



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

THIRD SECTION

CASE OF MEHMET ÜMİT ERDEM v. TURKEY

(Application no. 42234/02)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 Mehmet Ümit Erdem 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 Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 42234/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Mehmet Ümit Erdem (“the applicant”), on 7 October 2002.

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

3. On 2 May 2007 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 1976 and lives in Istanbul where he practises as a lawyer.

A. The events of 14 October 2001

5. According to the official documents, including transcription of data from the police camera, a number of political parties and non-governmental organisations wanted to hold an anti-war gathering in Istanbul's Şişli Square on 14 October 2001. However, the Istanbul Governor did not permit it. On that day, at around 11.30 a.m., a group of about 500 people carrying the flags of these parties started to walk towards the ferry boat station at the Kadıköy Square. The organisers were warned, with megaphones, that the gathering was unlawful, that they could not make press statements at that place and that if they did not disperse the police would have to resort to force. The crowd were shouting out slogans like "Yankee go home", "No to imperialist and colonial war", "Terrorist America", "Money for education and health and not for war", "the Middle East will be the grave of imperialism". As Mr L.T., head of the EMEP party, despite warnings, continued to make an oral press statement, the Rapid Response Force (*Çevik Kuvvet*) intervened and arrested forty-six persons who had resisted dispersing.

6. In the application form, the applicant claimed that he was in the crowd that day when police officers from the Rapid Response Force used excessive force on them. He submitted that, although he did not resist, the police, without any prior warning, sprayed pepper gas in his face, hit him with their truncheons and kicked him. As a result of having been sprayed with pepper gas, the applicant had a burning sensation in his eyes and face and had difficulty breathing. After having been kicked and beaten up with truncheons, he felt pain in his arms, legs, chest and ribs. Afterwards, the applicant stayed in the Kadıköy area in order to assist the injured and to note the names of persons who were being taken into custody. He then witnessed a high-ranking police officer beating up a person and taking him into custody. The same officer then started swearing at the applicant and pushed him about. A number of police officers then sent the applicant away from the area.

B. The criminal investigation of the applicant's complaint of ill-treatment

7. Approximately two hours after the incident, the applicant went to the office of the Kadıköy prosecutor and made an official complaint about the treatment to which he had been subjected by police officers and asked to be referred to a hospital. In particular, he stated that while the press release was being read, the rapid response forces had, without prior warning, started spraying pepper gas and hitting them. He submitted that he had received blows to his back and had been kicked. The applicant claimed that since the

police officers had masks it was not possible for him to identify the perpetrators.

8. The same day the applicant was examined by a doctor at the Numune hospital who found 3 x 15 cm of hyperaemia (increases of blood flow in tissue) in an area on the right side of the applicant's back, sensitivity in the right femur and pain in his right shoulder. He was transferred to an orthopaedist who noted ecchymotic regions on the applicant's right arm and back. The applicant was also examined by another doctor at another hospital who found hyperaemic regions on the right arm and costal-vertebral region. It appears that a number of X-rays were also taken on this day.

9. The following day the applicant was examined by the Kadıköy branch of the Forensic Medicine Directorate. The doctor found no trauma apart from pain in the applicant's right shoulder.

10. On 22 October 2001 a doctor who examined the applicant's X-rays noted that he had a closed fracture on the right eleventh costal cartilage.

11. On 5 November 2001 the Kadıköy public prosecutor requested authorisation from the Istanbul governor in order to be able to prosecute the police officers allegedly responsible for the applicant's ill-treatment. This request was made pursuant to Law No. 4483 on the Trial of State Employees and other Public Servants.

12. On 19 November 2001 the applicant was examined by a doctor who found that the applicant was suffering from lumbago and recommended ten days' rest.

13. On 11 December 2001 an Istanbul deputy police chief was appointed to carry out a preliminary investigation on behalf of the governor of the applicant's allegations of ill-treatment.

14. On the same day the deputy police chief prepared his report and submitted it to the governor's office. It recommended that authorisation for prosecution should be declined. It appears from the report that, in the course of its preparation, the police chief had regard to an incident report of 14 October 2001, drawn up by the police officers who had taken part in dispersing the crowd, as well as verbatim records of video footage of the incident. According to the police chief's report, police officers had had to use force to disperse the demonstrators as the demonstrators had failed to comply with an order to disperse. The applicant was not "one of the persons who had been taken into custody after the incidents". The report further stated that the police officers who had taken part in the incident had since been reminded about how to perform their functions during a demonstration.

15. On 24 December 2001 the Istanbul governor, on the basis of the information contained in the deputy police chief's report and statements, declined to grant the necessary authorisation for their prosecution.

16. On 18 January 2002, and within the relevant time limit, the applicant lodged an objection to the governor's decision with the Regional

Administrative Court. The applicant submitted, *inter alia*, that one of the chiefs of the Rapid Response Force had sworn at him before he was forcefully removed from the area by police officers and that he would be able to recognise this man if he ever saw him again. Referring to his medical reports, the applicant claimed that he was still under treatment.

17. In the meantime, on 8 January 2002, the Kadıköy prosecutor decided, on the basis of the governor's decision of 21 November 2001, not to bring any criminal proceedings against the security forces at the Rapid Force Department of the Istanbul Security Headquarters. An objection by the applicant to this decision was dismissed by the Üsküdar Assize Court on 15 March 2002.

18. On 2 May 2002 the Istanbul Regional Administrative Court upheld the Istanbul Governor's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A description of the relevant domestic law at the material time can be found in *Şimşek and Others v. Turkey* (nos. 35072/97 and 37194/97, §§ 82-84 and 86-87, 26 July 2005), and in *Balçık and Others v. Turkey*, (no. 25/02, §§ 17-19, 29 November 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained that the treatment he had been subjected to on 14 October 2001 amounted to inhuman and degrading treatment, 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. Admissibility

21. 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

1. *The parties' submissions*

22. The Government first claimed that it had not been shown that the applicant had actually taken part in the demonstration and been injured as a result of the lawful force used by the police officers. Secondly, they noted that even if the applicant had been injured by the police officers the findings of the medical reports established on the day of the event do not disclose that any excessive force was used on the applicant. In addition, the Government maintained that an effective investigation had been conducted into the circumstances of the case. In this connection, they referred to the steps taken by the authorities.

23. The applicant maintained that the police officers had used disproportionate force on people who had been participating in a peaceful demonstration. In this connection, he alleged that the treatment he had received that day amounted to torture and degrading treatment. He further submitted that the authorities had failed to investigate the case properly. In particular, no investigation was conducted into the acts of the police officer named Şükrü.

2. *The Court's assessment*

24. The Court 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).

25. The Court finds that the applicant's injuries (see paragraph 8), whether caused by the police or by someone else, were sufficiently serious to bring them within the scope of Article 3. It remains to be considered whether the State should be held responsible under Article 3 in respect of these injuries. In the instant case, the Government have disputed the presence of the applicant at the scene of the demonstration where the police had recourse to force (see, for example, *a contrario*, *Necdet Bulut v. Turkey*, no. 77092/01, § 24, 20 November 2007, *Eser Ceylan v. Turkey*, no. 14166/02, § 30, 13 December 2007, and *Balçık and Others*, cited above, § 30). The applicant, apart from his allegations, has not provided any prima facie evidence, such as witness testimonies, in support of his presence at the scene in question. In view of the above and in the absence of any documents in the case file which can place the applicant where he claims to have been, the Court considers that there is an insufficient factual and evidentiary basis on which to conclude "beyond reasonable doubt" that the State was

responsible for the injuries sustained by the applicant on 14 October 2001 (see *Balçık and Others*, cited above, § 25).

26. However, 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 v. Turkey* (nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts))).

27. The Court considers that the applicant’s testimony, the seriousness of his allegations, and the medical reports attesting the injuries sustained by him together raise a reasonable suspicion that he could have been subjected to ill-treatment as alleged. An investigation was therefore required.

28. The Court notes that, in the instant case, the investigation file initiated by the public prosecutor was transferred to the office of the Istanbul Governor in accordance with the provisions of Law No. 4483. A preliminary investigation was carried out by a deputy police chief. In this connection, the Court is struck by the fact that the deputy police chief was able to conclude the preliminary investigation and submit his recommendation report on the very day of his appointment (see paragraphs 13-14). Subsequently, the Governor, on the basis of the information gathered during the preliminary investigation, decided that no prosecution should be brought against the accused police officers (see paragraph 15 above).

29. The Court reiterates its earlier finding in a number of cases that the investigation carried out by an administrative entity such as the governor’s office cannot be regarded as independent since they are chaired by the governor, who is himself responsible for the security forces whose conduct was in issue in that case. Furthermore, the investigations which they instigated were often carried out by security forces linked hierarchically to the units concerned in the incident (see, among other authorities, *Kurnaz and Others v. Turkey*, no. 36672/97, § 62, 24 July 2007 and the cases referred to therein). The Court finds no reason to reach a different conclusion in the present case. In the Court’s opinion, the decision to entrust the Governor’s office with the investigation into the responsibility of the

security forces for the alleged injuries caused to the applicant on 14 October 2001 must call into question the possibility of making any independent determination on what happened at the material time.

30. In the light of the above, the Court concludes that the domestic authorities failed to conduct an independent investigation into the circumstances surrounding the injuries sustained by the applicant on 14 October 2001.

31. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

32. The applicant further complained that the above events, particularly the excessive force used by the security forces, constituted a violation of his rights under Articles 10 and 11 of the Convention.

33. The Court considers that these complaints should be examined from the standpoint of Article 11 alone.

34. In view of its conclusions above (see paragraph 25) the Court is not persuaded that, in the circumstances of the instant case, the applicant has shown that he was subjected to an interference with his rights under this head. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed, in total, 31,320 euros (EUR) in respect of pecuniary and non-pecuniary damage. In support of his pecuniary damage claim the applicant submitted two hospital receipts for 27,000,000 Turkish liras (approximately EUR 19).

37. The Government contested the amount.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 6,644 for costs and expenses incurred before the Court. He submitted a breakdown of costs drawn up by his legal representative and one postal receipt.

40. The Government contested the amount.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

42. 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 under Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention on account of the injuries sustained by the applicant on 14 October 2001;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an independent investigation into the circumstances surrounding the injuries sustained by the applicant on 14 October 2001;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President