



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

THIRD SECTION

CASE OF KARATEPE AND ULAŞ v. TURKEY

(Application no. 29766/03)

JUDGMENT

STRASBOURG

17 June 2008

FINAL

17/09/2008

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 Karatepe and Ulaş v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Ineta Ziemele,

Luis López Guerra,

Işıl Karakaş,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 29766/03) 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 two Turkish nationals, Mr Umar Karatepe and Ms Sevil Ulaş (“the applicants”), on 22 August 2003.

2. The applicants were represented by Mr A.T. Ocak, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged that the treatment to which they had been subjected by police offices during their arrest had amounted to a breach of Article 3 of the Convention.

4. On 8 December 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**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1975 and 1978 respectively and live in Istanbul.

6. On 1 September 2001 at about 7 p.m. the applicants went to the Milli Egemenlik Park in Bakırköy (Istanbul) to attend a meeting, namely the so-

called “peace festivities” organised by the Bakırköy branch of the Republican People’s Party (*Cumhuriyet Halk Partisi*). While they were about to enter the park, the applicants were stopped and searched by the police. The officers found fifty-three copies of a bulletin in a black plastic bag. As the applicants appeared suspicious, the police officers arrested them. The applicants were allegedly beaten up, insulted and threatened with death during their arrest. In particular, two police officers applied pressure to their necks from behind and made them lie down. Following the arrival of two more police officers, they dragged both applicants along the ground, kicked and slapped them and put them in a police car. Once in the car, the police officers continued to punch and slap them, hit them with wooden sticks, insult and threaten them. One of the police officers first sat on the head of Sevil Ulaş and then hit her against the roof of the car. When the applicants asked where they were being taken, one of the officers said: “We are taking you to a stream where your corpses will be found”.

7. However, according to the arrest and seizure report drafted by two police officers, the applicants were arrested because they had been acting suspiciously. The report further stated that the applicants had resisted the police officers, and had self-inflicted certain scratches and bruises on their bodies during the incident. In particular, Umar Karatepe had hit his elbow on the wall of the park and Sevil Ulaş had bruised her left elbow whilst resisting getting into the police car. The applicants refused to sign this report.

8. On the same day at about 8 p.m. the applicants were taken to the Bakırköy State Hospital for a medical examination. The doctor who examined the applicants drafted a provisional report. She observed that the first applicant had two scratches on his right elbow and a bruise on his back. As for the second applicant, the presence of a bruise on her left elbow was noted.

9. On 2 September 2001, at about 1 a.m., the applicants were taken to the Bakırköy State Hospital once again. The same doctor examined the applicants and reiterated her earlier findings in her report. Following this medical examination, the applicants were released.

10. On 3 September 2001 the Bakırköy Forensic Institute delivered its final report in respect of the applicants. It was stated that the first applicant had several bruises and scratches on his body. In particular, the doctor noted the presence of bruises measuring 3x1 cm, 0.5x0.5 cm, 2x1 cm and 0.5x0.3 cm on the right elbow, a scratch of 2 cm below the bruises described above, an ecchymosis of 6x3 cm on the inner part of the right arm, an ecchymosis of 1x2 cm in the middle inner part of the right biceps, a scratch of 3 cm on the right waist area, two ecchymosis of 1,5x1 cm and 0,3x0,3 cm on the inner middle part of the left biceps and a bruise of 2x2 cm on the inner part of the left elbow.

11. In respect of the second applicant, the doctor noted the presence of a 3x3 cm swelling in the right occipital temporal region. The report further concluded that both applicants were unfit to work for three days.

12. Again on 3 September 2001 the applicants filed a criminal complaint with the Bakırköy Public Prosecutor. They complained that the police officers had used excessive force during their arrest. They also stated that a person called Ö.U. had been an eyewitness to the events. Sevil Ulaş complained that in the course of her arrest she had received blows to her head and upper part of her body, that her head had been banged against the window, that her hair had been pulled and that these assaults by police officers had continued in the police car. Umar Karatepe alleged that he had been kicked and slapped during his arrest and that he had been beaten up in the police car on the way to the police station.

13. In his preliminary investigation report dated 28 December 2001, a senior police lieutenant, acting as the investigator, found that the complainants had shouted political slogans, such as “human dignity will defy torture” and that they hated the police because they had been arrested and detained on a number of occasions in the past and that the medical reports did not indicate the presence of any bruises which could have been caused by ill-treatment. Furthermore, considering that the police officers denied the allegations against them, the investigator concluded that there was no evidence on which to commit the accused for trial.

14. On 28 December 2001, relying on the investigator’s above report prepared in accordance with Article 5 of Law no. 4483, the Bahçelievler District Governor decided not to authorise the prosecution of the accused police officers. The applicants filed an objection against this decision.

15. On 9 April 2002 the Istanbul Regional Administrative Court set aside the District Governor’s decision of non-authorisation on the ground that the investigation into the applicants’ allegations was inadequate. The court noted that the investigator had failed to take evidence from the complainants and their witnesses. It therefore asked the District Governor’s office to conduct a new investigation. The District Governor appointed M.A., a police lieutenant, as the new investigator.

16. Between 30 May 2002 and 14 July 2002 M.A. conducted his investigation into the applicants’ allegations of ill-treatment. Having heard the applicants, police officers and an eyewitness named by the applicants, he found that the medical reports merely indicated the presence of scratches on the arms and hands of the complainants and that there was no indication of physical violence. He therefore concluded that the applicants’ allegations were not corroborated by evidence and that therefore no permission should be given for prosecution of the accused police officers.

17. In view of the investigator’s above-mentioned conclusion, on 15 July 2002 the Bahçelievler District Governor refused authorisation for the prosecution of the accused police officers.

18. On 7 October 2002, referring to the Bahçelievler District Governor's decision, the Bakırköy Public Prosecutor issued a non-prosecution decision in respect of the accused police officers. The applicants appealed against this decision.

19. On 17 December 2002 the Eyüp Assize Court dismissed the applicants' appeal. This decision was notified to the applicants on 26 February 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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).

21. Furthermore, Law No. 2559 on the Duties and Powers of the Police provides:

Additional Article 6 (dated 16 June 1985)

"In cases of resistance by persons whose arrest is necessary or by groups whose dispersal is necessary or of their threatening to attack or carrying out an attack, the police may use violence to subdue these actions.

Use of violence refers to the use of bodily force, physical force and all types of weapons specified in the law and it gradually increases according to the nature and level of resistance and attack in such a way as to restore calm.

In cases of intervention by group forces, the extent of the use of force and the equipment and instruments to be used are determined by the commander of the intervening force."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicants complained that the force used during their arrest was excessive and disproportionate and constituted 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."

23. The Government contested that argument.

A. Admissibility

24. The Court notes that this complaint 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

25. The applicants alleged that they had been severely beaten up by the police officers in the course of their arrest. They explained that they had been kicked, slapped, hit by wooden sticks and constantly insulted and threatened with death by the police officers. In their opinion, the medical reports clearly indicated the effects of the ill-treatment which they had suffered.

26. The Government claimed that the force used by the police officers was necessary to effect the applicants' arrest. Referring to the medical reports which indicated the presence of bruises on the upper parts of the applicants' bodies, they submitted that the bruises on the body of Umar Karatepe could have occurred as a result of his resistance to the police officers who wanted to put him into the police car. Furthermore, the findings contained in the forensic medical report did not prove Sevil Ulaş's allegation that she had been assaulted by the police officers. The swelling on her head could have been caused by her own resistance to the police officers.

27. The Court notes at the outset that Article 3 enshrines one of the most fundamental values of democratic societies, making no provision for exceptions and with no derogation from it being permissible, as provided by Article 15 § 2 (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

28. It reiterates that Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive (see, among other authorities, *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004; and *Günaydın v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005).

29. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see

Labita v. Italy [GC], no. 26772/95, § 121, ECHR 2000-IV). Furthermore, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 24, § 32).

30. In the instant case, the applicants claimed to have been severely beaten up, insulted and threatened with death by the police officers (see paragraph 6 above). In the Court's opinion, the presence of widespread bruises and scratches on the bodies of the applicants, as indicated in the medical reports issued by the Bakırköy State Hospital and Bakırköy Forensic Institute, are at least consistent with the applicants' allegations of having been subjected to physical violence (see paragraphs 8-11 above). It considers therefore that the injuries sustained by the applicants are sufficiently serious to bring them within the scope of Article 3 (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). In these circumstances, the Court considers that the burden rests on the Government to demonstrate with convincing arguments that the use of force, which resulted in the applicants' injuries, was not excessive (see, *Eser Ceylan v. Turkey*, no. 14166/02, § 30, 13 December 2007).

31. But the Government did no more than claim that the applicants had sustained injuries as a result of having resisted arrest by the police and that, in other words, they had inflicted injuries on themselves. Moreover, in concluding that the applicants' allegations of ill-treatment were not corroborated by any evidence, the two investigators appointed by the Bakırköy District Governor attached significant weight to the fact that the applicants had shouted political slogans, that they already hated the police and that the injuries were mere scratches which could not have resulted from physical violence (see paragraphs 13 and 16 above).

32. The Court finds these explanations irrelevant and unconvincing. It considers that, even if the applicants resisted arrest by the police, this could only have provided a very incomplete, and therefore insufficient, explanation of the widespread injuries on the body of the first applicant and on the head of the second applicant, which rendered them unfit for work for three days. In this connection, it notes that the applicants were arrested while entering a park where peace festivities were to take place. The police officers wanted to arrest them because they looked suspicious (see paragraph 6 above). However, the Government did not suggest that the festivities in question were the scene of violence or likely to give rise to unexpected developments to which the police officers had to react without prior preparation (see *Eser Ceylan*, cited above, § 30). In these circumstances, the Court considers that the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used against the applicants, whose injuries are corroborated by medical reports.

33. The foregoing considerations are sufficient to enable the Court to conclude that the force used against the applicants during their arrest was excessive and that therefore the State is responsible, under Article 3 of the Convention, for the injuries sustained by them during their arrest.

34. There has accordingly been a violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicants further complained of violations of Article 5 § 1 (c), Article 10 and Article 11 of the Convention. In this connection, they alleged that they had not been informed of the reasons for their arrest and that their rights to freedom of expression and association had been breached since they had been prevented from participating in the festivities.

36. The Government contested these arguments.

37. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicants each claimed 5,000 euros (EUR) in respect of pecuniary damage. This sum related to their loss of earnings and medical costs and expenses. They also claimed a total sum of EUR 10,000 in respect of non-pecuniary damage.

40. The Government did not reply to the applicants' just satisfaction claims.

41. As regards the alleged pecuniary damage sustained by the applicants, the Court considers that they have failed properly to substantiate their claim under this head. The Court accordingly dismisses it.

42. However, the Court finds that the applicants must have suffered pain and distress which cannot be compensated for solely by the Court's finding of a violation. Having regard to the nature of the violation found in the present case and ruling on an equitable basis, it awards the applicants each

EUR 5,000 in respect of non-pecuniary damage (see *Eser Ceylan*, cited above, § 37).

B. Costs and expenses

43. The applicants also claimed EUR 9,633.94 for the costs and expenses incurred before the Court.

44. The Government did not comment on the applicants' claims.

45. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, the Court notes that the applicants solely referred to the Istanbul Bar Association's scale of fees and failed to submit any documents in support of their claims. The Court therefore does not award any sum under this head (see *Balçık and Others v. Turkey*, no. 25/02, § 65, 29 November 2007).

C. Default interest

46. 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 complaint concerning the alleged ill-treatment inflicted on the applicants admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay each of the applicants, 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President