



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

FOURTH SECTION

CASE OF ÇELİK AND İMRET v. TURKEY

(Application no. 44093/98)

JUDGMENT

STRASBOURG

26 October 2004

FINAL

26/01/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Çelik and İmret v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr R. TÜRMEŒ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 5 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 44093/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr Abdurrahman Çelik and Mr Kasım İmret ("the applicants"), on 7 September 1998.

2. The applicants, who had been granted legal aid, were represented by Mr T. Elçi, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged that they had been subjected to torture and ill-treatment while in police custody and that there had been no adequate or effective investigation into their complaints. They invoked Articles 3 and 13.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 26 September 2000 the Court declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants, Abdurrahman Çelik and Kasim İmret were born in 1958 and 1947 respectively and live in Batman.

A. The detention in police custody and the medical certificates concerning the alleged ill-treatment of the applicants

10. On 17 May 1998 the applicants, accused of acting as couriers for the PKK, were arrested by police officers from the Batman Security Directorate.

11. Prior to their detention in police custody, the applicants were examined by a doctor who found that they did not bear the marks of any injury. The applicants were then taken to the Batman Security Directorate where they were detained and questioned.

12. On 18 May 1998 the public prosecutor authorised the applicants' continued detention until 20 May 1998.

13. On 18 and 20 May 1998 the applicants were again examined by two doctors who found that there was no evidence that the applicants had been ill-treated.

14. The applicants allege that they were subjected to various types of torture and inhuman treatment during their detention in police custody. They claim they were blindfolded and immersed in high pressure cold water. They had to stand naked and electric shocks were administered to various parts of their bodies including their sexual organs. They state that their testicles were squeezed and that their hands and legs were tied. They were severely beaten and deprived of food and water and prevented from using toilet facilities. They were also kept in isolation, subjected to unbearable noises, insulted and threatened with death. From time to time, police officers applied medication to their injuries.

15. On 20 May 1998 the applicants were brought before the Batman public prosecutor and then before the Batman Magistrates' Court (*Sulh Ceza Mahkemesi*). According to a protocol dated 20 May 1998 signed by six police officers, the applicants bumped into each other while they were getting out of the police car and Abdurrahman Çelik fell. It is to be noted that the applicants deny the authenticity of this protocol.

16. Both before the public prosecutor and the Batman Magistrates' Court the applicants denied the veracity of the statements that had been taken from them by the police and stated that they had been subjected to ill-treatment during their detention in police custody. The judge of the Batman Magistrates' Court observed that there was a violet-coloured bruise around Abdurrahman Çelik's left eye. She also noted the applicants' allegation that their statements were incorrect and had been obtained under duress. The Batman Magistrates' Court ordered the applicants' detention on remand.

17. On the same day the applicants were taken to the Batman prison.

18. On 21 May 1998 the applicants were examined by the prison doctor, Dr. T. D., who noted that there were marks on Abdurrahman Çelik's body resulting from the physical violence inflicted on him. He reported the following in respect of Abdurrahman Çelik:

“There is a bruise of 3 cm underneath the left eye. Furthermore, there are two petechial lesions on both right and left inguinal areas.”

19. In respect of Kasım İmret, Dr. T.D. noted that the latter's body did not bear any injury resulting from physical violence. The doctor further reported the following regarding Kasım İmret:

“There is a scar of 0,5 cm in diameter on the left side of the lower lip on the exterior.”

20. On the same day, the applicants filed petitions with the Batman Magistrates' Court and requested the latter to annul the order for their detention on remand. They emphasised, *inter alia*, that the statements taken by the police were false as they had been signed under duress

21. On 15 July 1999 one of the applicants, Abdurrahman Çelik was examined by a commission of medical experts from the Izmir Chamber of Doctors (*tabipler odası*). According to the report drafted by the commission, the applicant suffered somatic and psychological problems. The commission opined that the medical findings were a result of physical ill-treatment inflicted on the applicant.

B. Criminal proceedings against the applicants

22. On 12 June 1998 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment charging the applicants under Article 169 of the Criminal Code with aiding and abetting the members of the PKK.

23. On 27 July 1998 the applicants' representative filed a petition with the Diyarbakır State Security Court, alleging that the applicants had been tortured while in detention at the Batman Security Directorate. He requested the court to order the Batman Prison Administration to send the prison doctor's medical reports of 21 May 1998.

24. On 29 July 1998 the Batman prison administration submitted copies of the medical reports to the office of the Batman public prosecutor who transferred them to the Diyarbakır State Security Court.

25. On 13 August 1998 the Diyarbakır State Security Court held the first hearing against the applicants. Before the court, the applicants denied the charges and stated, *inter alia*, that they were forced to sign statements while blindfolded at the Batman Security Directorate. They also denied the veracity of the content of these statements.

26. The Diyarbakır Security Court read out the medical reports of 21 May 1998 drafted by the doctor of the Batman prison and asked the applicants' representative to make comments if he wished. The representative submitted that he had no objections to their contents. He further added that there was no evidence against the applicants other than the statements taken by the police at the Batman Security Directorate and that these statements were inadmissible as evidence against the applicants given that they had been obtained through ill-treatment. With reference to the medical report of 21 May 1998, the applicants' representative formally requested the court to initiate a criminal investigation (*suç duyurusu*) against the police officers responsible for the ill-treatment of the applicants and against the doctor who examined them following their release from police custody, for failing to note their injuries in his medical report of 20 May 1998.

27. The Diyarbakır State Security Court dismissed the request of the applicants' representative. It decided that the applicants had to lodge their complaints themselves with the local public prosecutor's office. It further decided that there was no ground for the continued detention of the applicants and ordered their immediate release.

28. On 4 February 1999 the Diyarbakır State Security Court acquitted the applicants. The court held that there was no evidence against the applicants, other than the statements taken at the Batman Security Directorate which was insufficient to ground a conviction.

C. Criminal proceedings against the police officers

29. On 11 November 1999 the International Law and Foreign Relations Directorate of the Ministry of Justice sent a letter to the public prosecutor's office in Batman informing the latter about the applicants' allegations before the European Court of Human Rights.

30. Following the letter of 11 November 1999, the Batman public prosecutor initiated a preliminary investigation into the applicants' allegations. He took statements from the accused police officers who denied the charges against them. The police officers alleged that the applicants sustained their injuries on account of the crowd in the prison vehicle while they were being taken to the Batman Magistrates' Court.

31. On 15 February 2001 the Batman public prosecutor filed a bill of indictment with the Batman Assize Court (*Ağır Ceza Mahkemesi*) charging nine police officers, who were on duty at the Batman Security Directorate at the relevant time, with inflicting ill-treatment on the applicants. The charges were brought under Article 243 § 1 of the Criminal Code. The defendants were accused of ill-treatment of the applicants in order to obtain a confession from them. The public prosecutor however stated in the indictment that there was not sufficient evidence against the police officers which could prove that the applicants had been ill-treated in police custody.

32. The Batman Assize Court held thirteen hearings in the case against the police officers between 16 February 2001 and 22 May 2003. The court heard oral evidence from the accused police officers, the witnesses and the applicants.

33. On 22 May 2003 the Batman Assize Court acquitted the accused police officers holding that there was insufficient evidence to conclude that the accused had ill-treated the applicants in police custody.

34. On 25 June 2003 the Batman Assize Court's judgment became final.

II. RELEVANT DOMESTIC LAW

35. A description of the relevant domestic law at the material time can be found in *Batı and Others v. Turkey*, no. 33097/96 and 57834/00, § 96-100, 3 June 2004 and *Elçi and Others v. Turkey*, no. 23145/93 and 25091/94, §§ 573 and 575, 13 November 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The parties' submissions

1. The applicants

36. The applicants complained that they had been subjected to various forms of ill-treatment and that there had been no adequate or effective investigation into their complaints. They relied on Article 3 of the Convention, which provides:

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

37. The applicants contended that they had been blindfolded and immersed in high pressure cold water. They had to stand naked and electric shocks were administered to various parts of their bodies including their sexual organs. They maintained that their testicles had been squeezed and that their hands and legs had been tied. They were severely beaten, deprived of food and water and prevented from using toilet facilities. They were also kept in isolation in police custody. They further submitted that the forensic medical reports drawn up on victims were unreliable. They contended that the doctors who examined detainees were civil servants who were pressurised by the authorities into ignoring evidence of ill-treatment and not noting it in their reports. Thus, the medical report prepared on 20 May 1998 under police supervision made no reference to any finding of ill-treatment whereas the judge at the Batman Magistrates' Court noted that the first applicant's left eye was bruised. The doctor attached to the Batman prison also noted this injury in his report of 21 May 1998. The applicants denied the authenticity of the protocol dated 20 May 1998 alleging that it was drafted following the communication of their application before the Court to the Turkish government. They claimed in this connection that this document had not been included in the file of the case brought against them.

2. The Government

38. The Government maintained that the applicants had been medically examined before they were taken into police custody and following their release from custody in order to verify their medical condition. This enabled the findings in the first report to be checked against the findings in the second. As to the findings of the report of the prison doctor that there was a scar measuring 0,5 cm in diameter on the left of Kasım İmret's lower lip, the Government contended that there were many detainees who bore this sort of bruising to their faces and bodies. However, this in itself did not mean that they were tortured. The Government further submitted documents to the Court at the post-admissibility stage, according to which the applicants sustained their injuries while trying to get out of the police car which took them to the Batman public prosecutor's office on 20 May 1998.

B. The Court's assessment

1. General Principles

39. The Court 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 veracity of the victim's allegations, particularly if those allegations are backed up by medical

reports. Failing this, a clear issue arises under Article 3 of the Convention (see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 61; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

40. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (*Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

2. Application of the above principles to the present case

(a) As regards the applicant Abdurrahman Çelik

41. In the case of Abdurrahman Çelik, the Court observes that between 17 and 21 May 1998 the applicant underwent four medical examinations which resulted in reports (see paragraphs 11, 13 and 18). It further notes that the latest report of 21 May 1998 is in contradiction with the previous reports as it contains findings of ill-treatment inflicted on the applicant (see paragraph 18). In effect, the content of the medical report of 21 May 1998 is consistent with the applicant's allegations of ill-treatment as well as with the medical report drafted by the commission from the Izmir Chamber of Doctors on 15 July 1999 (see paragraph 21).

42. In response to the findings in the medical report of 21 May 1998, the Government submitted documents to the Court according to which the applicant had sustained the injuries as a result of bumping into the other applicant, falling and hitting his head on the floor. The Court observes that the explanation in these documents sits ill with the nature of the applicant's injuries as recorded in the medical reports. While the Court does not exclude the possibility of accidents occurring in detention, it does not find it convincing that the applicant could have had a bruise on his eye and lesions around the groin at the same time as a result of such a fall. Moreover, the protocol dated 20 May 1998 concerning the alleged accident does not appear to be credible as it does not contain the signatures of the applicants.

43. In this connection, the Court must also have regard to the fact that the applicant, in his statements before the Batman public prosecutor and the

Magistrates' Court and later to the State Security Court, was unequivocal in his account that he had been ill-treated by police officers while in custody. Furthermore, the applicant has consistently denied the accuracy of the statement which he had signed in police custody and claimed that it was obtained under duress (see paragraphs 16, 20, 25 and 26 above).

44. The Court reiterates that a State is responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that the injuries recorded in the medical report of 21 May 1998 were the result of treatment for which the Government bore responsibility.

45. Accordingly, there has been a violation of Article 3 of the Convention in respect of the applicant Abdurrahman Çelik.

(b) As regards the applicant Kasım İmret

46. In the case of Kasım İmret, the Court observes that the medical report of 21 May 1998 contained a statement that the applicant bore a scar of 0,5 cm in diameter on the left side of his lower lip. It notes that the applicant has not produced any other cogent evidence in support of his allegations of ill-treatment nor supplied a detailed account of the abuse to which he was subjected to in police custody which would have caused the scar mentioned in the medical report.

47. The Court does not find the account of events stated in the documents submitted by the Government credible or convincing (see paragraph 42 above). However, it considers that the material before it regarding Kasım İmret's assertion that he was subjected to ill-treatment does not constitute sufficient evidence to support that conclusion.

48. In sum, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicant was subjected to treatment that attained a sufficient level of severity to come within the scope of Article 3, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention on account of the alleged ill-treatment (see *Labita v. Italy*, no. 26772/95, ECHR 2000-IV, § 129).

49. Accordingly, there has been no violation of Article 3 of the Convention in respect of the applicant Kasım İmret.

50. The Court does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the alleged deficiencies in the investigation. In the circumstances, this matter is more appropriately examined under Article 13 (see, among other authorities, *Mahmut Kaya v. Turkey*, no. 22535/93, § 120, ECHR 2000-III).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The parties' submissions

1. *The applicants*

51. The applicants alleged that they were denied an effective domestic remedy in respect of their complaints of ill-treatment, in violation of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

52. The applicants contended that they had raised their complaints of ill-treatment before several judicial authorities. They maintained that they took all reasonable steps to ensure that their allegations of ill-treatment could be properly and thoroughly investigated by the State. They submitted that the response of the authorities had been totally inadequate. The applicants also alleged that the investigation which started in 1999 and the subsequent criminal proceedings had not been effective and that they were actually aimed at protecting the accused police officers.

2. *The Government*

53. The Government submitted that the applicants raised their complaint only before the Diyarbakır State Security Court. That court advised the applicants to lodge their complaint with the competent public prosecutor given that the public prosecutor attached to the State Security Court, like the trial judge, was not competent to investigate such allegations. Neither the applicants nor their lawyer applied to the public prosecutor's office in Batman. The Government further maintained that the Batman public prosecutor initiated an investigation into the applicants' allegations following the communication of their application before the Court to the Government. They contended that a case had been brought against police officers from the Batman Security Directorate who had allegedly ill-treated the applicants.

B. The Court's assessment

1. General Principles

54. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (see *Aksoy*, cited above, § 98).

55. A requirement of promptness and reasonable expedition is implicit in this context (see *Yasa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-04; *Çakici v. Turkey* [GC], no. 23657/94, § 105, ECHR 1999-IV §§ 80, 87 and 106; and *Mahmut Kaya*, cited above, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating torture or ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

2. Application of the above principles to the present case

56. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 of the Convention for the ill-treatment suffered by the applicant Abdurrahman Çelik in police custody. This applicant's complaint in this regard is therefore “arguable” for the purposes of Article 13 in connection with Article 3 of the Convention (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 64, 29 April 2003; *Yasa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2442, § 112).

57. As regards the other applicant, Kasım İmret, the Court has not found it established that there has been a violation of Article 3 of the Convention in respect of the applicant's allegation that he was subjected to ill-treatment in police custody. This does not however mean, for the purposes of Article 13, that his complaint falls outside the scope of its protection. These complaints were not declared inadmissible as manifestly ill-founded and necessitated an examination on the merits. Accordingly, the applicant's complaint under Article 3 raised an arguable claim of a violation of the Convention for purposes of Article 13 (see *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 136, 10 October 2002).

58. The Court notes that the applicants complained of ill-treatment before the public prosecutor's office in Batman, the Batman Magistrates' Court and the Diyarbakır State Security Court. Despite the applicants' serious allegations, the judicial authorities failed to bring any criminal charges against the accused police officers promptly. In this connection, it observes that it was not until one year and six months later, following the communication of the application by the European Court of Human Rights to the Government, that a new investigation was conducted into the applicants' allegations. It then took the Batman public prosecutor one year and three months to file a bill of indictment with the Assize Court. The latter acquitted the accused police officers three years six months after the initiation of the proceedings and five years after the acts complained of had occurred.

59. The Court considers that the complete inactivity of the authorities for one year and six months in response to the serious allegations raised by the applicants and the speed of the subsequent proceedings do not comply with the requirement of "promptness". Accordingly, the above proceedings cannot properly be described as thorough and effective such as to meet the requirements of Article 13 of the Convention.

60. In conclusion there has been a violation of Article 13 in the case of each of the applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicants claimed the sum of 60,000 United States dollars (USD) (65,445 euros (EUR)) for non-pecuniary damage.

63. The Government contended that the applicants had failed to submit any evidence in support of his claims. They maintained that the claims were unsubstantiated.

64. The Court has found a violation of Articles 3 and 13 in the case of the first applicant, Abdurrahman Çelik, on account of the ill-treatment of the applicant in police custody and the failure of the authorities to conduct an effective investigation. Having regard to the circumstances of the present case, and deciding on an equitable basis, it awards Abdurrahman Çelik EUR 10,000.

65. In the case of Kasım İmret, the Court has found a violation of Article 13 on account of the failure of the authorities to conduct an effective investigation. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, it awards Kasım İmret EUR 5,000 under the head of non-pecuniary damage.

B. Costs and expenses

66. The applicants claimed a total of EUR 6,377 for his costs and expenses.

67. The Government submitted that the claims were excessive and unsubstantiated. They argued that no invoice had been produced by the applicant to prove his claims.

68. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Making its own estimate based on the information available, the Court awards the sum of EUR 3,000 exclusive of any value-added tax that may be chargeable less the sum of EUR 625 received in legal aid from the Council of Europe.

C. Default interest

69. 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. *Holds* that there has been a violation of Article 3 of the Convention in the case of Abdurrahman Çelik;
2. *Holds* that there has been no violation of Article 3 of the Convention in the case of Kasım İmret;
3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention in the case of each of the applicants;
4. *Holds*
 - (a) that the respondent State is to pay, 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) to Abdurrahman Çelik EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
 - (ii) to Kasım İmret EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (iii) to both applicants jointly EUR 3,000 (three thousand euros) for costs and expenses, less EUR 625 (six hundred and twenty-five euros) granted by way of legal aid;
 - (iv) 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 26 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President