CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36219/97
by Mehmet ERDAGÖZ and Devrim ERDAGÖZ
against Turkey

The European Court of Human Rights (First Section) sitting on 16 March 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Pantiru,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 17 October 1997 by Mehmet ERDAGÖZ and Devrim ERDAGÖZ against Turkey and registered on 24 May 1997 under file no. 36219/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, born in 1955 and 1975 respectively, are Turkish nationals who are living in Kars. The first applicant is the father (M.E.) of the second applicant (D.E.).

A. Particular circumstances of the case

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

On 17 January 1995 D.E. was arrested by policemen and taken to the Kars Security Directorate. He was charged with disseminating illegal propaganda for the PKK.

He was placed in custody to be questioned by policemen. He alleged that he was hosed with pressurised water, that electric shocks were administered to his body and was prevented from sleeping. He was subsequently requested to give information and to admit the charges.

On the same day policemen from the Kars Security Directorate searched the applicants' house with the consent of M.E.'s wife and on the orders of the principal public prosecutor at the Erzincan State Security Court.

On 18 January 1995 a doctor at the Kars State Hospital examined D.E. A medical report was prepared, which stated that he bore no trace of ill-treatment and that he was fit. He was then released.

On 30 May 1995 the principal public prosecutor at the Erzincan State Security Court issued a decision of non-prosecution in relation to D.E. The public prosecutor considered that he had not been involved in the PKK and that his acts did not constitute the offence of illegal propaganda.

On 21 September 1995 the applicants filed a petition with the Kars public prosecutor's office. They complained that the policemen had unlawfully searched their house. D.E. further complained that the policemen had tortured him during his detention in custody.

On 11 June 1996 the Kars public prosecutor issued a decision of non-prosecution in relation to the policemen at the Kars Security Directorate. He considered that there was insufficient evidence on which to institute criminal proceedings against the policemen.

On 23 July 1996 the applicants filed an objection with the Ardahan Assize Court against the Kars public prosecutor's decision of 11 June 1996.

On 27 August 1996 the Ardahan Assize Court dismissed the applicants' objection. The court stated, *inter alia*, that

> "...the complainants Mehmet Erdagöz and Devrim Erdagöz complained that the latter had been tortured during his detention in police custody. However, the medical reports of 18 and 19 January 1995, prepared by Dr. Ömer Topçu from the Kars State Hospital, stated that Devrim Erdagöz bore no trace of ill-treatment and that he was fit.

In his petition of 21 September 1995 Mehmet Erdagöz further complained that his house had been searched by use of force... It has been understood that the house search report of 18 January 1995 bore the signature of his wife Mrs Güleser Erdagöz who had consented to the search of her house. It follows that the decision of non-prosecution is lawful and the objection should be rejected....”

COMPLAINTS

D.E. alleges under Article 3 of the Convention that the suffering he experienced in the course of his detention in police custody amounted to torture. He complains in this respect that he was hosed with pressurised water, electric shocks were administered to his body and was prevented from sleeping.

D.E. maintains under Article 5 § 1 of the Convention that his detention in police custody was unlawful and arbitrary as policemen arrested him on account of his name, Devrim (*Revolution*), and his Kurdish origin.

The applicants both submit that the search of their house was in breach of Article 8 of the Convention.

B. Relevant domestic law and practice

i) Section 8 paragraph 1 of Prevention of Terrorism Act No. 3713 of 12 April 1991 (before the amendments of 27 October 1995):

<Translation>

"No one shall, by any means or with any intention or idea, make written or oral propaganda or hold assemblies, demonstrations or manifestations against the indivisible integrity of the State of the Turkish Republic, its territories and the nation. Those carrying out any such activity shall be sentenced to imprisonment between two and five years and a fine between 50 and 100 million Turkish lira."

ii) Section 94 of the Turkish Code on Criminal Procedure:

<Translation>

“Premises, including the home, the goods and chattels as well as the physical person of a suspect, the accomplices of a suspect, or a person receiving stolen property may be searched.

Such searches may be made for the purpose of making an arrest, or where there are grounds to believe that necessary evidence may be discovered.”

iii) Section 95 of the Turkish Code on Criminal Procedure:

<Translation>

“Searches of persons other than those described in Article 94 may only be made at the houses or other premises of such persons and may only be made for the purpose of

securing information or evidence for arresting the accused, to secure evidence as to the commission of an offence, or for the seizure of certain property...”

iv) Section 97 of the Turkish Code on Criminal Procedure:

<Translation>

“Authority to order searches and seizures rests with the judge. However, where there is a threat of prejudicial delay, public prosecutors and police officials charged with assisting the public prosecutors may also authorize a search...”

THE LAW

1. D.E. alleges under Article 3 of the Convention that the suffering he experienced in the course of his detention in police custody amounted to torture. He complains in this respect that he was hosed with pressurised water, electric shocks were administered to his body and was prevented from sleeping. Article 3 of the Convention provides as follows:

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

The Court observes that in assessing whether the applicant’s allegations disclose a violation of his rights under Article 3 of the Convention, it must have particular regard to the evidence adduced by him, as well as the findings of the domestic courts. Moreover, it is not in principle for the Court to substitute its own view of the facts for that of the domestic courts, whose task it is to assess the evidence adduced before them (see the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, p. 24, § 32). Cogent reasons are needed before the Convention organs in order to depart from the findings of fact of the national courts (cf. Eur. Court HR, the Klaas v. Germany judgment of 22 September 1993, p. 17, § 30).

In the instant case a number of facts raise doubts as to whether D.E., as he maintained, suffered treatment prohibited by Article 3 when he was placed in detention in police custody.

Firstly, D.E. did not complain of ill-treatment until 21 September 1995, when he filed a petition with the Kars public prosecutor’s office, against the policemen alleged to have inflicted ill-treatment on him on 17 January 1995.

Secondly, the Ardahan Assize Court, which was under a duty to establish the facts of the case on the basis of the evidence before it, did not accept that the applicant had established that ill-treatment had been inflicted on him while in detention in police custody. The court relied in particular on the medical reports of 18 and 19 January 1995, which stated that D.E. bore no trace of ill-treatment and that he was fit.

Lastly, the applicant has adduced no material, which could call into question the findings of the national authorities and add weight to his allegations before the Court.

In the light of these considerations the Court finds that the applicant has failed to substantiate his allegations that he was subjected to a treatment contrary to Article 3 of the Convention. Furthermore, no cogent elements have been provided which could lead the Court to depart from the findings of fact of the national authorities.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. D.E. maintains under Article 5 § 1 of the Convention that his detention in police custody was unlawful and arbitrary as policemen arrested him on account of his name, Devrim (*Revolution*), and his Kurdish origin.

The Court will examine this particular complaint under paragraph 1 (c) of Article 5 of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> > c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offfence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

The Court recalls that on the question whether detention is "lawful", including whether it complies with "a procedure prescribed by law", the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. However, it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely "to protect individuals from arbitrariness" (see Eur. Court HR, Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 11, § 24).

The Court's task is to determine whether the conditions laid down by paragraph 1 (c) of Article 5, including the pursuit of the prescribed legitimate purpose, have been fulfilled in the circumstances of the particular case. In this respect it notes that D.E. was charged with the offence which fell under section 8 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991). Moreover, he was arrested on suspicion of having disseminated illegal propaganda for the PKK.

Accordingly, the Court considers that D.E.'s detention in police custody for one day can be considered to be "in accordance with a procedure prescribed by law" on the basis of "reasonable suspicion" of having committed an offence within the meaning of Article 5 § 1 (c) of the Convention. Furthermore, the Court found nothing in the case-file to substantiate D.E's allegation that he was arbitrarily arrested on account of his name and Kurdish origin.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicants both submit that the search of their house was in breach of Article 8 of the Convention.

Article 8 of the Convention, in so far as relevant, provides:

"Everyone has the right to respect for his private and family life, his home and correspondence."

The Court observes that the search of the applicants' house was conducted on the orders of the principal public prosecutor at the Erzincan State Security Court in accordance with section 97 of the Turkish Code on Criminal Procedure. The Court also notes that the Ardahan Assize Court found that the policemen had searched the applicants' house with the consent of M.E's wife Mrs Güleser Erdagöz, who had signed the house search report of 18 January 1995. Furthermore, bearing in mind that the applicants have not submitted any evidence in support of their allegations, the Court considers that there is nothing to suggest that the search of the applicants' house was in breach of Article 8 of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President