



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

SECOND SECTION

CASE OF ÇELİK v. TURKEY (no. 1)

(Application no. 39324/02)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Çelik v. Turkey (no. 1),

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 39324/02) 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 Murat Çelik (“the applicant”), on 3 September 2002.

2. The applicant was represented by Mrs S. Ballıkaya Çelik, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 5 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, a lawyer, was born in 1966 and lives in Istanbul. He was a member of the board of directors of the Istanbul Bar Association and Istanbul department director of the Contemporary Lawyers Association at the time of the lodging of the application. The applicant also pursued various activities for the furtherance of human rights protection in Turkey.

A. The alleged ill-treatment

5. In his application form the applicant submitted that, on 18 February 1999, a client of his and Ms Several Demir, a certain Ms S.P., committed suicide in prison in protest. When they went to pick up her body at the morgue, together with the deceased's brother, a police officer approached them and told them that Mr A.Ç., the deputy police chief of the Istanbul Security Directorate, would like to express his condolences and invited them to the Security Directorate to meet him. At the police station the applicant and Ms Demir were asked to wait outside while Mr A.Ç. received the deceased's brother, Mr A.P. After a while they were also received. The applicant claimed that there were seven or eight other policemen in the room and that, as soon as they entered the room and sat down, Mr A.Ç. asked, in a stern tone, why they were interested in this incident. When the applicant stated that they were the deceased's lawyers, Mr A.Ç. became angry and told them in a rude manner that the dead people do not have lawyers. The applicant alleged that, when he stated that they were the lawyers of the family, Mr A.Ç. became even angrier, got up from his seat, repeated that dead people do not have lawyers, insulted the applicant and punched him in the face. When the applicant tried to get up from his seat, the other police officers held his arms and hands while Mr A.Ç. continued to punch him in the face and stomach. Later he was pushed around and kicked out of the police station, with insults being hurled at him.

6. According to the Government, the deceased's brother was at the police station to sort out paperwork regarding the funeral. Two lawyers erupted into the office of the deputy police chief and stated that they were the deceased's lawyers and wanted to take over the funeral arrangements. The deputy director, maintaining that deceased persons could not be legally represented, asked the lawyers to leave his office. Since they resisted, they were escorted by the police out of the Security Headquarters.

B. The investigation into the alleged ill-treatment

7. On the same day the applicant submitted an official complaint to the Fatih public prosecutor about the above events and requested the prosecution of Mr A.Ç. and the other police officers on duty that day. In addition, he asked to be referred to the Forensic Medical Institute for a medical examination.

8. On the same day, at 6.15 p.m., the applicant was examined by a doctor at Haseki Hospital who noted that the applicant had pain in his eye sockets and neck. The applicant was also seen by an orthopaedist who noted that the applicant had pain in his neck and right shoulder.

9. On 19 and 20 February 1999, press statements were issued by the Turkish Bar Association, Istanbul Bar Association and Contemporary

Lawyers' Association, condemning the incident and requesting the prosecution of those responsible.

10. On 26 March 1999 the Fatih public prosecutor gave a decision of lack of jurisdiction *ratione materiae* and transferred the investigation file to the Istanbul Governor's Office.

11. On 9 April 1999 Mr E.Y., an Istanbul deputy police chief ("the investigator"), was appointed to carry out a preliminary investigation on behalf of the governor into the applicant's allegations of ill-treatment.

12. On an unspecified date the investigator prepared his report and submitted it to the governor's office. It recommended that authorisation for prosecution be declined. It appears from the report that in the course of its preparation Mr E.Y. heard the police officers on duty that day and two journalists who had been in the waiting room of Mr A.Ç. during the alleged incident. They all testified that the applicant had not been attacked.

13. On 15 June 1999 the Istanbul governor, on the basis of the investigator's report, declined to grant the necessary authorisation for prosecution.

14. This decision was annulled by the Istanbul Administrative Court on 30 November 2001 on the ground that the decision should have been taken by the Provincial Administrative Council and not by the governor himself.

15. In the meantime, on an unspecified date, Mr A.Ç. was promoted and became the police chief of the Diyarbakır Security Headquarters.

16. On 15 April 2002 the Fatih Forensic Medicine Department, relying on the findings in the medical report of 18 February 1999, concluded that the injuries rendered the applicant unfit for work for three days.

17. On 8 April 2002 Mr N.P., the deputy police chief of the Istanbul Security Headquarters, heard the applicant, Mr A.P. and Ms S.D.

18. In his statement the applicant repeated his allegations. In particular, he maintained that Mr A.Ç. knew him because he was the director of the Contemporary Lawyers Association. He further stated that, when he went to submit his petition to the Fatih public prosecutor's office, his clothes were ripped and bloody.

19. In her statement Ms Demir supported the applicant's version of events. She submitted that she did not see who else apart from Mr A.Ç. had hit the applicant but that she herself had not been verbally or physically attacked by the policemen.

20. In his statement Mr A.P., the deceased's brother, maintained that Mr A.Ç. had been angry with the lawyers, and had stated that dead people do not have lawyers, then punched and kicked them out. He further stated that he was outside and that he did not hear or witness what had happened.

21. Between 4 April and 7 April 2002, Mr N.P. heard five police officers who had been on duty that day, three of whom were the accused. He also heard Mr A.Ç.'s secretary. They all denied that the applicant had been ill-treated.

22. On 5 April 2002 Mr N.P. heard two journalists, Mr M.Ç. and Mr O.S.Ü. They both affirmed that the applicant had not been ill-treated. In particular, they submitted that the door of Mr A.Ç.'s office was open and that Mr A.Ç. had asked why they were there. When the lawyers replied that they were the deceased's lawyers and were going to take care of her funeral arrangements, Mr A.Ç. told them that the dead people do not have lawyers and that the incident did not have anything to do with them. However, the lawyers insisted and started making propaganda for an illegal organisation, at which point Mr A.Ç. told them that he would not permit such propaganda in a State building and asked them to leave. When the lawyers refused to do so, Mr A.Ç. asked police officers to escort them out. While they were being removed, the lawyers shouted "establishment police, fascists, you will be held to account for this" in the corridor.

23. On 9 April 2002 Mr C.S., the Diyarbakır Governor heard Mr A.Ç., who denied the accusations against him. In particular, he maintained that the lawyers had been removed from his room after they had insisted that they would organise the funeral even though he had explained that this matter would be discussed with the deceased's relative alone. He submitted that the lawyers, while being taken out, had shouted out "establishment police, fascists, you will be held to account for this" in the corridor.

24. On 1 May 2002 the Provincial Administrative Council of the Istanbul Governor's Office found, on the basis of the investigation file, that the accused police officers had not beaten or insulted the applicant as alleged, and refused authorisation for their prosecution. On 24 May 2002 the applicant objected to this decision. In his objection he criticised, in particular, the manner in which the investigation had been conducted and the fact that Mr A.Ç. had been promoted in the course of the investigation.

25. On 18 June 2003 the 2nd Chamber of the Supreme Administrative Court decided, in accordance with the relevant provisions of Law no. 4616, as amended by Law no. 4758, to suspend the proceedings concerning the accused police officers.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Okkalı v. Turkey*, (no. 52067/99, § 47, ECHR 2006-... (extracts)), and *Çalışır v. Turkey* (no. 52165/99, §§ 17-19, 21 February 2006).

THE LAW

I. ADMISSIBILITY

27. 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. The application must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained about the treatment he had received at the Istanbul Security Directorate on 18 February 1999 and about the manner in which the investigation had been conducted by the authorities, resulting in impunity, in breach of Article 3 of the Convention, which provides:

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

A. The parties' submissions

29. The Government maintained that the applicant's allegations of ill-treatment were not substantiated.

30. The applicant maintained his allegations. In particular, he alleged that the police officers present in the room were all known from criminal investigations involving torture and arbitrary killings and that, therefore, the attack against him had been premeditated. He further criticised the promotion of Mr A.Ç. and submitted that, due to the physical and mental injuries he had sustained, he had been unable to pursue his profession effectively. Finally, he complained about the impunity enjoyed by the police in Turkey. In his additional observations, the applicant challenged the veracity of the witness testimonies given by the journalists whom he accused of being partial, due to links with the police.

B. The Court's assessment

31. The Court reiterates the basic principles laid down in its judgments concerning Article 3 (see, in particular, *Orhan Kur v. Turkey*, no. 32577/02, § 40, 3 June 2008, and *K.Ö. v. Turkey*, no. 71795/01, §§ 35-37, 11 December 2007 and the references therein). It will examine the present case in the light of these principles.

32. In the instant case, the applicant complained of having been insulted and punched, several times, in the face and stomach by Mr A.Ç. He

maintains that he was further battered and verbally assaulted by the police officers who took him out of Mr A.Ç.'s office. The Government denied this.

33. The Court considers that the applicant has not produced any conclusive or convincing medical evidence in support of these allegations. In this connection, the Court takes note that the medical report of 18 February 1999 found that the applicant had pain in his eye sockets and neck, as well as pain in his right shoulder (see paragraph 8 above). It considers however that such indications are insufficient to substantiate or confirm the ill-treatment, in particular the punches to the face and stomach, described by the applicant (see *Ahmet Mete v. Turkey* (no. 2), no. 30465/02, § 33, 12 December 2006). The Court observes that any ill-treatment inflicted in the way alleged by the applicant would have left some distinctive marks on his body which would have been seen by the doctor who had examined him the very same day (see *Tanrıkulu and Others v. Turkey* (dec.), nos. 29918/96, 29919/96 and 30169/96, 24 February 2005).

34. In addition, as regards the applicant's allegations regarding the verbal abuse, even assuming that there was some factual basis to them, leaving him with feelings of apprehension or disquiet, the Court reiterates that such feelings would not be enough in themselves to amount to degrading treatment within the meaning of Article 3 (see, in particular, *Hüsnüye Tekin v. Turkey*, no. 50971/99, § 48, 25 October 2005, *K.Ö. v. Turkey*, cited above, § 41, and *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006).

35. In conclusion, the material before it is not sufficient to enable the Court to find beyond reasonable doubt that the applicant was subjected to treatment which amounted to a substantive breach of Article 3 of the Convention as alleged.

36. 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" (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). The minimum standards as to effectiveness 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, the Court recalls that the rights enshrined in the Convention are practical and effective, and not theoretical or illusory. Therefore, in such cases, an effective investigation must be able to lead to the identification and punishment of those responsible (see *Orhan Kur*, cited above, § 46).

37. The Court considers that the applicant's testimony, the seriousness of his allegations and the findings of the medical report of 18 February 1999 together raise a reasonable suspicion that the applicant could have been the subject of ill-treatment as alleged. An investigation was therefore required.

38. In the instant case, the Court notes that the investigation file opened by the public prosecutor was transferred, on 23 March 1999, to the office of the Istanbul Governor on 23 March 1999. A preliminary investigation was carried out by a deputy police chief. In this connection, the Court is struck by the fact that the latter was apparently able to conclude his report without hearing the applicant or his witnesses (see paragraph 12 above). On 15 June 1999 the Istanbul governor refused to authorise the prosecution of the accused police officers. However, due to the irregularity of this act, the Governor's decision was overruled by the Istanbul Administrative Court on 30 November 2001. It was only after this decision, in April 2002, that the appointed investigator heard the applicant and his witnesses, more than three years after the events. It appears that, while being investigated, the accused police officers were not suspended from duty and, on the contrary, Mr A.Ç. was promoted. On this point, the Court underlines the importance of suspension from duty of the agent under investigation in order to prevent any appearance of collusion in or tolerance of unlawful acts.

39. The Court further observes that, on 1 May 2002, the Provincial Administrative Council, on the basis of the case file, refused authorisation for the prosecution of the accused police officers. In this respect, the Court refers to a number of cases in which it has expressed doubts as to the effectiveness of investigations carried out by administrative councils, as their composition lacked the requisite independence from governors (see, for example, *Mehmet Ümit Erdem v. Turkey*, no. 42234/02, § 29, 17 July 2008, and *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.

40. Moreover, on 18 June 2003 the criminal investigation into the applicant's allegations ended without any tangible result due to the suspension of the proceedings against the accused police officers, in application of Law no. 4616. In this connection, the Court reiterates its earlier finding in a number of cases that the Turkish criminal law system has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents when criminal proceedings brought against the latter are suspended due to the application of Law no. 4616 (see *Orhan Kur v. Turkey*, cited above, § 48, *Nevruz Koç v. Turkey*, no. 18207/03, § 54, 12 June 2007, and *Yeşil and Sevim v. Turkey*, no. 34738/04, § 42, 5 June 2007).

41. In the light of the above, the Court concludes that the domestic authorities failed to conduct an independent and effective investigation into the applicant's allegations of ill-treatment.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. In the application form, the applicant complained under Articles 6 and 13 of the Convention that the authorities' failure to conduct an effective investigation into his complaints of ill-treatment had rendered impossible the punishment of the persons responsible for the ill-treatment inflicted on him or the initiation of civil proceedings against them. He further maintained that the mental scars resulting from this incident interfered with his private life, in breach of Article 8 of the Convention. Finally, the applicant alleged that he was discriminated against on account of his activities in the sphere of human rights, in violation of Article 14 of the Convention.

44. Having regard to the facts of the case, the submissions of the parties and its finding of a violation of 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 6, 8, 13 and 14 of the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007, *K.Ö. v. Turkey*, cited above, § 50, *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008, and *Mehmet Eren v. Turkey*, no. 32347/02, § 59, 14 October 2008¹).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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, costs and expenses

46. The applicant claimed, in total, 25,500 Turkish liras [TRY] (approximately 13,297 euros [EUR]) in respect of pecuniary damages. This sum concerned medical expenses and loss of earnings incurred as a result of the alleged ill-treatment, as well as the costs and expenses incurred before the Court. The applicant submitted the legal fees' agreement concluded with his lawyer. He further claimed EUR 30,000 in respect of non-pecuniary damages.

47. The Government contested the amounts.

48. As regards the alleged pecuniary damage sustained by the applicant, in respect of alleged medical expenses and loss of earnings, the Court does

¹ The judgment is not yet final.

not discern any causal link between the violation found and the unsubstantiated pecuniary damage requested. As to the claims concerning costs and expenses, the Court reiterates that an applicant is entitled to 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 documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 1,000.

49. As to the applicant's claims regarding non-pecuniary damage, the Court accepts that the applicant must have suffered distress and frustration, resulting from the inadequacy of the investigation concerning his alleged ill-treatment, which cannot be compensated solely by its finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Default interest

50. 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

1. *Declares* unanimously the application admissible;
2. *Holds* unanimously that there has been no substantive violation of Article 3 of the Convention;
3. *Holds* by 5 votes to 2 that there has been a procedural violation of Article 3 of the Convention;
4. *Holds* unanimously that there is no need to examine separately the complaints under Articles 6, 8, 13 and 14 of the Convention;
5. *Holds* by 5 votes to 2
 - (a) that the respondent State is to pay the applicant within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, for non-pecuniary damage;

- (ii) EUR 1,000 (one thousand 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partly separate opinion is annexed to this judgment:

Partly dissenting opinion of Judge András Sajó, joined by Judge Vladimiro Zagrebelsky;

F.T.
S.D.

PARTLY DISSENTING OPINION OF JUDGE
ANDRÁS SAJÓ JOINED BY JUDGE VLADIMIRO
ZAGREBELSKY

To my regret I have to disagree with the Court's conclusion that there has been a procedural violation of Article 3 of the Convention. Contrary to all the cases referred to in the Judgment, this applicant (who entered the police headquarters of his own will and was free to leave at any moment) could not allege even a semblance of ill-treatment (except a medical report issued two months after the incident that contradicted the report that was taken on the day of the incident at the hospital chosen by the applicant). He did not suffer any physical damage and (according to the Court, paragraph 34 above) the alleged verbal abuse he complained of was not enough to amount to degrading treatment within the meaning of Article 3 of the Convention.

Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). However, there is no such duty to investigate where there is no sign of injury. In the absence of injury I could not find any grounds for a reasonable suspicion.

In the absence of a fact that, at least arguably, brings the application within the orbit of Article 3 of the Convention, there is no reason to evaluate a futile investigation, even if it is part of a system which has been found repeatedly not to be in conformity with the Convention.