

4.1.1. Decision of D.E.Ö no. 2018/ 83 dated 18.07.2018

Claims of the Applicant

In the application subject to the decision, the applicant claimed that his wife's face was demanded to be shown because her face was covered with a veil and she was wearing a hijab in the aims of identity clarification by police officers the moment the applicant, his wife and kids were passing through an X-Ray machine in the security check point in District Governorship of Zeytinburnu, that his wife requested officers to show her face to a female officer in a more private place such as a room or a cabin where there is no other man in compliance with her belief, that a female officer, who was there, came next to his wife after her request but rejected taking her to a cabin, that a male officer arrived, and insulted her along with an aggressive behaviour, that this male officer choked applicant by grabbing applicant's head with his arms, hit applicant's stomach, that aforementioned officer took the applicant to an empty cabin and battered him there, hence the applicant pressed charges against the police officers, they were exposed to psychological pressure and ill treatment when they went to District Police Department of Zeytinburnu, that the officer which the applicant pressed charges against, this time, asked for their identity there, that they were threatened by different police officers there and that the incident in question was deliberately recorded inaccurately to the record of statement during the statement. A medical examination report was also attached to the application by the applicant. Within the report, it is stated that the applicant had injuries on his body, and that these injuries were reported to be treatable through simple medical attention.

Procedure

Claims of the applicant have been examined under the purview of freedom of religion and conscience, and prohibition of torture and ill treatment. Accordingly, correspondence made with the Provincial Police Department of İstanbul, District Governorship and Police Department of Zeytinburnu, İstanbul, Chief Public Prosecutor's Office of İstanbul, General Directorate of Security, and Human Rights Board of the Governorship of İstanbul, to present written opinions, and to receive information as well as documents in accordance with the Paragraph 2 of Article 10 of the Law no. 6701.

Response of the Addressee Institutions

It is stated in the Disciplinary Inquiry Report that is prepared by the Police Department of Istanbul that there are no concrete facts, information, documents or evidence on the incident in question except for the claims asserted by the applicant, that the officers did not act in bad faith or negligence, and that there is no need for a disciplinary inquiry due to the fact that there is not any action that can be subject to disciplinary inquiry by the police officers, and that actions taken against the police officers are

considered to be cancelled. District Governorship; on the other hand, stated that there were no cabins in the entrance of the District Governorship building for checking the faces of women with veils, that such people could be taken to the officer waiting room which was 7 metres away from the security check point and where there was no one during the daytime on demand, and that the officers in the security check point of District Governorship building treated every citizen that came to the building equally, and that every citizen was taken in the building through necessary security control not to create any security weaknesses, and that there had been women with veils coming to the building before and those women had been checked by a female officer in the officer waiting room. The consequence of the interrogation related to the charges pressed has been asked to Chief Public Prosecutor's Office of Bakırköy and Office notified that it is decided against prosecution on 12/06/2018.

Evaluation and Decision

Regarding the claims of the applicant on torture and ill treatment; it is stated that in reference to the judgements of Cüneyt Polat v. Turkey and Salman/Turkey of the ECHR, if all or some parts of the incident in question is within the knowledge of the authorities only, all kinds of injury that happened during custody causes presumptions of fact and, in this case, the government has the burden of proof, just like in the cases of people who are subjected to the supervision of the authorities during custody. This is explained with the sensitive situation of the detained and the officers being responsible for protecting these people. Law enforcers, who are officers using the authority of especially taking and holding in custody, are responsible for respecting and protecting the human dignity and enable people to use the human rights that all the people have, when they are fulfilling their duty.

It is stated that the prohibition of torture and ill treatment does not prohibit the use of force in some defined conditions, but this type of a force can only be used if the incident is inevitable and it should not be excessive. In an interaction that a police officer or another state agent confronting someone; if the behaviour of the person does not require such force without any doubt, use of physical force is degrading, and as a principle, it means violation of the right stated in Article 3. If the injuries happen during the supervision of the police, ECHR holds responsible the respondent State that is subject to application for the burden of proof which includes a convincing statement proving the use of force was absolutely necessary due to behaviour of the applicant and the force that was used by the officer was not excessive (Gazioğlu and Others / Turkey, 29835/05, 17/05/2011, § 43). Accordingly, it is concluded that the injuries on the applicant's body matches with his claims and the relevant institution cannot bring up any convincing statement on the incident, that video footage does not show the inside of the places that the incident is reported to happen, and according to record of the Chief Public

Prosecutor's Office of Bakırköy, officer seized the applicant from his collar first. Board accepted the fact that in case of a resistance, the intervention of the officer is not to seize the collar but to grab the arms or use handcuffs behind. Thus, Board concluded that the officer had degraded the applicant by seizing him from his collar in front of the people there, and as a result of his action, the officer encountered with a counter attack. None of the statements of the officer explain the injuries that are recorded in medical reports. It is concluded that the protection of the applicant, who was subject to the authority and act of the state the moment he was seized, falls upon the public servants of the state, that all the injuries, which happened to the person in custody or person seized, must be proven with evidence by the officers in an appropriate way; that in the incident, there are injuries of the applicant who was taken to a place without any surveillance cameras and there is no evidence that can prove the claims of the applicant is wrong. Therefore, the injuries that happened under the authority and act of Law Enforcers and cannot be proven by due means and with enough evidence is concluded to be ill treatment.

It is concluded that within the context of freedom of religion and conscience, the request of the applicant's wife to show her face to a female officer in a room or a cabin where there is no man is a request that can be tolerated and accoiled within the boundaries of opportunities that the State can provide in a democratic society, and that the relevant intervention violated the freedom of religion and conscience due to the fact that it fails to fulfil the principle of proportionality.