000 the prosecutor questioned Mr R.G., the identified police officer, who denied the accusations against him. In particular, he stated that he did not know the applicant or her house, and that he had seen her for the first time during the identification procedure. He pointed out that the applicant's son had told her to identify him. In this respect, Mr R.G. stated that he understood a little bit of Kurdish. He suggested that, since he had arrested the applicant's son six months ago, he might have told his mother to identify him to revenge a grudge. He further noted that he had worked in the neighbourhood for the past three and a half years and that not everyone liked him. Finally, he referred to the fact that the applicant's statements during the identification contradicted her earlier submissions.

22. On 17 April 2000 Dr Ş.Y., the director of the Psychiatry Department of the Faculty of Medicine at Istanbul University, informed the Directorate of the Faculty of Medicine that the applicant had been seen on 26 February and 24 March 2000. She was diagnosed as suffering from a post-traumatic stress syndrome and she was undergoing treatment. Dr Ş.Y. also submitted the protocol established in this connection.

23. On 25 April 2000 the deputy director of the Faculty of Medicine forwarded the letter of 17 April 2000 to the Adana public prosecutor.

24. On 23 May 2000 the Adana public prosecutor issued a decision of non-prosecution concerning Officer R.G. In his decision, the prosecutor noted, in particular, that the applicant's allegations and version of events were inconsistent and contradictory. He further noted that the medical reports did not record any traces of ill-treatment on the applicant's body. Finally, it found that the applicant had been under the influence of her son in the course of the identity parade on 31 March 2000.

25. The applicant objected to the aforementioned decision of the prosecutor.

26. On 3 July 2000 the Tarsus Assize Court dismissed the applicant's objection. This decision was served on the applicant on 31 August 2000.

C. Subsequent events

27. The applicant claimed that she continued to be harassed by police officers at her house. In this respect, the applicant alleged that she was

beaten and threatened on 26 May 2000, 1 April 2001 and 10 June 2001. As regards the first incident, the applicant lodged a complaint with the prosecutor who decided on 27 February 2001 not to initiate criminal proceedings on the ground that the applicant's allegations were unsubstantiated. The prosecutor noted that the applicant repeatedly refused to see a doctor. As to the second incident, the applicant applied to the foundation and the doctor who had examined her found that her physical pains were psychosomatic and referred her to a psychiatrist, who prescribed antidepressants. As regards the last incident, the applicant applied both to the foundation and a State hospital. The medical reports issued by these institutions noted various bruises on the applicant's body and stated that she was still suffering from an acute post-traumatic stress syndrome and that this diagnosis was consistent with the applicant's allegations of ill-treatment and torture.

28. On 29 April 2003 the applicant petitioned the Adana public prosecutor's office, complaining that she had been harassed by the police. She claimed that on 23 April 2003 a number of police officers had entered her house and threatened to kill her if she did not withdraw her application to the European Court of Human Rights. She submitted that she had been beaten up when she refused to sign a document. The applicant also maintained that on 28 April 2003 a number of police officers had taken her for a car ride which lasted two hours, during which time she was told to withdraw her application to the Court.

29. On 3 January 2005 the applicant was arrested and taken into police custody on suspicion of aiding and abetting an illegal armed organisation. On 5 January 2005 she was remanded in custody. On 14 January 2005 the criminal proceedings against the applicant commenced. On 7 March 2005 the court ordered the applicant's release pending trial. On an unspecified date the Adana Assize Court convicted the applicant of aiding and abetting an illegal armed organisation and sentenced her to three years and nine months' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

I. ADMISSIBILITY

31. The Court considers that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that 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.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that she was subjected to torture by police officers. In this respect, she maintained that she had been beaten, strangled, threatened and raped with a truncheon, in violation 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

33. The Government, referring to the conclusions of the various medical reports, the inconsistencies noted in the applicant's declarations and the fact that she was unable to identify her perpetrators, maintained that the applicant's allegations were unsubstantiated. In this connection, they pointed out that the public prosecutor had conducted a meticulous investigation into the applicant's complaints.

34. The applicant maintained that the prosecutor had failed to take into account the medical reports of the Human Rights Foundation of Turkey and that of the Istanbul Medicine Faculty. She claimed that she was still undergoing treatment. The applicant implied that it was inconceivable for an elderly woman brought up with feudal values to make up a rape claim.

B. The Court's assessment

1. The applicant's alleged ill-treatment

35. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the

Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

36. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see, for example, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII, extracts, and *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 similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

37. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

38. At the outset the Court observes that the documentary evidence submitted by the parties does not allow it to conclude beyond reasonable doubt that, prior to or after the incidents in November 1999, the applicant was subjected to the kind of severe ill-treatment, at the hands of State agents, which fell within the proscribed scope of Article 3. Nor is there sufficient evidence to support for the applicant's allegations of having been subjected to constant harassment in this connection.

39. In the instant case, the applicant, in the initial application form, complained of having been beaten, strangled, threatened and raped with a truncheon at her house on 19 November 1999 by three persons whom she alleged to have been police officers. The applicant further stated that on 28 November 1999 her house had been raided again by police officers who had broken a picture frame, stolen her money and put a gun to her head.

40. The Court notes, however, that the applicant has not produced any conclusive or convincing evidence in support of these allegations. It observes that any ill-treatment inflicted in the way alleged by the applicant on 19 November 1999 would have left marks on her body which would have been seen by the doctor who had examined her on 22 November 1999, three days later (see paragraph 7 above). The indications noted in this medical report are insufficient to substantiate the ill-treatment described by

the applicant. In the light of the foregoing, the Court considers that there is insufficient evidence to support the view that the findings of psychological problems described in the medical reports of 30 November 1999 and 17 April 2000 were the consequences of the treatment, in particular, the rape, to which the applicant was allegedly subjected on 19 November 1999 by three police officers.

41. In addition, as regards the second incident on 28 November 1999, even assuming that there was some factual basis to the applicant's claims, leaving her with feelings of apprehension or disquiet, the Court recalls that such feelings would not be enough in themselves to amount to degrading treatment within the meaning of Article 3 (see, in particular, *Hüsniye Tekin v. Turkey*, no. 50971/99, § 48, 25 October 2005, and *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006).

42. In conclusion, the material submitted by the applicant is not sufficient to enable the Court to find beyond reasonable doubt that the applicant was subjected to treatment which amounted to a breach of Article 3 of the Convention on 22 and 29 November 1999 at the hands of State agents.

Consequently, no violation of Article 3 has been proven in its substantive limb.

2. *The lack of an effective investigation*

43. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion”, even if such treatment is administered by private individuals (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). The minimum standards applicable, as defined by the Court's case-law, 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). In addition, for an investigation to be considered effective, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (see, in particular, *Batı and Others*, cited above, § 134).

44. The Court considers that the applicant's testimony, the seriousness of her allegations, her age and the medical reports attesting to her mental health together raise a reasonable suspicion that the applicant could have been the subject of ill-treatment, irrespective of the status of the alleged perpetrator(s). An investigation was therefore required.

45. In the instant case, the Court observes that an investigation into the allegations of the applicant was initiated promptly by the public prosecutor's

office. This investigation ended when the Assize Court upheld the decision of the public prosecutor not to prosecute Mr R.G., the police officer identified by the applicant as one of those who had entered her house on 28 November 1999. In the course of the investigation the prosecutor heard evidence from the applicant and additional medical reports were sought to establish the veracity of her allegations. The prosecutor, with exemplary diligence, involved the applicant in the preliminary investigation by asking her to identify the alleged perpetrators first by checking police records and later via an identification procedure.

46. Nonetheless, the Court observes that there were shortcomings in the way the investigation was conducted by the prosecutor which had repercussions on its effectiveness. In this connection, the Court observes, firstly, that the prosecutor never sought to secure the testimonies of potential witnesses, such as neighbours or relatives, in order to establish the veracity of the allegations of the applicant regarding the incidents. Secondly, the applicant was questioned twice without the assistance of a third person who could act as an official translator. Instead her lawyer and son had to take on that role (see paragraphs 16 and 17 above). The prosecutor never took into account the possibility that some of the inconsistencies in her story, in addition to the poor state of the applicant's mental health, might have been the result of inadequate translation. Thirdly, there is no explanation as to why the applicant's son was present during the identification procedure and whether he had been duly warned that any interference on his part in that process could have adverse consequences for the investigation. Finally, the Court notes that the prosecutor's investigation into the applicant's allegations remained fairly limited, in that no consideration was given to the possibility that the applicant might have been ill-treated by persons simply claiming to be police officers, and thus expanding the investigation in that light.

47. In the light of the foregoing the Court finds that the investigation carried out into the applicant's arguable allegations of ill-treatment was inadequate and, therefore, in breach of the State's procedural obligations under Article 3 of the Convention.

48. It follows that there has been a violation of Article 3 under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLES 8, 14 AND 34 OF THE CONVENTION

49. The applicant complained that the police raid at her house constituted an unjustified interference with her right to respect for her private life and her home. She submitted that the police had entered her house, stolen her money and thrown her daughter's picture on the floor. In addition, the applicant complained that she had been discriminated against

on account of her ethnic origin, in breach of Article 14 of the Convention. Finally, the applicant complained that her constant harassment by police officers and the criminal proceedings instigated against her constituted pressure on her to withdraw her application and an interference with the exercise of the right of individual petition.

50. Having regard to the facts of the case, the submissions of the parties and its finding of a violation under Article 3 under its procedural limb above, the Court considers that it has examined the main legal question raised in the present application. It concludes therefore that there is no need to give a separate ruling on the applicant's remaining complaints under Articles 8, 14 and 34 of the Convention (see, for example, *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 43, 17 July 2007, and *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

52. The Court points out that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part.”

53. In the instant case, on 29 September 2005 the Court invited the applicant to submit her claims for just satisfaction by 10 November 2005. However, she did not submit any such claims within the specified time-limit.

54. In view of the above, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no substantive violation of Article 3 of the Convention on account of the applicant's alleged ill-treatment by State agents;

3. *Holds* that there has been a procedural violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment;
4. *Holds* that there is no need to examine separately the complaints under Articles 8, 14 and 34 of the Convention.

Done in English, and notified in writing on 11 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President