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

SECOND SECTION

CASE OF ERDOĞAN YAĞIZ v. TURKEY

(Application no. 27473/02)

JUDGMENT

STRASBOURG

6 March 2007

This judgment is final but it may be subject to editorial revision.

In the case of Erdoğan Yağız v. Turkey,

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

Françoise Tulkens, *President,*
András Baka,
Ireneu Cabral Barreto,
Rıza Türmen,
Mindia Ugrekhelidze,
Antonella Mularoni,
Danutė Jočienė, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 6 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 27473/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Erdoğan Yağız ("the applicant"), on 22 June 2002.

2. The applicant was represented by Mr E. Özgün, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not appoint an Agent for the purposes of the proceedings before the Court.

3. On 7 July 2005 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Istanbul.

A. The applicant's arrest and detention in police custody

5. On 26 November 1999 Ms S.D. lodged a criminal complaint against S.Ç. and G.D., alleging threatening behaviour. She apparently stated that "a certain Erdoğan, chief of police" had protected the two men.

6. On 5 February 2000, at about 5 p.m., the applicant, who had been employed as a doctor by the Istanbul police for fifteen years, received a telephone call from his supervisor, who asked him to come to the office. As he got out of his car in the car park outside the building, the applicant was stopped by three police officers. In front of the members of the public in the courtyard, he was handcuffed and informed that he was under arrest. In the course of his arrest, the applicant told the officers that he was an official police doctor and that there must have been a mistake. He begged them not to handcuff him in front of hundreds of people. He was taken into police custody in the organised crime and arms-trafficking branch.

7. Later that day, without having informed him of the accusations against him, the police took the applicant in handcuffs to his workplace and home, where they carried out searches. It appears that he again asked for the handcuffs to be removed so that his children and neighbours would not see him being restrained. He even suggested that the officers go to his home after sunset so that he would not be exposed to public view. The police officers refused and, moreover, forced him to walk 70 metres along the road before arriving at his home. During the search he was allegedly insulted in front of his family. The police also seized his official weapon.

8. The applicant further maintained that he had signed the records of the searches while in handcuffs, before being escorted back to the police headquarters. He was made to sit on a chair, blindfolded and still in handcuffs, throughout his time in police custody. As the chair was by the entrance to the toilets, he was jostled whenever anyone came past. He heard staff from the headquarters ask why their doctor was in police custody. He refused to drink or eat.

9. On 7 February 2000 a statement was taken from him by the police although he had not been informed of the accusations against him.

...

10. On 5, 6 and 7 February 2000 the applicant was examined by a forensic specialist. The subsequent medical reports did not mention any signs of assault. They stated that he was cooperative and lucid, that his faculties had not been impaired and that he had not reported any particular grievances.

11. On 8 February 2000 the applicant was taken to the Bakırköy public prosecutor's office; he was later released without being brought before the prosecutor.

12. On 10 February 2000 he was examined by a psychiatrist, who certified him unfit for work for twenty days on account of psychiatric trauma. His sick-leave was extended several times on account of acute depression.

13. On 15 February 2000 the applicant lodged a very detailed complaint with the Istanbul Criminal Court concerning his detention in police custody, setting out the circumstances in which he had been arrested, detained and

released after three days without any explanation. He asked the court to inform him why he had been taken into police custody.

14. Later that day the court replied that he had been questioned in connection with criminal investigation no. 2000/102 because of his relations with suspects.

15. On 16 February 2000 the applicant was informed that he was to be suspended until the end of the criminal investigation on account of his relations with persons who had already been convicted of blackmail, looting and false imprisonment as members of an organised gang.

16. On 19 February 2000 the factory which employed him as a doctor under an individual contract – a post he had found in the private sector – dismissed him, criticising him for his lack of care and attention towards the staff. The letter of dismissal also mentioned that he was undergoing psychiatric treatment.

17. In an order of 1 March 2000 the Criminal Court ruled that the applicant's official weapon should be returned to him in the absence of any offence or indictment.

18. On 9 March 2000 the public prosecutor's office discontinued the case against the applicant.

19. On 12 July 2000, the applicant was reinstated in his post at the police headquarters. However, as he was unable to work in the same department on account of aggravated psychosomatic symptoms, he remained on sick-leave until 3 January 2002, when he was admitted to hospital.

20. On 28 February 2002 he was ordered to take early retirement on health grounds, the diagnosis being "persecution-type hallucination with serious depression". He was subsequently admitted to the neuropsychiatry department of Bakırköy University Hospital on several occasions for psychiatric treatment.

B. The applicant's complaint against the police officers

21. On 9 January 2001 the applicant lodged a complaint with the Fatih public prosecutor's office against five police officers, H.Ö., A.A., B.K., Z.G. and A.S., alleging that they had abused their authority and ill-treated him with a view to obtaining a confession. He gave a detailed explanation of how he had been handcuffed without being informed of the accusations against him and insulted in front of his family and police personnel, and of all the forms of humiliation he had suffered without knowing why.

22. The public prosecutor's office asked the Istanbul Provincial Administrative Council (*İl İdare Kurulu*) for leave to open an investigation.

23. On 6 June 2001 the Administrative Council refused leave to open a judicial investigation on the ground that no fault was attributable to the police officers.

24. On 27 July 2001 the applicant lodged an objection with the Istanbul Administrative Court.

25. In a judgment of 21 November 2001 the Administrative Court dismissed the objection.

26. On 12 December 2001 the public prosecutor's office discontinued the proceedings on the basis of the Administrative Council's decision.

27. On 15 January 2002 the applicant appealed against the judgment to the Istanbul Assize Court.

28. On 20 March 2002 the Assize Court dismissed the appeal.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant submitted that the police officers had subjected him to humiliating and degrading treatment during his arrest and detention. He complained that they had exposed him to the public in handcuffs and then taken him to his workplace and his home, still in handcuffs. He contended that the police officers' conduct during his time in their custody had been designed to humiliate and debase him in front of his colleagues, neighbours and family. He alleged that this humiliation had affected him to such an extent that he had lost all capacity to cope with it psychologically, had lost his job as a result and had been undergoing psychiatric treatment ever since. 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."

...

B. Merits

32. The Government observed that the applicant had not submitted any medical reports to substantiate the ill-treatment to which he had allegedly been subjected while in police custody. They thus concluded that the facts of the case had not attained the minimum level of severity to fall within the scope of Article 3.

33. The applicant contested that submission.

34. The Court observes that the applicant did not complain of physical violence but of inhuman and degrading treatment, which had consisted in

forcing him to sit on a chair for three days, insulting him and publicly displaying him in handcuffs at his workplace, in the area where he lived and in front of his family. The Court notes that the Government have not submitted any observations concerning those complaints.

35. It reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

36. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has also deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Ireland v. the United Kingdom*, cited above, § 167; *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 120, ECHR 1999-VI; and *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In order for a punishment or treatment to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

37. In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 22, Series A no. 58). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI). In this connection, the public nature of the punishment or treatment may be a relevant or aggravating factor (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII). Moreover, it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26, and *Smith and Grady*, cited above, § 120).

38. Lastly, allegations of ill-treatment must be supported before the Court by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269).

39. In assessing the consequences suffered by the applicant, the Court will have particular regard to the context of the alleged treatment and its effects on his personality.

40. It notes at the outset that the applicant, who had been employed as a general practitioner for fifteen years, had no history of mental disorders before being taken into police custody, and no evidence has been produced to show that he suffered from any psychosomatic instability. Before the Court, and in his complaint to the prosecuting authorities, he gave a detailed explanation of the treatment to which he had been subjected in police custody and, above all, the humiliation he had felt at being exposed to public view in handcuffs, both at his workplace in front of his patients and in the area where he lived (see paragraphs 6-8 above).

41. The Court observes that the Government made no submissions on the issue of handcuffing, in particular as to whether the applicant had indeed been left to sit handcuffed throughout his three days in police custody in the conditions he described, whether he had been handcuffed in public view in the courtyard of the building and whether handcuffing was a statutory requirement at the time of his arrest and the searches and/or necessary in his particular case.

42. As regards the kind of treatment in question in the present case, the Court reiterates that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances (see *Raninen*, cited above, § 56). However, in this connection it is important to determine whether there is reason to believe that the person concerned would resist arrest, attempt to flee, cause injury or damage or suppress evidence. The Court notes that it found in *Raninen* that the applicant's handcuffing had (as conceded by the Government) not been made necessary by his own conduct and had therefore been unjustified in itself.

43. The Court further observes that in the present case it can reasonably be presumed that there is a causal link between the treatment complained of and the onset of the applicant's mental disorders, which, moreover, were diagnosed two days after his release (contrast *Raninen*, cited above, § 58).

44. According to the successive medical reports, the applicant sustained severe trauma following his time in police custody. In particular, he felt humiliated in front of staff at the police headquarters who were his patients.

45. The Court accepts that such treatment, in particular the wearing of handcuffs in public, can affect a person's self-esteem and cause him or her psychological damage. In the applicant's case it appears from his psychiatric assessments, the medical reports confirming his acute depression, and his admissions to psychiatric institutions on account of the trauma he suffered, as a result of which he was made to take early retirement, that he was

affected mentally by the treatment to which he was subjected (contrast *Raninen*, cited above, § 58). In particular, it appears that wearing handcuffs in public at his workplace and in front of his family aroused in him a strong feeling of humiliation and shame, especially in view of his professional duties. His mental state suffered irreversible damage as a result of the incident, and he was incapable of coming to terms with his ordeal. The Court observes that the psychiatric reports corroborate his argument that wearing handcuffs in public affected his mental state (see paragraphs 12 and 19-20 above). It has already accepted that treatment may cause a victim to feel humiliated in his own eyes, even if there is no public element (see *Tyrer*, cited above). Clearly, the applicant's feeling of humiliation was aggravated by the public nature of his treatment.

46. The applicant did not have a record that might have led to fears for security and there is no evidence that he posed a danger to himself or to others or that he had previously committed criminal acts or acts of self-destruction or violence against others. The Court attaches particular importance to the fact that in their observations the Government did not provide any explanation justifying the need for handcuffs.

47. The Court cannot discern any ground for accepting that it was necessary for the applicant to be seen in handcuffs during his arrest and the searches. It therefore considers that in the particular context of the case, exposing him to public view wearing handcuffs was intended to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his moral resistance.

48. In the light of these considerations, the Court concludes that, in the exceptional circumstances of the applicant's case, wearing handcuffs constituted degrading treatment in breach of Article 3 of the Convention. There has therefore been a violation of that provision.

...

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 297,792 euros (EUR) in respect of pecuniary damage, on account of the loss of earnings sustained as a result of his

enforced early retirement. He also sought EUR 750,000 for the non-pecuniary damage he had sustained.

57. The Government submitted that those claims were excessive.

58. Making its assessment on an equitable basis, the Court considers that the applicant should be awarded EUR 2,000 to cover all heads of damage.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the degrading treatment endured by the applicant;

...

Done in French, and notified in writing on 6 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Cabral Barreto is annexed to this judgment.

F.T.
S.D.

CONCURRING OPINION OF JUDGE CABRAL BARRETO

(Translation)

I agree with the conclusion that there was "degrading treatment in breach of Article 3 of the Convention" in the present case, but I would have preferred to reach that finding by means of the following reasoning.

1. According to the Court's settled case-law, where an individual is taken into the custody of the State in good health but is found to be "injured" at the time of release, if the Government do not provide a plausible explanation of how those "injuries" were caused, the State must be held responsible for the individual's situation.

I agree with the observation in paragraph 43 that in the applicant's case it can reasonably be presumed that there is a causal link between the treatment complained of and the onset of his mental disorders.

2. However, if this causal link exists, is the State responsible for all the after-effects suffered by the applicant, for example his "persecution-type hallucination with serious depression" and his inability to continue practising as a doctor?

An answer in the affirmative would lead me to conclude without hesitation that the situation was so serious as to qualify as "torture" rather than "degrading treatment".

In my opinion, the applicant's suffering can be defined as "severe" within the meaning of Article 1 of the United Nations Convention against Torture. As the Court has held, "this 'severity' is, like the 'minimum severity' required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc." (see *Selmouni v. France* [GC], § 100, ECHR 1999-V).

The effects on the applicant's mental state are beyond dispute.

Admittedly, the treatment in question – wearing handcuffs – could hardly be regarded as sufficiently severe to attain the threshold required for the particular situation experienced by the applicant to be defined as torture; once again, however, we should not overlook the relative nature of concepts.

3. Why then do I have no hesitation in ruling out the classification of "torture" for the acts complained of?

For a very simple reason: there is not an *adequate* causal link, and I stress "*adequate*", between the acts of which the police authorities were accused and the applicant's state of health.

A causal link is a common factor in all forms of liability, whether civil, criminal, political or any other form.

However, it is not sufficient to consider, as the theory of equivalence of conditions does, that any event without which the damage would not have occurred should be treated as a cause.

It must be shown that there is a relationship of probability – according to the normal course of things, the ordinary sequence of events and experience of life – between the event and the damage alleged to have resulted from it.

According to the theory of adequate causation, we should disregard the factors that have become part of the damage as a result of extraordinary circumstances and consider only those which experience of life suggests are likely to produce damage.

Returning to the case at hand, I must say that wearing handcuffs, even if we take into account the very particular set of circumstances that obtained, would in all probability not be expected to produce such serious consequences as those suffered by the applicant.

Thus, once the adequate causal link between the police authorities' acts and the applicant's state of health has been broken, the State cannot be held responsible under the Convention for the applicant's current situation.

All that remains is the fact of wearing handcuffs. The special circumstances of the present case are very different from, and more serious than, those examined in *Raninen v. Finland* (16 December 1997, *Reports of Judgments and Decisions* 1997-VIII); accordingly, contrary to the conclusion reached in *Raninen*, and for the reasons set out in the judgment, the present case involved degrading treatment worthy of censure.