



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

SECOND SECTION

**CASE OF NAFİYE ÇETİN AND OTHERS v. TURKEY**

*(Application no. 19180/03)*

JUDGMENT

STRASBOURG

7 April 2009

**FINAL**

***07/07/2009***

*This judgment may be subject to editorial revision.*



**In the case of Nafiye Çetin and Others 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 17 March 2009,

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

## PROCEDURE

1. The case originated in an application (no. 19180/03) 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 six Turkish nationals, Mrs Nafiye Çetin, Mr Necat Çetin, Mr Nezir Çetin, Mr Adnan Çetin, Mrs Nuriye Kaymış and Leman Ekingen (“the applicants”), on 30 April 2003.

2. The applicants were represented by Mr S. Korkmaz, Mr A. Süer and Ms I. Midyat, lawyers practising in Diyarbakır. 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. 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 applicants were born in 1929, 1972, 1956, 1966, 1963 and 1953 respectively, and live in Mersin except for the third and the fourth applicants who reside in Diyarbakır and Şanlıurfa respectively.

5. The first applicant’s son and the other applicants’ brother, Harun Çetin, was a student at the Istanbul University at the time of the events.

6. On 15 March 1993 Harun Çetin was arrested and taken into police custody, together with his friend Mr Ö.Yüce, at the Avcılar Campus of Istanbul University. They had Molotov cocktails in their possession.

7. On 16 March 1993, while in detention, Harun Çetin's health deteriorated and he was admitted to Şişli Etfal Hospital. On the same day, he was transferred to Cerrahpaşa hospital. On his arrival, Harun Çetin was unconscious and had slight bruises and abrasions on various parts of his body. A brain scan revealed a subdural haematoma in the right fronto-temporo-parietal region. He was immediately operated on and remained in the hospital's intensive care unit until 9 June 1993, without, it appears, regaining consciousness. Harun Çetin was later transferred, first to Bakırköy Reanimation Center and later to Taksim Hospital where he died on 5 September 1993. He was twenty years old.

8. On 8 September 1993, upon the request of the Beyoğlu public prosecutor, an autopsy was carried out on Harun Çetin at the Cerrahpaşa Medical Faculty. According to the autopsy report, drawn up on 22 December 1993, the cause of death was attributed to pneumonia related respiratory insufficiency which had developed as a result of his transition from active to passive, following the subdural brain haemorrhage suffered from a head trauma.

9. In the meantime, on 16 March 1993 Mr Yüce gave a statement to the police in which he claimed, *inter alia*, that he and Harun Çetin had been beaten both by the police officers who had arrested them and by the police officers at the Avcılar police station where they were interrogated, and that Harun Çetin's poor health might have resulted from these beatings.

10. Between 3 September 1993 and 4 October 1993, a prosecutor took the statements of eleven police officers who were working either at the Avcılar police station or the anti-terror branch of the Security Directorate.

11. In an indictment dated 31 December 1993, the public prosecutor at the Bakırköy Assize Court accused Mr U.A., the police chief at the anti-terror branch of the Avcılar Security Directorate and Mr I.H., a police officer in the same department, of causing Harun Çetin's death, unintentionally, as a result of ill-treatment. They were also accused of ill-treating Mr Yüce. The charges were brought under Articles 452 § 1, 243 §§ 1 and 2 of the Criminal Code.

12. On 5 January 1994 the criminal proceedings against the accused police officers began before the Bakırköy Assize Court. The first hearing was fixed for 8 April 1994.

13. Between 8 April 1994 and 24 February 2006 the court held thirty-three hearings, during which it mainly took numerous procedural decisions in order to establish the whereabouts of Mr Yüce, without success.

14. In the hearing held on 8 April 1994 the applicants, except for Mrs Nuriye Kaymış, joined the proceedings as civil parties (*müdahil*).

15. The court heard the police officers, who denied the accusations against them at the hearing held on 1 July 1994.

16. In a petition dated 28 October 1994, the civil parties requested the court to conduct an additional investigation. In this connection, they asked the court to request the medical records of the deceased and to hear a number of witnesses, including the doctors who had treated Harun Çetin and the police officers whose names featured in the official documents in respect of Harun Çetin's arrest and detention.

17. In the hearing held on 16 May 1995, the court dismissed these requests as being irrelevant to the outcome of the case.

18. On 26 October 2001 the court decided not to hear Mr Yüce since he could not be found. However, at the next hearing on 31 May 2002, the prosecutor argued that, since no detailed statement had been obtained from Mr Yüce at the investigative stage, it was important for the court to hear him. In this connection, the prosecutor noted that Mr Yüce had claimed to have been beaten on arrest and at the police station, and that the Avcılar central police station and the anti-terror branch were in the same building. The court agreed.

19. On 12 October 2005 the court, once again, decided not to hear Mr Yüce since he could not be found. On that date, the prosecutor submitted his observations on the merits.

20. On 24 February 2006 the Bakırköy Assize Court held that the accused had ill-treated Harun Çetin with a view to extracting a confession of guilt and had caused his death. The police officers were sentenced to six years and six months' imprisonment pursuant to Articles 452 § 1 and 59 § 2 of the Criminal Code. The court decided to discontinue the proceedings regarding the ill-treatment of Mr Yüce as that prosecution had become time-barred (*zamanaşımı*).

21. The police officers appealed.

22. The applicants submitted that, since they feared that a further prolongation in the case would result in its dismissal for being time-barred, they did not appeal against this decision.

23. On 26 February 2007 the principal public prosecutor at the Court of Cassation submitted his written opinion, mentioning the approaching time-bar.

24. On 9 May 2007 the Court of Cassation quashed the judgment of the first-instance court on account of an insufficient investigation into the events in question. In this connection, it considered that the first-instance court should have heard Mr Yüce and the witnesses mentioned in the applicants' petition of 28 October 1994.

25. The case was remitted to the Bakırköy Assize Court on 20 June 2007. In the hearing held on 21 November 2007, the court decided to obtain the medical records of the deceased and to hear two persons cited by the applicants in their petition of 28 October 1994.

26. The proceedings are still pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The relevant domestic law and practice in force, at the time of the death of Harun Çetin, are outlined in the following judgments: *Ali and Ayşe Duran v. Turkey* (no. 42942/02, § 45, 8 April 2008), and *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-99, ECHR 2004-IV (extracts)).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

28. The applicants complained that the authorities had failed to carry out an effective investigation into the circumstances regarding the death of Harun Çetin, as the criminal proceedings brought against the police officers who had tortured him to death had not been concluded within a reasonable time. The applicants relied on Articles 6 and 13 of the Convention.

29. The Court considers that the applicants' complaint falls to be examined under the procedural aspect of Articles 2 and 3 of the Convention, which read, in so far as relevant, as follows:

#### Article 2

"Everyone's right to life shall be protected by law..."

#### Article 3

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

### A. Admissibility

30. The Government maintained that the applicants had failed to exhaust the domestic remedies available to them, as required by Article 35 § 1 of the Convention. In this connection, they argued that the criminal proceedings against the accused police officers were still pending before the domestic courts.

31. The applicants disputed this argument.

32. The Court observes that the criminal proceedings against the accused police officers commenced in 1993 and were still pending when the applicants filed their complaints with the Court on 30 April 2003, arguing, *inter alia*, that the said proceedings were of excessive length and therefore ineffective.

33. The Court finds that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaint. Therefore, to avoid prejudging the latter, these questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

34. Moreover, the applicants' complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

35. The Government, referring to the Court's case law, submitted that the investigation conducted at the domestic level met the requirements of the Convention. They maintained in that connection that an autopsy had been conducted and the statements of witnesses had been taken by the prosecutor. They further submitted that, subsequently, criminal proceedings had been instigated against the accused police officers. In this connection, they noted that, despite all efforts, the first-instance court had been unable to hear a key witness, which resulted in delays in the proceedings.

36. The applicants maintained their allegations.

### *2. The Court's assessment*

37. The Court reiterates the basic principles laid down in its judgments concerning a State's procedural obligations under Articles 2 and 3 of the Convention (see, in particular, *Ali and Ayşe Duran v. Turkey*, cited above, §§ 59-64, *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 91-98, ECHR 2007-..., *Ramsahai and Others v. the Netherlands*, GC, no. 52391/99, § 321, ECHR 2007-..., *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-15, ECHR 2001-III, *K.Ö. v. Turkey*, no. 71795/01, § 43, 11 December 2007, *Çamdereli v. Turkey*, no. 28433/02, § 36, 17 July 2008, and *Dölek v. Turkey*, no. 39541/98, §§ 70-75, 2 October 2007). It will examine the present case in the light of those principles.

38. In the instant case, the Court observes that an investigation into the ill-treatment and death of Harun Çetin was initiated by the public

prosecutor's office. This investigation led to the committal for trial of two police officers for causing unintentional death as a result of ill-treatment. The proceedings are still pending before the first-instance court. However, after having examined the documents submitted by the parties, the Court finds that there were important shortcomings in the manner in which the investigation was conducted by the national authorities into the alleged ill-treatment and subsequent death of Mr Harun Çetin.

39. Among these deficiencies, the Court is particularly struck by the fact that the prosecutor in charge at the pre-trial stage failed to secure essential evidence for the establishment of the facts of the case. In this connection, the Court notes that the prosecutor failed to take a detailed statement from Mr Ö.Yüce, an eye-witness and an alleged victim of ill-treatment. Nor was this person ever asked to identify the alleged perpetrators by using photographs, an identification parade or the like. Moreover, despite Mr Yüce's statement to the police that he and Mr Çetin had both been beaten up during their arrest, no criminal investigation appears to have been made concerning the arresting officers. Finally, the prosecutor never sought to secure the testimonies of any other potential witnesses, such as other civilians or detainees present during the arrest or at the police station at the time of the events, in order to establish the exact circumstances in which Harun Çetin had received his injuries, particularly the head trauma noted in the autopsy report. In fact, it appears from the case file that the investigation undertaken by the prosecutor did not go beyond ordering an autopsy and taking the statements of certain other police officers. The Court is of the opinion that the above elements disclose significant defects in the reliability and thoroughness of this part of the investigation.

40. In the Court's view, the defects at the pre-trial investigation were not remedied by the investigation conducted by the assize court during the criminal proceedings, before whom, after almost fifteen years, the proceedings are still pending. The Court accepts that part of the delay in the proceedings stemmed from the absence of Mr Yüce, both a witness and complainant in the procedure. However, it cannot be said that this in itself justified the overall protracted nature of the proceedings before the national authorities. Rather, it was the Bakırköy Assize Court's failure to act with the necessary diligence in conducting the proceedings, coupled with the shortcomings in the pre-trial investigation, that unnecessarily prolonged the case. In this connection, the Court observes that during the thirty-three hearings, held at irregular intervals with substantial delays, between 8 April 1994 and 24 February 2006, the first-instance court only focused on obtaining Mr Yüce's testimony and undertook no other investigative measures to elucidate the facts of the case. During this time the accused police officers were only heard once (see paragraph 15 above). It was not until the case was quashed by the Court of Cassation, within a reasonable time, for insufficient investigation and remitted, that the assize court

decided on 21 November 2007 to request the medical records of the deceased and hear some other persons as witnesses, i.e. more than fourteen years after the events. In such circumstances, it cannot be held that the assize court has acted with sufficient promptness and reasonable expedition in a case where a person died after receiving a life threatening head trauma while in police custody.

41. In addition, the Court notes that no information was submitted by the Government to demonstrate that the accused police officers were suspended from duty while being investigated or tried. 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 (see *Abdulsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004).

42. Having regard to the above background and noting that, after almost fifteen years, the criminal proceedings instituted in order to elucidate the facts and identify and punish those responsible for the alleged severe ill-treatment sustained by Harun Çetin in detention are still pending, the Court cannot accept that they constituted an effective examination into the cause of and responsibility for the alleged ill-treatment and his subsequent death. In these circumstances, the Court concludes that there has been a procedural violation of Articles 2 and 3 of the Convention. It follows that the Government's preliminary objection (see paragraph 33 above) must be dismissed.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. In their observations dated 20 May 2008, the applicants, without specifying any sums, asked the Court to award them pecuniary and non-pecuniary damages. In respect of pecuniary damages, the applicants referred, in particular, to hospital expenses, travelling and living costs incurred during Harun Çetin's hospitalisation, the loss of future financial support from Harun Çetin and legal costs and expenses.

45. The Government asked the Court to dismiss the applicants' claim for damages.

46. As regards the alleged pecuniary damage sustained by the applicants, the Court does not discern any causal link between the violations found and the unsubstantiated pecuniary damage claimed in respect of alleged medical expenses, travelling and living costs or a loss of future financial support. Moreover, in the absence of any qualification and supporting evidence, the Court finds the applicants' claim in respect of costs and expenses unsubstantiated. It accordingly dismisses them.

47. As to non-pecuniary damage sustained by the applicants, the Court notes that it has found a violation of Articles 2 and 3 of the Convention under their procedural limb. Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards EUR 10,000 to Nafiye Çetin and EUR 5,000 to each of the other applicants.

### **B. Default interest**

48. 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. *Joins to the merits* the Government's objection concerning the exhaustion of domestic remedies and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Articles 2 and 3 of the Convention, under their procedural limb;
4. *Holds*
  - (a) that the respondent State is to pay the applicants, 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 Turkish liras at the rate applicable at the date of settlement:
    - (i) EUR 10,000 (ten thousand euros) to Nafiye Çetin and EUR 5,000 (five thousand euros) to each of the other applicants in respect of non-pecuniary damage;
    - (ii) any tax that may be chargeable on the above amounts;
  - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé  
Registrar

Françoise Tulkens  
President