



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

FOURTH SECTION

**CASE OF KOÇAK v. TURKEY**

*(Application no. 32581/96)*

This version was rectified on 10 October 2007  
Under Rule 81 of the Rules of Court

JUDGMENT

STRASBOURG

3 May 2007

**FINAL**

*03/08/2007*



**In the case of Koçak v. Turkey,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMESEN,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 3 April 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 32581/96) 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 a Turkish national, Mr Memet<sup>1</sup> Koçak (“the applicant”), on 3 October 1995.

2. The applicant was represented by Mr M. İriz and Mrs Ş. Turan, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that he had been subjected to ill-treatment while in police custody. He further alleged that he had been deprived of his right to legal assistance during questioning by the police, the public prosecutor and the judge who ordered his detention on remand. The applicant invoked Articles 3 and 6 §§ 1 and 3 (c) of the Convention.

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.

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<sup>1</sup> Rectified on 10 October 2007: The applicant’s first name read “Mehmet” in the former version of the judgment.

6. 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).

7. By a decision of 7 October 2003, the Court declared the complaint under Article 3 of the Convention admissible.

8. The applicant and the Government each filed further written observations (Rule 59 § 1).

9. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

10. On 10 October 2006 the Court decided to examine the merits of the complaint under Article 6 §§ 1 and 3 (c) of the Convention at the same time as its admissibility under the provisions of Article 29 § 3 of the Convention.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

11. The applicant was born in 1965 and lives in Istanbul.

#### **A. The alleged ill-treatment of the applicant in police custody**

12. On 12 December 1993 the applicant and five other persons were arrested by police officers from the anti-terror branch of the Istanbul Security Directorate in the house of one of the arrestees, M.O., in the course of a police operation carried out against the PKK.

13. Between 12 and 27 December 1993 the applicant was detained in the Istanbul Security Directorate. The applicant alleges that, while there, he was blindfolded and forced to listen to the cries of other detainees being tortured. He was threatened with torture and forced to admit that he was a member of the PKK. When he refused to do so, he was stripped naked, immersed in cold water and beaten with a truncheon on various parts of his body, including the soles of his feet. He was then forced to walk on a salt-strewn floor. His hands were tied with a blanket, he was strung up by his arms and subjected to a form of torture known as "Palestinian hanging". In this position, electric shocks were administered to his genitals, his fingers and feet. He was subsequently coerced into signing a statement, of which he only signed the first two pages. During his detention in police custody the applicant was kept in a cell, deprived of food and water and prevented from sleeping.

14. On 27 December 1993 the applicant was examined by a medical expert from the Istanbul branch of the Forensic Medicine Institute who observed two ecchymoses of 2-3 cm in diameter on both sides of the applicant's hips and an allergic dermatitis on his right hand. The doctor concluded that the applicant's life was not endangered and that the injuries rendered him unfit for work for one day.

15. On the same day the applicant was brought before the public prosecutor and a single judge at the Istanbul State Security Court. On both occasions the applicant denied the accuracy of the statements that had been taken from him by the police. He contended that he had signed the statements under duress. The judge at the Istanbul State Security Court ordered the applicant's detention on remand. The applicant was then transferred to Sağmalcılar prison.

16. On 30 December 1993 the applicant filed a petition with the Istanbul State Security Court. In his petition, the applicant reiterated that he had been tortured while in police custody and that his statements had been taken under duress. He finally requested to be released.

17. On 14 January 1994 the applicant was examined by the director of the Eyüp branch of the Forensic Medicine Institute. The medical expert observed the following:

“... presence of pain in the shoulders, the armpits and the neck, a yellow ecchymosis on the right armpit, an ecchymosis of 3x2 cm on the upper part of the right arm, widespread ecchymotic area and abrasions on both arms and wrists, hyperaemic lesions of 3x2 cm and 2x1 cm on the upper part of the right hand and on the left hand, widespread pain in the hands, widespread ecchymotic area of yellow colour on both gluteal regions on the back, ecchymotic area on the groin, pain in the testicles, pain during defecation, swollen area on the right leg and foot, a yellow ecchymosis and swollen area on the sole of the right foot, pain in the left leg, a yellow ecchymosis on the malleolar region, a yellow ecchymosis and swollen area on the sole of the left foot, several old wounds on both wrists and ankles...”

The medical expert considered that the applicant's life was not endangered and that the injuries rendered him unfit for work for seven days.

18. On 11 July 1994 and 27 March 1995 the applicant filed further petitions with the Istanbul public prosecutor's office alleging that he had been subjected to ill-treatment while in police custody.

19. On an unspecified date the Istanbul public prosecutor initiated an investigation into the applicant's allegations of ill-treatment.

20. On 5 June 1995 the public prosecutor issued a decision of non-prosecution with regard to R.A., the director of the anti-terror branch of the Istanbul Security Directorate, holding that there was insufficient evidence to bring criminal proceedings against him. The public prosecutor further noted that criminal proceedings had been brought against Ö.D. and Ü.K., police officers from the anti-terror branch of the Istanbul Security Directorate, under Article 243 of the Criminal Code. The police officers

were accused of torturing the applicant in order to obtain a confession from him.

21. On 29 June 1995 the applicant filed an objection against the decision of 5 June 1995.

22. On 4 August 1995 the Beyoğlu Assize Court dismissed the applicant's objection.

23. On 20 December 1995 the Istanbul Assize Court acquitted the accused police officers, holding that there was insufficient evidence to conclude that the accused had ill-treated the applicant while in police custody.

24. The judgment of 20 December 1995 became final as the public prosecutor did not lodge an appeal against it.

## **B. Criminal proceedings against the applicant**

25. Following his arrest, the applicant surrendered a 7.65 mm calibre pistol and seven bullets to the police officers. Furthermore, according to the official documents, several weapons and organisational documents were found and seized in the course of the police operation.

26. On 4 February 1994 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant, along with twenty-nine other persons. The public prosecutor charged the applicant under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713 with membership of the PKK.

27. On 26 November 1996 the Istanbul State Security Court convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment.

28. In its judgment, the first-instance court noted that the applicant had been arrested in the house of M.O., along with other suspects and that he had subsequently surrendered a 7.65 mm calibre pistol and seven bullets to the police. The court further stated that one of the applicant's co-accused, M.D., had maintained before the public prosecutor that he had been involved in PKK activities together with the applicant. The court also took into account the statements of three other accused, who had contended before the public prosecutor that the applicant had collected money on behalf of the PKK. The Istanbul State Security Court finally noted that the applicant had maintained during the hearings that he supported the ideology of the PKK and believed that the PKK was the legitimate representative of Kurdistan. Basing its judgment on the aforementioned elements, the Istanbul State Security Court concluded that the applicant was a member of the PKK.

29. The judgment of 26 November 1996 became final in respect of the applicant since he did not appeal against it.

30. On 26 April 2003 the applicant was conditionally released from prison.

## II. RELEVANT DOMESTIC LAW

31. A description of the relevant domestic law at the material time can be found in *Sakık and Others v. Turkey* (judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, § 18-28), *Elçi and Others v. Turkey* (nos. 23145/93 and 25091/94, §§ 573 and 575, 13 November 2003) and *Kolu v. Turkey* (no. 35811/97, §§ 42-44, 2 August 2005).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained that he had been deprived of his right to legal assistance during his questioning by the police, the public prosecutor and the judge who ordered his detention on remand. He invoked Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which provide:

“1. In the determination...of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

33. The Government submitted at the first place that the applicant failed to file an appeal with the Court of Cassation against the judgment of the Istanbul State Security Court and that, therefore, he did not exhaust the domestic remedies.

34. As regards the merits of the complaint, the Government submitted that access to legal assistance during the preliminary investigation had been restricted in accordance with the relevant legislation in force at the material time. They further maintained that, in any case, the applicant had failed to

request legal assistance during his questioning by the police, the public prosecutor and the judge who ordered his detention on remand.

35. The Court does not consider it necessary to determine whether the applicant exhausted domestic remedies, as this complaint is manifestly ill-founded for the following reasons.

36. According to the Court's case-law, Article 6, especially paragraph 3, may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36). The manner in which Article 6 §§ 1 and 3(c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. The question is whether the lack of legal representation during the preliminary investigation, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing (*John Murray v. the United Kingdom*, judgment of 8 February 1996, Reports 1996-I, § 63).

37. In the present case, the applicant's right of access to a lawyer while in police custody was restricted pursuant to the domestic legislation which was in force at the material time.

38. Nevertheless, the Court observes that there is no element to suggest that the fairness of the proceedings against the applicant was infringed in the instant case. The Istanbul State Security Court's judgment of 26 November 1996 convicting the applicant of membership of the PKK was not based on the applicant's statements before the police, the public prosecutor and the judge who had ordered his detention on remand. The first-instance court took into consideration the statements of four of the applicant's co-accused made before the public prosecutor or the judge and the applicant's statements given during the hearings. It further took into account the fact that the applicant had surrendered a pistol and bullets to the police (see paragraph 28 above).

39. The applicant's lack of access to legal assistance during the preliminary investigation cannot, therefore, be considered to have deprived him of a fair trial within the meaning of Article 6 §§ 1 and 3 (c) of the Convention (see *Ahmet Mete v. Turkey*, no. 77649/01, § 27, 25 April 2006, *Saraç v. Turkey* (dec.), no. 35841/97, 2 September 2004 and, *a contrario*, *Örs and Others v. Turkey*, no. 46213/99, § 61, 20 June 2006).

40. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.



## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that he had been subjected to various forms of ill-treatment while in police custody. He relied on Article 3 of the Convention, which provides:

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

42. The applicant alleged that the suffering to which he had been subjected, taken as a whole, amounted to torture. He submitted that he had been blindfolded, stripped naked, immersed in cold water and beaten with a truncheon on various parts of his body. He further maintained that he had been beaten on the soles of his feet and then forced to walk on a salt-strewn floor. He contended that he had been subjected to “Palestinian hanging” and that electric shocks had been administered to his genitals, his fingers and feet. The applicant relied on the medical reports of 27 December 1993 and 14 January 1994 (see paragraphs 14 and 17 above). As regards the difference in the contents of these two reports, the applicant submitted that, upon a complaint made by an arrestee, on 15 June 1995 the Istanbul Chamber of Physicians had forbidden the medical expert who had examined him on 27 December 1993 to practice medicine for a period of six months as the Chamber had found that the expert had drafted medical reports concealing signs of ill-treatment inflicted on the complainant while in police custody.

43. The Government submitted that the applicant's allegations were unsubstantiated. They maintained that the applicant had failed to put forward any concrete evidence in support of his allegations. They contended that the allegations were deceitful and were part of a scenario used by the terrorist organisation to dishonour the fight against terrorism. The Government further submitted that the reports of 27 December 1993 and 14 January 1994 should not be regarded as inconsistent. In this connection, they contended that the applicant had sustained the injuries mentioned in the second report as he had probably been beaten by his fellow-inmates in prison, since he had disclosed information to the police concerning the PKK. The Government concluded that there had been no violation of Article 3 of the Convention.

44. 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 accuracy 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*

1996-VI, p. 2278, § 61; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

45. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (*Avsar 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).

46. In the instant case, the Court notes, at the outset, that the applicant was not medically examined at the beginning of his detention. Following his transfer from police custody, he underwent two medical examinations which resulted in two medical reports. The report of 27 December 1993 referred to two ecchymoses of 2-3 cm in diameter on both sides of the applicant's hips and the second report of 14 January 1994 referred to widespread ecchymotic areas and old wounds on various parts of his body (see paragraphs 14 and 17 above).

47. In this connection, the Court observes that the findings contained in the second report were consistent with the applicant's allegations of ill-treatment. Moreover, the Government have not provided a plausible explanation for the marks and injuries identified on the applicant's body.

48. In the light of the circumstances of the case as a whole and in the absence of a plausible explanation by the Government, the Court is led to conclude that the injuries noted in the medical reports were the result of ill-treatment for which the Government bore responsibility. Having regard to the nature and degree of the ill-treatment and to the strong inferences that can be drawn from the evidence that it was inflicted in order to obtain information from the applicant about his suspected connection with the PKK, the Court finds that the ill-treatment involved very serious and cruel suffering that only be characterised as torture (see, among other authorities, *Salman*, cited above, § 115, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports*, 1996-VI, § 64; and *Abdülşamet Yaman v. Turkey*, no. 32446/96, § 47, 2 November 2004).

49. There has accordingly been a violation of Article 3 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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. Pecuniary damage**

51. The applicant claimed the sum of 13,560 euros (EUR) for pecuniary damage.

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

53. The Court observes that the applicant did not produce any document in support of his claim, which the Court, accordingly, dismisses.

### **B. Non-pecuniary damage**

54. The applicant claimed the sum of EUR 13,560 for non-pecuniary damage.

55. The Government contested the amount requested by the applicant.

56. The Court has found a violation of Article 3 of the Convention on account of the ill-treatment of the applicant in police custody. Having regard to the circumstances of the present case, it awards the applicant his claim in full.

### **C. Costs and expenses**

57. The applicant also claimed EUR 10,397 for fees and costs in the preparation and presentation of his case before the Convention institutions. This included legal work and administrative costs incurred by his representatives and fees and administrative costs such as telephone calls, postage, stationery and translation costs. In support of his claims, the applicant submitted a detailed schedule of costs prepared by one of his representatives.

58. The Government contested this claim. They maintained that only expenses actually incurred could be reimbursed.

59. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 2,000 under this head.

**D. Default interest**

60. 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. *Declares* the complaint under Article 6 §§ 1 and 3 (c) inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
    - (i) EUR 13,560 (thirteen thousand five hundred and sixty euros) in respect of non-pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
    - (iii) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI  
Deputy Registrar

Nicolas BRATZA  
President