



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

SECOND SECTION

CASE OF KEMAL KAHRAMAN v. TURKEY

(Application no. 39857/03)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Kemal Kahraman v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 39857/03) 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 Ali Kahraman and Mr Kemal Kahraman (“the applicants”), on 17 November 2003.

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

3. The applicants alleged under Articles 3 and 6 of the Convention that they had been subjected to ill-treatment during their detention in police custody and that they had been denied a fair hearing by the Istanbul State Security Court, which tried and convicted them.

4. On 3 October 2006 the Court declared the application partly inadmissible, particularly as regards the complaints of the first applicant, Mr Ali Kahraman, and communicated Mr Kemal Kahraman’s allegations of ill-treatment to the Government. Hereafter, only Kemal Kahraman is referred to as the applicant in the case. 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 applicant Kemal Kahraman was born in 1972 and lives in Istanbul.

6. On 10 June 1999 the applicant was arrested by police officers from the Anti-Terrorism Branch of the Istanbul Security Directorate on suspicion of membership of the IBDA-C (*Great Eastern Islamic Raiders' Front-İslami Büyükdoğu Akıncılar Cephesi*). He was believed to have been involved in the bombing of bars and clubs in Istanbul on three different occasions, which had caused casualties. The police found instructions on how to make bombs, the necessary materials and explosives for doing so, as well as photographs in which the applicant was covered in the organisation's flag whilst holding a Kalashnikov-type rifle, at his place of residence. The applicant claimed that during his questioning by the police officers he was blindfolded and subjected to various forms of ill-treatment. In particular, he was suspended by his arms ("reverse hanging"), hosed with cold water and beaten up by the police officers. Thereafter the applicant was made to sign statements in which he admitted the charges against him.

7. On 14 June 1999 the applicant was brought before the public prosecutor at the Istanbul State Security Court, where he repudiated the content of his police statements, alleging that they had been extracted from him under torture.

8. On the same day, the applicant was examined by a doctor at the Istanbul Forensic Medicine Institute. The medical report recorded a bruise of 2 cm on his left upper leg, a bruise of 1.5 cm on the inner part of his right upper arm, a hyperaemic¹ area of 2cm on the right elbow, a bruise of 1.5 cm on the inner part of the left upper arm, a scab-covered lesion of 1 cm on the left elbow, and a complaint of pain in the back and arms. In her report the doctor also noted the applicant's complaints that he had been suspended by his arms, beaten up and threatened during his detention in police custody. She thus concluded that the applicant had been subjected to physical violence which rendered him unfit for work for two days. The applicant was then brought before the investigating judge, who ordered his pre-trial detention.

9. On 18 September 1999 the Chief Public Prosecutor filed a bill of indictment with the Istanbul State Security Court, accusing the applicant of membership of the IBDA-C. The Public Prosecutor sought the death penalty, under Article 146 § 1 of the Criminal Code, on account of the applicant's participation in that organisation's activities, and his aim to

¹ Relating to or caused by hyperaemia (increased blood in an organ or other body part)

undermine the constitutional order of the State and to replace it with a theocratic regime.

10. In the course of the criminal proceedings, the applicant applied to the Istanbul State Security Court, alleging that he had been tortured during his detention in police custody. He protested his innocence and stated that he had been forced under torture to sign statements which he had not seen, including the report on the search of his home, and that the materials allegedly found at his home did not belong to him.

11. In his defence submissions dated 21 May 2002, the applicant's lawyer referred to the medical report of 14 June 1999 indicating signs of ill-treatment, and asked the Istanbul State Security Court to acquit his client for lack of evidence.

12. On 1 October 2002 the State Security Court found the applicant guilty as charged. The court relied on the evidence gathered by the police from the applicant's place of residence, such as the photographs showing him wrapped in the IBDA-C banner whilst holding a gun, materials for making bombs, as verified by a criminal expert report, and the applicant's handwriting on some of the papers, giving instructions on how to make bombs, as well as the statements made by the applicant's co-accused. It therefore convicted the applicant and sentenced him to life imprisonment.

13. On 7 November 2002 the applicant's lawyer lodged an appeal with the Court of Cassation, arguing that the State Security Court had disregarded their defence submissions. Relying on the medical report dated 14 June 1999, he claimed that, in convicting the applicant, the first-instance court had relied on the statements which the police had obtained from the applicant under torture and that no investigation had been carried out into his allegations before the impugned statements had been included in the case file. He therefore asked the court to quash the first-instance court's judgment and to refer the case back for a new trial.

14. On 23 September 2003 the Court of Cassation dismissed the appeal and upheld the judgment of the Istanbul State Security Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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, ECHR 2004-IV).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained that he had been subjected to various forms of torture during his detention in police custody, 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

1. The parties' submissions

(a) The Government

17. The Government submitted that this complaint was inadmissible for failure to comply with the six-month rule and to exhaust domestic remedies within the meaning of Article 35 of the Convention.

18. Referring to the Court's admissibility decision of 3 October 2006 (paragraph 4 above), in which the first applicant Ali Kahraman's complaint under Article 3 of the Convention had been dismissed for failure to observe the six-month rule, the Government submitted that the complaints of the present applicant, Kemal Kahraman, should also be dismissed for non-compliance with the six-month rule. In this connection, they contended that, even assuming that there were no remedies to be exhausted, as alleged by the applicant, he should have understood this, at the latest, by the time the Istanbul State Security Court had given its judgment on 1 October 2002 and that the application should have been lodged with the Court not later than 1 April 2003. The applicant had lodged his complaint on 17 November 2003, clearly outside the six-month time-limit.

19. The Government further claimed that the applicant had not exhausted domestic remedies since he had failed to avail himself of the relevant civil and administrative-law remedies. They noted that the applicant could have brought an action for a full remedy (*tam yargı davası*) in the Ankara Administrative Court against the Ministry of Interior in respect of his allegations of ill-treatment.

(b) The applicant

20. The applicant claimed that he had complied with the six-month and exhaustion of domestic remedies rules under Article 35 § 1 of the Convention. He noted that he had brought his allegations of torture to the

attention of the national authorities, namely before the State Security Court and the Court of Cassation, but that no action had been taken to investigate those allegations. He therefore maintained that he had lodged his application following the appeal court's judgment, and therefore after the exhaustion of all remedies and within the six-month time-limit.

2. *The Court's assessment*

21. As regards the first limb of the Government's objections, the Court notes that it indeed dismissed Ali Kahraman's complaints under Article 3 of the Convention for failure to observe the six-month rule and decided to communicate Kemal Kahraman's complaints to the respondent Government. As explained in its decision dated 3 October 2006, Ali Kahraman's failure to pursue his complaints of ill-treatment during the proceedings before the first-instance court and the Court of Cassation grounded the Court's considerations that, even assuming that Ali Kahraman was right in his assertion that the domestic remedies were ineffective, he must have become aware of the ineffectiveness of those remedies by the date on which the Istanbul State Security Court gave judgment. Accordingly, in Ali Kahraman's case, the six-month period started to run from the date of the Istanbul State Security Court's judgment because he did not raise his complaints, alleging ill-treatment, in his appeal and the Court of Cassation therefore did not deal with them.

22. However, the present applicant, Kemal Kahraman, repeatedly asked the judicial authorities to take action against the police officers who had allegedly ill-treated him and to disregard the statements which the police had obtained from him thereby (see paragraphs 7, 10 and 11 above). He also reiterated his complaints before the Court of Cassation and lodged his application within six months of the latter's decision (see paragraph 13 above). In these circumstances, the Court considers that Kemal Kahraman complied with the six-month time-limit under Article 35 § 1 of the Convention.

23. As regard the second limb of the objections, namely the alleged non-exhaustion of civil and administrative-law remedies, the Court reiterates that it has already examined and dismissed the Government's preliminary objections in similar cases (see, in particular, *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52). It finds no particular circumstances in the instant case that require it to depart from its findings in the foregoing applications.

24. In these circumstances, the Court dismisses the Government's preliminary objections.

25. The Court notes that the application 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

26. The applicant alleged that he had been suspended by his arms (“reverse hanging”), hosed with cold water and beaten up during his detention in police custody.

27. The Government submitted that the applicant’s complaints were unsubstantiated.

28. 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, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, Reports 1998-VIII, p. 3288, § 93).

29. It also reiterates that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim’s allegations, particularly if those allegations were corroborated by medical reports, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87, ECHR 1999-V, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

30. Furthermore, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court 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). Moreover, where allegations are made under Article 3 of the Convention, the Court must make a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

31. In the instant case, following his release from police custody, the applicant was examined by a doctor from the Istanbul Forensic Institute. In her report, the doctor noted the applicant’s complaints and found numerous injuries on his body, in particular hyperaemia, bruising and a scab-covered lesion, as well as pain in his arms. She concluded that the applicant had been subjected to physical violence which rendered him unfit for work for two days (see paragraph 8 above). In the Court’s opinion, these injuries are consistent with the applicant’s allegations of having been suspended by his arms and beaten up by the police officers. They are therefore sufficiently serious to fall within the scope of Article 3 (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

32. The Government did not offer any explanation for the injuries observed on the applicant's body. Nor did they challenge the medical report in question or allege that those injuries dated from the period prior to the applicant's arrest.

33. As to the seriousness of the treatment in question, the Court reiterates that, in accordance with its case-law in this sphere (see, among other authorities, *Selmouni*, cited above, §§ 96-97), in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was intended that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

34. In this connection, the Court considers that the treatment complained of was inflicted on the applicant intentionally by the police officers for the purpose of extracting confessions from him. In these circumstances, the Court finds that this act was particularly serious and cruel, and capable of causing severe pain and suffering. It therefore concludes that this sort of ill-treatment can only be described as torture within the meaning of Article 3 of the Convention (see *Aksoy*, cited above, § 64, and *Koçak v. Turkey*, no. 32581/96, § 48, 3 May 2007).

35. Considering the circumstances of the case as a whole, and the absence of a plausible explanation from the Government as to the cause of the injuries sustained by the applicant while in custody, the Court finds that these injuries were the result of torture for which the Government bore responsibility.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. Without specifying an amount, the applicant asked the Court to make an award for non-pecuniary damage. He also claimed 2,000 Turkish liras (TRY – approximately 1,000 euros (EUR)) in respect of pecuniary damage incurred during the domestic proceedings.

39. The Government submitted that no award should be made, given the applicant's failure to claim a specific amount for non-pecuniary damage.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. However, having regard to the extremely serious violation of Article 3 suffered by the applicant and ruling on an equitable basis, it awards him EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 5,500 for legal fees incurred by him and Ali Kahraman for their representation before the Court. In this connection, he submitted a time-schedule indicating 12.5 hours' legal work carried out by his legal representative and a table of costs and expenditures. The applicant also claimed TRY 394 (approximately EUR 200) for stationery, postage and translation fees.

42. The Government claimed that the amount claimed was not justified and had not been actually and necessarily incurred.

43. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,500 for the proceedings before it.

C. Default interest

44. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, Kemal Kahraman, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
- (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President