



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

SECOND SECTION

CASE OF DÖNDÜ ERDOĞAN v. TURKEY

(Application no. 32505/02)

JUDGMENT

STRASBOURG

23 March 2010

FINAL

23/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Döndü Erdoğan 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 2 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 32505/02) 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, Ms Döndü Erdoğan (“the applicant”), on 2 August 2002.

2. The applicant was represented by Mr A. Yazıcıoğlu and Ms K. Doğru, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 15 January 2008 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).

4. On 25 June 2008 the Government filed observations on the admissibility and merits of the applicant's complaints. The applicant did not file any observations on the admissibility and merits, nor did she make any claim for just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and lives in Istanbul.

A. Events relating to the applicant's arrest and her subsequent detention

1. Facts as presented by the applicant

6. On 29 April 2001 at approximately 2.30 p.m. the applicant was apprehended by a large group of police officers in Istanbul while she was walking to her sister's house. She did not have her identity papers at the time of her apprehension.

7. She was subsequently handcuffed and taken to the Bahçelievler police headquarters, where she was questioned for an hour. She was allegedly subjected to inhuman treatment during the questioning, which involved being beaten with a truncheon, hosed down with cold water and banged against walls. She remained handcuffed and blindfolded throughout.

8. At approximately 9.30 p.m. the applicant's family contacted the local police station to report her missing. The police identified the missing person as the applicant from the descriptions provided and referred her family to the anti-terrorist branch, located on the second floor of the Bahçelievler police headquarters.

9. The applicant's family were subsequently taken to the interview room where the applicant was being held. They found the applicant in a hysterical state, screaming and cursing the police officers, hurling herself against the walls and attempting to throw herself out of the window. The applicant also had bruises and scratch marks on her head and wrists, which she claimed were caused by the handcuffs. When they asked why the applicant, who was only 15 at the material time, had been apprehended, the police informed the family that the applicant was a suspected terrorist and that she had not given them her name or age. The police further told them that the applicant had refused to talk despite the treatment through which they had put her.

10. The applicant, however, had informed the authorities of both her and her father's name and her identity and age could be readily discovered from the diary which was in her bag. Moreover, her age had been changed from 14 to 19 in the diary by the police officers.

11. The applicant's handcuffs were subsequently removed pending the verification of her identity information and she was given a glass of water. The applicant, however, broke this glass and cut her wrists. She was thereupon taken to Yenibosna Hospital by the police for treatment.

12. After her treatment, at approximately 1.00 a.m., the police took the applicant to her house, where she again became hysterical. When the applicant refused to talk to her family about the treatment she had undergone at the police station, she was sent to her sister's house where she felt more at ease. Once at her sister's house, which was on the fourth floor, the applicant attempted to commit suicide by jumping out of the window.

13. The applicant spent the following fourteen days in the intensive care unit at Istanbul University Hospital and was, allegedly, still undergoing psychological treatment at the Human Rights Foundation of Turkey at the time this application was lodged.

14. During her stay at the hospital, officers from the Bahçelievler police headquarters, including the chief constable, came to visit her regularly and asked her family not to lodge a criminal complaint or inform the press of the incident. They explained that they had only apprehended the applicant because they had received a tip-off about her, which they now believed to have been made by the applicant herself. They then had the applicant's father listen to a recording of the tip-off call. The applicant's father claimed that the voice and accent on the tape did not belong to his daughter.

2. Facts as presented by the Government

15. On 29 April 2001, at approximately 2 p.m., an anonymous tip-off call was received through the police helpline reporting a woman carrying illegal documents in her bag. The anonymous caller provided a detailed description of the suspect, along with her exact whereabouts, specifying that the woman was standing in front of a certain callshop in the Bahçelievler district of Istanbul. The police dispatched a patrol to the indicated location and arrested the applicant, who matched the suspect's description. The applicant had no proof of identification with her at the time of her apprehension and refused to reveal her age or identity to the police. It appears from the official records submitted by the Government that her age was estimated to be 19 at the time.

16. At around 4 p.m. the applicant was brought to the Bahçelievler police headquarters. She was questioned about her identity, family and address in the office of the superintendent of the anti-terrorist branch for approximately one hour, in the presence of the chief constable of the Bahçelievler police headquarters and the superintendent of the branch. Upon her refusal to provide any information, the applicant was further questioned for almost an hour by expert police officers from the anti-terrorist branch, where she maintained her silence.

17. It was ultimately concluded that the applicant had no affiliations with any illegal organisations. She could not, however, be released as her identity remained unestablished and the police had come to believe by that point that the applicant was “mentally unstable”. It was, therefore, decided to keep her there under missing person status pending the investigation into her identity and address. In the meantime, the police units in the area were instructed to contact the Bahçelievler police headquarters regarding any reports of missing persons.

18. At approximately 10.30 p.m. the applicant's sisters and uncles contacted Yenibosna police station to report her missing. They were directly referred to the Bahçelievler police headquarters where the applicant was

being held. Upon seeing her family, the applicant immediately started acting in a disorderly manner, whereas up until that point she had been quite calm. The applicant subsequently attempted to jump out of the window in her frenzy and thus had to be handcuffed to a chair for her own safety. In the meantime, one of her sisters, G.E., told the police that the applicant suffered from a mental illness and that she had attempted to run away from home on previous occasions.

19. Some time later, after she had become relatively calm, the handcuffs were removed and the applicant was given a glass of water at her request. The applicant, however, broke this glass and cut her wrists. She was immediately taken to Yenibosna Hospital by the police. According to the records submitted by the Government, the applicant had old scars on her arms and wrists, which suggested that she had also cut herself in the past.

20. At approximately 12.10 a.m. the applicant was released from the hospital and accompanied by police to her address as she refused to go home with her family. When they arrived at the applicant's house, she went berserk and violently refused to enter her house, screaming that she did not want to see her father. She was accordingly taken to her sister's house, where she subsequently attempted to commit suicide by jumping out of the window at approximately 1.10 a.m.

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

21. On 3 May 2001 the applicant's father filed a criminal complaint with the Bakırköy Public Prosecutor against the police officers at the Bahçelievler police headquarters. The applicant's father submitted that the police officers who had caused his daughter's mental suffering ought to be held responsible for the applicant's suicide attempt.

22. On 15 May 2001 the Bakırköy Public Prosecutor referred the file to the Bahçelievler District Administrative Council and requested authorisation to prosecute the accused police officers in accordance with Law no. 4483 on the Trial of State Employees and other Civil Servants.

23. The applicant alleges that, in the meantime, on 13 May 2001 eight police officers came to her sister T.Ç.'s house. They told T.Ç. that there were certain documents at the police headquarters which required their signatures and that their failure to sign these documents would result in their permanent detention in police custody.

24. On 29 June 2001 two police inspectors were appointed to carry out a preliminary investigation on behalf of the Bahçelievler District Administrative Council into the allegations of the applicant's father. The inspectors took statements from the police officers concerned, the applicant's relatives and other witnesses for the purposes of the

investigation. They did not, however, take a statement from the applicant, as she had not fully regained her health at that point.

1. The statements found in the investigation report

25. C.A. and D.A., the employees of the callshop in front of which the applicant had been apprehended, were asked to provide information as witnesses during the preliminary investigation. C.A. and D.A. claimed in their statement that, on the day of the incident, a woman had come into the shop to make a telephone call. She had then dialled 155, the police helpline, from the booth allocated to her. Approximately ten to fifteen minutes after the woman had completed her call, she was taken away by a police car outside their shop. C.A. and D.A. stated that the woman had not been handcuffed by the police. This was verified in the statements of the police officers who had arrested the applicant.

26. According to the statement of G.Ç., one of the applicant's sisters, and D.E., an uncle, the applicant had marks on her wrists when they first saw her at the police headquarters, which had allegedly been caused by handcuffs. They did not mention any other marks or bruises on the applicant's body in their statement. Nor did they mention any complaints made to them by the applicant regarding any adverse treatment she had received while in police custody. The other sisters and uncle, on the other hand, stated that they had observed no marks on the applicant, not even on her wrists.

27. Another sister of the applicant, G.E., submitted in her statement that when she was taken to the applicant at the police headquarters, the applicant had started having a violent outbreak, hitting her head against the walls. G.E. stated that her sister had only been handcuffed for a short while during that outbreak and that she had not mentioned being handcuffed at any other time.

28. The applicant's father maintained in his statement that the applicant had been detained at the police headquarters for seven or eight hours, during which time she had been questioned under duress. He further stated that his daughter was normally a lively person. G.E., however, claimed that the applicant was a very reserved girl who avoided social interaction, that she had suffered from meningitis five years previously and that they had expected her to have a permanent physical or mental disability as a result of that illness.

29. According to the preliminary investigation report, the paramedic who treated the applicant at Yenibosna Hospital for the cuts on her wrists had expressed in his statement that he had seen no other blemishes on the applicant's wrists, such as handcuff marks.

2. *Decision of the Bahçelievler District Administrative Council*

30. On 24 July 2001 the Bahçelievler District Administrative Council (“the District Administrative Council”) declined to grant the required authorisation to prosecute the accused police officers owing to a lack of sufficient evidence. The decision was mainly based on the investigation report submitted by the two police inspectors and the statements contained therein. The District Administrative Council held that it was believed to have been the applicant who had reported herself to the police for reasons unknown to them. Moreover, although she had remained calm and silent throughout her detention at the police headquarters, she had attempted to hurt herself severely on three separate occasions upon being confronted with her family. The conclusion was therefore drawn that the applicant's suicide attempt could not be related to her detention and that the applicant's relatives had done no more than provide conflicting statements without bringing forth any evidence or witnesses in support of their allegations.

31. On 23 August 2001, within the statutory time-limit, the applicant's father submitted an objection to the District Administrative Council's decision, complaining in particular of the administrative nature of the decision-making body.

32. On 7 December 2001 the Istanbul Regional Administrative Court upheld the District Administrative Council's decision. This decision was served on the applicant on 8 February 2002.

33. In the meantime, disciplinary proceedings were also initiated against the accused police officers. On 11 October 2001 the disciplinary board of the police headquarters decided that no negligence could be established on the part of these officers in respect of the applicant's attempted suicide. No disciplinary action was therefore taken against them.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. A description of the relevant domestic law and practice at the material time can be found in *Satık and Others v. Turkey* (no. 31866/96, §§ 34-40, 10 October 2000).

35. According to Article 5(b)(4) of the Regulations on Apprehension, Custody and Taking of Statements dated 1 October 1998 in force at the material time, security forces were entitled to apprehend, take into custody or detain persons who could not prove their identities with a document or through the witnessing of persons recognised by the security forces or other reliable persons. They could also apprehend those who presented dubious documents. Such detention could last for a maximum period of twenty-four hours until the discovery of their identity or the determination of whether they were wanted by the police.

36. Article 10 of the aforementioned Regulations stipulates that, before a person is placed in custody, a medical examination must be carried out with a view to determining the state of health of the individual at the time of apprehension. A further medical examination is likewise required prior to that person's release.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. The applicant complained under Article 3 of the Convention that she had been ill-treated while in police custody. She alleged that she had been beaten with a truncheon, hosed down with cold water and banged against walls, which had brought about intense mental suffering leading to a suicide attempt, considering in particular her age at the material time. The applicant also maintained under Articles 6 § 1 and 13 of the Convention that the respondent State had failed to conduct an effective investigation into her allegations of ill-treatment as her request to initiate criminal proceedings against the accused police officers had not been dealt with by an independent and impartial tribunal.

38. The Court considers at the outset that these complaints should be examined from the standpoint of Article 3 of the Convention alone.

A. Admissibility

39. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her, as required by Article 35 § 1 of the Convention. In this connection, they maintained that the applicant had not availed herself of the civil and administrative law remedies which could have provided reparation for the harm she had allegedly suffered. They further maintained that, if the applicant had considered that there were no effective remedies in respect of her allegations of ill-treatment, she should have lodged her application with the Court before 2 August 2002, that is to say, within six months of the date of the alleged incidents. In the latter context, the Government concluded that the applicant had failed to comply with the six-month rule fixed by Article 35 § 1.

40. The Court reiterates that it has already examined and rejected the Government's preliminary objection regarding the non-exhaustion of domestic remedies in similar applications (see, in particular, *Karayığit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It finds no particular circumstances in the present application which would require it to depart

from its findings in such cases. It therefore rejects the Government's preliminary objection under this head.

41. The Court further reiterates that the six-month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies, and that, where an applicant is entitled to be served automatically with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see amongst many examples *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 72, 17 March 2009). The Court notes that the final effective decision concerning the complaint under Article 3 of the Convention, which was the decision of the Istanbul Regional Court of 7 December 2001, was served on the applicant's lawyer on 8 February 2002. The Court therefore considers that the application lodged on 2 August 2002 complied with the six-month time-limit under Article 35 § 1 of the Convention. It thus likewise dismisses the Government's preliminary objection in this connection.

42. Moreover, the Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

43. The Government first noted that the applicant had not been arrested and taken into custody, but merely kept under police surveillance in accordance with Article 5(b)(4) of the Regulations on Apprehension, Custody and Taking of Statements in force at the material time on account of her refusal to disclose her identity. Secondly, they maintained that the applicant had failed to submit any concrete evidence to suggest that she had been ill-treated or even handcuffed at any point during her detention at the Bahçelievler police headquarters. The Government stressed in this regard that, upon her release from police custody, the applicant's family had not even attempted to obtain a medical report in support of her allegations of ill-treatment. The Government further argued that the applicant had been extremely calm and quiet during the period she had spent under police surveillance and only started acting in a disorderly manner upon seeing her family at the police station. The applicant's family had already acknowledged that she had psychological problems and that this was not her first attempt to run away from home. In these circumstances, the State authorities could not be held accountable for the applicant's self-destructive actions, especially her suicide attempt after she was handed over to her

family. The Government lastly contended that an effective investigation had been immediately carried out in respect of the applicant's allegations.

44. The applicant did not respond to any of these arguments.

45. Firstly, the Court notes that it cannot attach any weight to the distinction drawn by the respondent Government between “being taken into custody” and “being taken under surveillance” (see, *mutatis mutandis*, *Çiçek v. Turkey*, no. 25704/94, § 137, 27 February 2001). Regardless of the classification of her status under the domestic law, the Court considers that for the purposes of Article 3 of the Convention, the applicant's well-being was the responsibility of the State authorities from the moment she was under police control.

46. The Court reiterates in this connection 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, among many others, *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 un rebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative. It depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.

47. The Court notes at the outset that the State cannot, *prima facie*, be deemed responsible for the applicant's suicide attempt at her sister's house when this incident is viewed in isolation, as it occurred after the applicant was handed over to her family, that is, when she was no longer under the control of the police. The State's responsibility, however, may be invoked if it can be proven, beyond reasonable doubt, that the applicant's self-destructive behaviour was a direct result of adverse treatment she had received while in police custody, which was sufficiently severe to drive her to take her own life. It remains to be considered whether this causal link can be established.

48. Turning to the applicant's allegations, the Court notes that she alleged to have been beaten with a truncheon, hosed with cold water and banged against walls during her detention in police custody. There is, however, no shred of evidence in the case file, such as medical reports, corroborating her claims. The parties, moreover, make entirely conflicting submissions on the events in question without presenting satisfactory documentary evidence, which severely hampers the Court's ability to make an assessment of the facts. In these circumstances the Court cannot but conclude that there is an insufficient factual and evidentiary basis on which to find “beyond reasonable doubt” that the applicant was ill-treated in police

custody. This finding moreover precludes the Court from making any assessment as to whether the State authorities could be held accountable for the applicant's subsequent suicide attempt.

49. The Court therefore finds no violation of Article 3 of the Convention under its substantive limb.

50. The Court, however, also notes that the absence of evidence in support of the applicant's allegations of ill-treatment stems to a large extent from the respondent Government's disregard for their procedural obligations under Article 3 of the Convention.

51. The Court first notes that the medical examination of persons in police custody constitutes one of the most essential safeguards against ill-treatment (see *Algür v. Turkey*, no. 32574/96, § 44, 22 October 2002, and *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008) and the results of such examinations play a crucial role in cases where the detainees raise allegations of ill-treatment. It further notes that, at the time of the events giving rise to this application, the medical examination of persons taken into police custody was a requirement to be fulfilled by the State authorities under Turkish law (see paragraph 36 above), and not the responsibility of the applicant as argued by the Government. Despite the foregoing, the Court observes that the applicant underwent a medical examination neither before being taken into custody at the Bahçelievler police headquarters, nor after her release from detention. In the Court's opinion, this procedural shortcoming reduced the possibility of a meaningful examination in respect of the State authorities' substantive obligations under Article 3 of the Convention (see paragraph 48 above).

52. Secondly, 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". The minimum standards applicable, as defined by the Court's case-law, include the requirement that the investigation be independent and impartial. 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 victim (see, for example, *Mehmet Ümit Erdem v. Turkey*, no. 42234/02, § 26, 17 July 2008).

53. The Court considers that the worrisome nature of the applicant's allegations, the lengthy period of time she spent in police custody and, in particular, her age and apparently fragile mental condition at the material time, raise a reasonable suspicion that she could have been subjected to ill-treatment. An investigation was therefore required in respect of her allegations.

54. The Court notes that, in the instant case, the investigation file initiated by the public prosecutor was transferred to the Bahçelievler District Administrative Council for authorisation in accordance with the provisions

of Law No. 4483. A preliminary investigation was carried out by two police inspectors. Subsequently, the District Administrative Council, 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 30 above).

55. The Court reiterates its earlier finding in a number of cases that investigations carried out by administrative entities such as the District Administrative Council cannot be regarded as independent since they are chaired by district governors who are themselves responsible for the security forces, and it is the security forces whose conduct is presently at issue. Furthermore, the investigations which they instigate are often carried out by security forces linked hierarchically to the units concerned in the relevant incidents (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.

56. Lastly, the Court notes that the applicant was at no point asked to provide a statement regarding her allegations of ill-treatment during the preliminary investigation, not even after she was released from intensive care. In the absence of a satisfactory justification by the Government, the Court concludes that this omission likewise seriously prejudiced the effectiveness of the investigation.

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

58. There has therefore been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

59. The applicant complained under Article 5 § 1 of the Convention that there had been no reasonable suspicion to justify her detention, particularly having regard to her age at the material time.

60. The Court notes that the applicant was released from detention on 30 April 2001. The application, however, was not lodged until 2 August 2002, that is, more than six months later.

61. It follows that this complaint was lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

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 under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb.

Done in English, and notified in writing on 23 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President