

HRRS-Nummer: HRRS 2004 Nr. 168

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Zitiervorschlag: EGMR HRRS 2004 Nr. 168, Rn. X

EGMR Nr. 32578/96 - 8. Januar 2004 (Çolak und Filizer v. Türkei)

Folterverbot; unmenschliche Behandlung (Anwendung auf den Terrorismus: PKK; Beweislastverteilung bei Inhaftierung und Verletzung der Inhaftierten; Untersuchungshaft); Beweis einer Konventionsverletzung (Beweiswürdigung des EGMR: Indizienschlüsse; Tatsachenvermutungen; Beweislastumkehrung).

Art. 3 EMRK; Art. 1 EMRK; Art. 5 EMRK

Leitsätze des Bearbeiters

1. Wird eine Person gesund inhaftiert, jedoch mit Verletzungen entlassen, muss ein Staat eine plausible Erklärung dafür bieten, wie es zu diesen Verletzungen gekommen ist und Belege dafür bieten, welche ihre Behauptung, sie sei Opfer einer unmenschlichen Behandlung geworden, in Zweifel ziehen. Anderenfalls ist Art. 3 EMRK anzuwenden. Dies gilt insbesondere dann, wenn die Behauptungen durch medizinische Untersuchungen gestützt werden. Diese ständige Rechtsprechung des EGMR gilt auch dann, wenn den Betroffenen terroristische Betätigung vorgeworfen wird und die streitigen Sachverhalte mit dem "Kampf gegen den Terrorismus" im Zusammenhang stehen.

2. Grundsätzlich sieht der Gerichtshof etwas als belegt an, wenn es ohne vernünftigen Zweifel nachgewiesen ist. Der Nachweis kann jedoch auch auf Indizienschlüssen oder unwiderlegten Tatsachenvermutungen beruhen. Liegen die fraglichen Geschehnisse ganz oder in größerem Umfang im exklusiven Wissen der Behörden, wie dies bei der Inhaftierung von Personen der Fall ist, ergeben sich aus Verletzungen, die während der Inhaftierung aufgetreten sind, starke Vermutungen. Die Beweislast liegt dann bei den Behörden.

3. Der Staat ist für jede Person, die er inhaftiert und die durch eine Anklage in eine angreifbare Lage gerät, verantwortlich. Der Staat ist zu ihrem Schutz verpflichtet. Der Freispruch der an den fraglichen Vorfällen beteiligten Polizeibediensteten stellt den Staat von seinen Verpflichtungen allein nicht frei.

THE FACTS

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| I. THE CIRCUMSTANCES OF THE CASE | 1 |
| A. The arrest and detention in police custody of the applicants | 2 |
| 9. The applicants were born in 1969 and 1964 respectively and live in Sanli Urfa, Turkey. | 3 |
| 10. Police officers from the anti-terrorist branch of the Istanbul Security Directorate arrested the applicants on suspicion of membership of an illegal organisation, the PKK (<i>Kurdistan Workers' Party</i>), and placed them in custody on 28 and 29 April 1995 respectively. Both applicants alleged that they had been beaten and insulted by policemen on the way to the Security Directorate Building. | 4 |
| 11. On 29 April 1995 the public prosecutor attached to the Istanbul State Security Court ordered the extension of the applicants' custody period until 9 May 1995. | 5 |
| 12. The applicants alleged that during their interrogation by the police, they had been kept blindfolded and forced to give information about persons they did not know. They were allegedly subjected to various forms of ill-treatment by police officers. They claimed they were beaten, strung up by the arms, threatened with death and given electric shocks. | 6 |
| 13. On 2 May 1995 the applicants were allegedly forced to sign police statements about their activities in the PKK and their connections with other PKK members. | 7 |

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| 14. On 5 May 1995 the applicants were examined by the Istanbul Forensic Medicine Institute's medical expert along with fourteen other detainees. In his report, the institute's doctor noted that there were no signs of beating, force or violence on the bodies of the applicants, whereas he had spotted certain signs of injury on the bodies of two other detainees. | 8 |
| 15. On 22 May 1995 the first applicant underwent a second medical examination in prison. According to the prison doctor's report, the applicant had fading bruises on his body and ecchymoses on his left foot. The applicant was later transferred to Fatih Forensic Medicine Institute where another medical expert examined him. In a report dated 20 June 1996, it was concluded that the applicants' injuries, as cited in the report of the prison doctor, would prevent him from carrying out his work for two days. | 9 |
| 16. On 18 May 1995 the prison doctor also examined the second applicant. In his report, the doctor noted the presence of abrasions on the penis, pain in the chest and ecchymoses under the left eye. He also noted that the applicant had described a feeling of pain while chewing and pain on both shoulders. | 10 |
| B. Criminal proceedings against the applicants | 11 |
| 17. On 5 May 1995 the applicants were brought before the public prosecutor attached to the Istanbul State Security Court. In their questioning they denied their police statements and rejected the allegations against them. | 12 |
| 18. On 6 May 1995 they were brought before the State Security Court, where they repeated their denials in relation to the statements taken by the public prosecutor. The court ordered the applicants' detention on remand on account of the nature of the accusations against them and of the evidence already available. | 13 |
| 19. On 22 June 1995 the public prosecutor initiated criminal proceedings against the applicants in the Istanbul State Security Court and charged them with carrying out acts aimed at the separation of a part of the State territories. | 14 |
| C. Criminal proceedings against the police officers | 15 |
| 20. On 1 June 1995 the applicants filed a complaint with the Fatih public prosecutor's office alleging that they had been subjected to various forms of ill-treatment during their detention in police custody. | 16 |
| 21. By decisions of 19 and 21 September 1995 the Fatih public prosecutor declined to bring any criminal proceedings against the police officers, because of a lack of evidence against them. | 17 |
| 22. On 13 October 1995 the applicants filed an appeal with the Istanbul Beyoglu Assize Court against this decision. | 18 |
| 23. On 14 December 1995 the Assize Court dismissed the appeal lodged by the second applicant on the ground that there was insufficient evidence to commit the police officers for trial. The court, however, upheld the appeal in respect of the first applicant. | 19 |
| 24. On 8 June 1998 the Istanbul Chief Public Prosecutor filed an indictment with the Istanbul Assize Court accusing two police officers from the Istanbul Security Directorate of inflicting ill-treatment on the first applicant. | 20 |
| 25. On 27 October 1999 the Istanbul Assize Court acquitted the two police officers on the ground that there was no sufficient and convincing evidence which would enable the court to convict the accused. The court reasoned that the complainant could not identify the police officers since he had allegedly been kept blindfolded while being tortured and that the Istanbul Forensic Medical Institute's report stated that no lesions had been seen on his body. It further noted that the Fatih Forensic Medicine Institute's report had been given fifteen days after the alleged incident and that the accused had denied the allegations. | 21 |
| II. RELEVANT DOMESTIC LAW | 22 |
| 26. The Criminal Code makes it a criminal offence to subject an individual to torture or ill-treatment (Articles 243 and 245 respectively). | 23 |

THE LAW

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| I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION | 24 |
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27. The applicants complain that they have been subjected to various forms of ill-treatment in violation of Article 3 of the Convention, which provides: 25

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment." 26

28. The applicants allege that the suffering they experienced, taken as a whole, amounts to torture. In this connection, the first applicant submits that, while in detention in the anti-terrorist branch of the Istanbul Security Directorate for six days, he was throttled, beaten, kicked, strung up by his arms and threatened by police officers, who told him that he might share the destiny of others who disappeared in custody. The second applicant maintains that while in police custody for seven days, he was blindfolded, punched severely on his head, stomach, abdomen and kidneys, strung up by his arms and his testicles were squeezed,. He further asserts that he was made to sit on a chair while policemen connected electrodes to his sexual organs and his toes, whereby electric shocks were administered to him. He finally contends that he was forced to listen to music at an extremely high volume in his cell. The applicants both refer to the medical reports issued by the prison doctor who noted the bruises and the after effects of wounds. As regards the discrepancies between the first medical report and the other reports, the applicants note that they spent one more day in police custody after their examination by the Istanbul Forensic Medicine Institute's medical expert on 5 May 1995 and were transferred from police custody to detention on remand on 6 May 1995 (see paragraph 18 above). 27

29. The Government submit that the applicants' allegations are unsubstantiated. They maintain that the applicants failed to adduce any concrete evidence in support of their allegations of torture. They note that the medical expert of the Istanbul Forensic Medical Institute found no sign of violence on the bodies of the applicants. The injuries found by the prison doctor must have been due to other circumstances for which the authorities bear no responsibility. In this connection, the Government point out that the applicants underwent the second medical examination sixteen and thirteen days after the first one, respectively. This corresponds to a period during which they were held in the E-type Bayrampasa prison together with other PKK members. In their opinion, these allegations aim at dishonouring the security forces in their struggle against terrorism. 28

30. 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 victim's allegations, particularly if those allegations were backed up by medical reports, failing which a clear issue arises under Article 3 of the Convention (see *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, § 62; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34). 29

31. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. 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 such 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). 30

32. In the instant case, the Court notes that the applicants were not medically examined at the beginning of their detention and did not have access to a lawyer or doctor of their choice while in police custody. After their transfer from police custody they underwent three medical examinations which resulted in contradictory reports. Having regard to the applicant's submissions that they spent one more day in the custody of the police officers following their first medical examination and in the absence of any convincing explanation by the Government for the discrepancies, the Court attaches no particular weight to the first medical report, in which no signs of violence were found on the applicants' person. In this connection, the Court notes that no plausible explanation has been provided for the bruises and ecchymoses found on the body of the first applicant and the abrasions and ecchymoses identified on the body of the second applicant (see paragraphs 15 and 16 above). Moreover, the Government did not suggest that the signs of violence found on the applicants' bodies could have predated their arrest. 31

33. The Court reiterates that a State is responsible for any person in detention, who is in a vulnerable situation while in its charge, and that the authorities have a duty to protect such a person. Bearing in mind the State authorities' obligation to account for injuries caused to persons within their control in custody, the Court considers that the acquittal of the police officers suspected of inflicting ill-treatment cannot absolve the State of its responsibility under the Convention (see *Esen v. Turkey*, no. 29484/95, § 28; *Yaz v. Turkey*, no. 29485/95, § 30; and *Ayşe Tepe v. Turkey*, no. 29422/95, 22 32

July 2003).

34. In the light of the above and in the absence of a plausible explanation by the Government, the Court considers that the symptoms noted in the prison doctor's reports were the result of treatment for which the Government bore responsibility. 33

It follows that there has been a violation of Article 3 of the Convention. 34

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION 35

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FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention; 37

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