



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

SECOND SECTION

Application no. 59683/12
Mevlüt CAN and others
against Turkey
lodged on 14 June 2012

STATEMENT OF FACTS

A. The circumstances of the case

The applicants, Mr Mevlüt Can, Ms Hatice Can and Ms Ezgi Sevgi Can are Turkish nationals, who were born in 1957, 1957 and 1987, respectively. The applicants live in Ankara. They are represented before the Court by Mr E. Kanar, a lawyer practising in Ankara.

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 2 June 2010, at 9.20 p.m. the first two applicants' son and the third applicant's brother, Onur Yaser Can, was arrested and taken to the Narcotics Branch of the Istanbul Security Directorate on suspicion of carrying illegal drugs.

At 10 p.m. the Beyoğlu public prosecutor ordered his release.

Following that order, at 11.15 p.m., an arrest and search report was drawn up by some police officers. The report indicated that Onur Yaser Can had consented to the seizure of the 11 grams of cannabis found on him but had not been able to describe the person he had bought the drugs from. According to the police records, Onur did not want his family to be informed of his arrest and refused legal assistance.

Before his release, Onur was taken to the Haseki Training and Research Hospital, where he underwent a medical examination at 11.45 p.m. The medical report drawn up there noted that there was no sign of physical violence on his body.

Later on that night, on 3 June 2010 at 1 a.m., he was released.

On 23 June 2010 Onur committed suicide at 10.15 p.m. by jumping from the third floor of a building. An ambulance arrived some forty minutes later and took him to the Şişli Etfal Hospital, where he was refused treatment. He was then driven to the Social Security Institute Okmeydanı Hospital, where he died during an operation, at 2 a.m.

The next day, 24 June 2010 an investigation into the cause of death was started.

During the course of that investigation, on 2 July 2010 the applicants filed a complaint with the Şişli public prosecutor, arguing that Onur's suicide was the result of the ill-treatment he had been subjected to during his time in police custody on 2 June 2010. They claimed that he had been stripped naked, forced to squat and cough in that position and probably sexually harassed by police officers. The applicants further filed complaints against those liable for the omissions by the Emergency Service and Şişli Etfal and Okmeydanı Hospitals.

On the same day the first applicant made more detailed submissions before the public prosecutor. He submitted that although his son had given his statements and been released on the night of his arrest, two days later he had been invited back to the Narcotics Branch, where he had been coerced into signing a new statement without having seen its content. The first applicant alleged that on 23 June 2010 the police had told Onur's lawyer that he needed to go to the Narcotics Branch to give his statements once again and that Onur had been frightened when he heard of that request. He also maintained that the ill-treatment could be deduced from the notes Onur had left, in which he had given the names of certain police officers.

In two decisions issued on 7 July and 16 July 2010 respectively, the Şişli public prosecutor separated the investigation against the police officers at the Narcotics Branch for ill-treatment and incitement to suicide from that against the personnel at the Emergency Service and Şişli Etfal and Okmeydanı Hospitals for causing death by negligence.

Within the context of the investigation against the police officers, on 13 August 2010 the first applicant gave his statements once again, this time before the Fatih public prosecutor. He reiterated his previous statements and added that his son had been forced to stand against the wall naked and been coerced into listening to the crying of another person in police custody. He also argued that the signature of his son had been forged on some documents.

On the same day four police officers involved in the deceased's arrest and search gave their statements before the Fatih public prosecutor. Denying the allegations of ill-treatment, the officers mainly submitted that they did not recall having strip-searched Onur Yaser Can.

Later on during the same day the chief police officer at the Narcotics Branch gave his witness statements. He stated that during his time at the Branch, the deceased had been strip-searched as that was the routine procedure in such cases.

During the course of the investigation, Onur's friends were heard as witnesses. According to their submissions, the deceased had complained of the degrading treatment he had been subjected to at the Narcotics Branch and claimed that he had been stripped naked, turned against the wall, slapped and humiliated.

On 24 October 2010 the deceased's lawyer was heard by the Fatih public prosecutor as a witness. Explaining the events before Onur's suicide, she stated that following his release from the Narcotics Branch, her requests to obtain a copy of his police statements had been refused in that a confidentiality decision had been taken in respect of the case. She maintained that one of the police officers had called her following Onur's death and asked the reasons for his suicide.

On 25 October 2010 the applicants' lawyer requested a copy of the video recordings made during Onur Yaser Can's time in police custody. However, the Fatih public prosecutor stated that she could be given only certain parts of the recordings, excluding the evidence concerning the search and seizure and the expert examination, as the case had been classified as confidential.

On 5 January 2011 the Şişli public prosecutor concluded the investigation into the cause of death and issued a decision not to prosecute. He held that Onur Yaser Can had committed suicide as a result of his psychological situation and that there was no indication of his being incited to suicide by others.

The applicants objected to that decision. They argued that there was neither a witness statement nor a medical report which could justify the public prosecutor's conclusion that Onur had been psychologically distressed. However, on 9 March 2011 the Beyoğlu Assize Court rejected their objection.

Meanwhile, on 21 January 2011 an expert report, evaluating the video recordings of the Narcotics Branch on the night of Onur Yaser Can's police custody, was submitted to the Fatih public prosecutor's office. The report, which included images of the entry and exit doors, elevators and staircases of the building, concluded that there was no record of ill-treatment inflicted on the deceased.

On 2 May 2011 the Fatih public prosecutor issued a decision not to prosecute the police officers for ill-treatment. Relying on the expert report, he noted that according to the video recordings of the deceased's time in police custody, there was no sign of any physical violence being inflicted on him. The public prosecutor nevertheless issued a report (*fezleke*), requesting that two of the police officers complained of by the applicants be prosecuted for forging official documents.

Following that written opinion, on 12 May 2011 the Istanbul public prosecutor issued an indictment against two police officers, accusing them of forging official documents. The public prosecutor noted in particular that the deceased's statements appeared to have been drawn up following his release and that he had been made to sign his statements two days after his police custody. The criminal proceedings concerning the falsifying of documents appear to be pending before the Istanbul Assize Court.

As regards the public prosecutor's decision not to prosecute the officers for ill-treatment, the applicants filed an objection, arguing that the video recordings referred to by the public prosecutor showed irrelevant places within the building of the Narcotics Branch and did not contain any images of the room where the deceased had been questioned. They also maintained that there had been discrepancies in the statements of the police officers.

On 26 December 2011 the Bakırköy Assize Court rejected the applicant's objection, without dwelling upon the applicants' submissions.

B. Relevant domestic law

Article 75 of the Code of Criminal Procedure reads:

Article 75 – Physical examination of the suspect or accused

(1) In order to obtain evidence in relation to an offence, at the request of the public prosecutor or the victim or with the initiative of the judge or the trial court, a decision may be taken for a physical examination of the suspect or accused ... Such intervention can only be performed by a doctor or by another person who is a health worker under the supervision of a doctor.

...

(3) A physical examination of the person ... is not possible in the case of crimes for which the upper limit of imprisonment foreseen is less than two years.

(4) An examination of the sexual organs or the anus would also be considered as a physical examination.

The relevant paragraphs of the Regulation on Judicial and Preventive Searches read:

Article 8 - Searches to be conducted without a warrant

A search order or warrant shall not be sought in the following events:

...

c) The bodily search of a detained person before placing him/her in the detention room,

...

Article 28 - Execution of bodily searches upon a warrant or written order

In case of reasonable suspicion that the person is carrying something that is not allowed by the law and in case the purpose of the search cannot be achieved otherwise, the bodily search may be conducted by removing the clothes, as follows:

a) Before proceeding with the search, why such search is considered necessary and how the search will be conducted shall be explained to the person by the highest ranking law enforcement chief assigned to the search unit.

b) The search shall be carried out by officers of the same gender as the person; the search procedures shall be carried out after taking measures to ensure that no one sees the procedure.

c) The search shall be conducted in a way least violating the feeling of shame of the person: first the clothes at the top section of the body shall be removed. The clothes at the bottom half of the body shall be removed after the top half clothes have been put back on. These clothes must absolutely be searched.

d) Necessary care shall be taken not to touch the body during the search.

e) The search shall be completed within the shortest time possible.

COMPLAINTS

The applicants complain under Articles 2 and 3 of the Convention that Onur Yaser Can was subjected to ill-treatment and psychological duress during his time at the Narcotics Branch of the Istanbul Security Directorate, which led to his suicide. In that connection, they maintain that Onur was stripped naked and forced to squat and stand against the wall that way while in police custody. They also claim that the insistent calls from the police officers with a view to obtaining further statements from Onur caused damage to his psychological situation and incited him to commit suicide.

Relying upon Articles 6 and 13 of the Convention, the applicants maintain that the investigation conducted into the alleged ill-treatment was not effective in that the domestic authorities have failed to take note of the conflicting statements of the involved police officers and did not examine the evidence, in particular the video recordings, diligently.

The applicants submitted under Article 5 § 2 of the Convention that Onur was not informed of the reasons of his arrest and was denied legal assistance.

QUESTIONS TO THE PARTIES

1. Was Onur Yaser Can, the first two applicants' son and the third applicant's brother, subjected to inhuman or degrading treatment in breach of Article 3 of the Convention, during the time he was held at the Narcotics Branch of the Istanbul Security Directorate?

In that connection, was he strip-searched and/or physically examined by police officers, with a view to finding illegal drugs?

2. Having regard to the procedural protection from inhuman or degrading treatment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in compliance with Article 3 of the Convention?

In that connection, was the investigation classified as confidential? If so, did this decision restrict the applicants' access to the complete file as indicated by the Fatih public prosecutor in his response to their request to have a copy of the video recordings?

The Government are requested to provide the Court with the video recordings of the Narcotics Branch of the Istanbul Security Directorate from 9 p.m. on 2 June 2010 to 1 a.m. on 3 June 2010.