

**APPLICATION/REQUÊTE N° 19092/91**

**Yuksel YAĞIZ v/TURKEY**

**Yuksel YAĞIZ c/TURQUIE**

**DECISION of 11 October 1993 on the admissibility of the application**

**DÉCISION du 11 octobre 1993 sur la recevabilité de la requête**

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**Article 3 of the Convention** *Custody in the context of a police investigation  
Allegations of torture (Application declared admissible)*

**Articles 3 and 26 of the Convention**

- a) In order to complain about treatment undergone during police custody (Turkey), lodging of a criminal complaint constitutes an effective and sufficient remedy. Where the complaint has been rejected by the courts due to lack of evidence, the person concerned is not required in addition to seek compensation by way of civil or administrative action*
- b) In relation to treatment contrary to Article 3 of the Convention, the possibility of obtaining compensation may, in normal circumstances, constitute an adequate and sufficient remedy*

**Article 26 of the Convention**

- a) When there is a choice of several domestic remedies open to the applicant, Article 26 must be applied to reflect the practical realities of that individual's position in order to ensure the effective protection of the rights guaranteed*
- b) An applicant must make normal use of those domestic remedies which are apparently effective and sufficient*

*(TRANSLATION)*

**THE FACTS**

The applicant is a Turkish national, born in 1953 and resident in Izmir

She is represented before the Commission by Mr Erol Ozcan, a lawyer practising in Izmir

The facts, as submitted by the parties, may be summarised as follows

The applicant is a member of the auxiliary staff on the maternity ward at the social security hospital of Tepecik in Izmir

A baby, born on 4 December 1989 in the obstetrics ward of this hospital, was abducted shortly after being born

On 14 December 1989, the applicant was interrogated for several hours at the district police station in connection with this abduction

On 15 December 1989, the applicant was arrested by officers of the Izmir police force and taken to Izmir Security Department, where she was detained in police custody. She was accused of having participated in the abduction of the newborn baby. The applicant was interrogated until the following morning on the premises of the murder and armed robbery squad. In the meantime, the applicant was twice taken by police officers to the emergency unit of a hospital for treatment. She was then taken back to Izmir Security Department and released on 16 December 1989.

On the day of her release, the applicant was admitted to the hospital of her employment suffering from psychological shock. The medical examination carried out at the hospital on 18 December 1987 did not reveal a pathological condition likely to affect the applicant's work. The psychiatric examination, however, revealed mental trauma which resulted in the applicant's absence on sick leave for five days.

At the request of the applicant's father, a committee of three medical experts, appointed by the Izmir Medical Association examined the applicant on 20 December 1989. They diagnosed 'severe post traumatic stress (mental disorder) and found marks on the soles of her feet. The medical experts stated in their opinion that these symptoms were consistent with the allegations of ill treatment suffered by the applicant in police custody.

Meanwhile, on 17 December 1989, the applicant lodged a complaint with the Izmir prosecution authorities against the police officers in charge of her while in police custody, alleging that they had ill treated her while in police custody.

On 12 April 1990, after taking evidence from the applicant, the suspects and witnesses on 20 December 1989, the Public Prosecutor of Izmir preferred charges of ill-treatment against the three police officers before the Criminal Court of Izmir under the provisions of Article 245 of the Turkish Criminal Code.

In a decision of 12 June 1990, the Criminal Court of Izmir declined jurisdiction in the case on the ground that assuming the alleged facts were proved, they would constitute a violation of Article 243 of the Turkish Criminal Code, which makes it an offence to use torture to extract confessions from suspects. The court referred the case to the Izmir Assize Court.

In a judgment of 16 November 1990, the 2nd Assize Court of Izmir acquitted the three police officers. It held that in the light of the medical expert reports, it was established that the applicant had been subjected to duress at the Izmir Security Department but that the identity of the persons who had inflicted this duress had not been established, as the applicant had been unable to identify those responsible for the ill treatment and the witnesses had not clarified the matter in any way.

The applicant appealed to the Court of Cassation which in a decision of 19 June 1991 upheld the judgment of the Izmir Assize Court.

Following the police investigation into the child abduction charge, the real offenders were arrested and prosecuted. An order was rendered on 28 December 1989 dismissing the prosecution's case against the applicant and the other four co-accused.

## COMPLAINTS

The applicant alleges a violation of Article 3 of the Convention. She claims that she was subjected to torture while in police custody by the police officers who sought to extract information from her on the abduction of the child.

She claims that during her interrogation, certain police officers hit her with a truncheon on the soles of her feet while she was blindfolded. She specifies that her torturers tied her skirt into a knot so that she could not move her legs, that they placed a weight on her shoulders and beat her with a truncheon on the soles of her feet. She adds that the police officers then made her walk on wet ground to prevent her feet from swelling up. She alleges finally that she was tortured in this way after being stripped and that her torturers also assaulted her sexually.

The applicant states that she had to have psychiatric treatment for two years as a result of the mental trauma suffered while in police custody. Furthermore, she still has to wear orthopaedic shoes today owing to the pain in the soles of her feet.

## THE LAW

The applicant complains that the police officers who accused her of abducting the child tortured her while she was in police custody in order to extract confessions from her. She alleges a violation of Article 3 of the Convention, which provides that

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

1. The respondent Government argue first of all that the applicant has not exhausted domestic remedies. They state that the applicant should have claimed damages by filing a claim in full legal proceedings before the administrative courts.

The Government observe in this respect that the applicant could have relied before those courts on the judgment of the Assize Court, which had established that the applicant was subjected to duress while in police custody.

The applicant disputes this argument and observes that she lodged a complaint against the police officers in charge of her while in police custody and that this complaint did not succeed.

The Commission observes that in cases concerning treatment which is contrary to Article 3 of the Convention and inflicted by police officers, the lodging of a criminal complaint constitutes an adequate and effective remedy within the meaning of Article 26 of the Convention (see Nos 14116/88 and 14117/88, *Sargin and Yağcı v Turkey*, Dec. 11.5 89, D R. 61 p 250)

The Commission also observes that, in certain circumstances, compensation is an effective and sufficient remedy in respect of a complaint of ill-treatment in violation of Article 3 of the Convention (see, *inter alia*, Nos 5577-5583/72, *Donnelly and others v United Kingdom*, Dec 15.12 75, D R 4 pp 4, 153, No 8462/79, *X v United Kingdom*, Dec. 8.7 80, D R 20 p 184)

Finally, the Commission considers, in the light of the case-law of the European Court of Human Rights, that it is in the first place for the applicant to select which legal remedy to pursue. where there is a choice of remedies available to the applicant to obtain redress for an alleged violation of the Convention, Article 26 must be applied in a manner corresponding to the reality of the applicant's situation in order to guarantee him effective protection of his rights and freedoms set forth in the Convention (Eur Court HR , *Arey* judgment of 7 October 1979. Series A no 32, p 12, para 23)

The applicant must make "normal use" of those remedies which are apparently effective and sufficient, provided such remedies redress his complaints through domestic procedures (see on this point, No 9697/82, *J. et al v Ireland*, Dec 7 10.83, D R 34 p 131).

The Commission observes that in the case of allegations of torture, a successful outcome of one of the three remedies available under Turkish law could allow an applicant to obtain redress. An applicant can first lodge a complaint and then commence criminal proceedings against the alleged offenders. Secondly, he may bring an administrative law action for damages against the State or the suspects. He may also lodge a complaint relying on his civil rights (application to join the proceedings as a civil party seeking damages) against the alleged offenders (see, *mutatis mutandis*, Nos 14116/88 and 14117/88, *Sargin and Yağcı v Turkey*, above-cited decision; Nos 15202-15205/89, *A. Gurdoğan, K. Mustak, B. Mustak and A. Mustak v Turkey*, Dec 12.1.93, unpublished, No 17128/90, *Erdagoz v Turkey*, Dec 10 7 91, D R 71 p. 275)

In this case, the Commission observes that by submitting a complaint to the criminal courts, the applicant preferred to bring criminal proceedings against the officers allegedly in charge of her while in custody in order to secure their conviction for the alleged torture. Although the criminal courts found that the applicant had been subjected to duress while in police custody, they did not establish the details of the ill-treatment she had suffered, nor did they identify the offenders.

The applicant was therefore unable to bring her complaints before the national civil courts despite the fact that she had used an adequate and effective remedy under domestic law. In the circumstances, it cannot be argued that the applicant failed to use other legal remedies, such as suing for damages under administrative law as suggested by the respondent Government which, in the Commission's opinion, is an subsidiary remedy in the circumstances of this case.

The Government's argument that the applicant failed to exhaust domestic remedies cannot therefore be accepted.

2. As to the merits of the application, the Government state that a number of the allegations submitted by the applicant to the Commission were not submitted to the domestic courts. They argue that such allegations, which were not brought during criminal proceedings before the domestic courts, cast doubt on the honesty and credibility of the applicant.

The applicant disputes this argument. She observes that the national criminal courts established that she had been subjected to duress at the Izmir Security Department, but did not establish the identity of the persons who inflicted the duress. The applicant also states that she did not go into detail before the national courts regarding the indecent aspects of the ill-treatment she had suffered. She maintains that the description she gave the Commission is an accurate description of what happened.

The Commission has conducted a preliminary examination of the arguments submitted by the parties. It considers that the application raises complex questions of fact and law which cannot be resolved at this stage of the examination of the application but require an examination of the merits. The application cannot therefore be declared manifestly ill-founded.

The Commission also notes that the application cannot be rejected on any other ground of inadmissibility.

For these reasons, the Commission, unanimously,

**DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits**