

4.1. Precedents

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.

4.1.2. Decision of H.A. no. 550-4505 dated 30/11/2018

Claims of the Applicant

In the application subject to the decision, it is claimed that the applicant was 66% disabled because of vision loss, that the applicant was held in the penitentiary institution for 21 months, that the applicant wanted to benefit from audio books, that the Public Library had a rich archive of audio books, that there was no prohibition for these books to be brought to the penitentiary institution in which the applicant was held, that the content of the audio book would not be a problem as it was to be sent from an official public institution, that the applicant's only need was to have a CD player owing to the fact that these books were to come as CDs, that the applicant sent this request to different ministries and directorates, that this request was rejected by the penitentiary institution due to non-existence of any legislation on the subject; and the applicant requested fulfilment of these wishes.

Procedure

Claims of the applicant are evaluated under the prohibition of ill treatment and discrimination.

According to the Convention on the Rights of Persons with Disabilities Article 14 Paragraph 2, if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation and accessibility. Accordingly, the situation was discussed with the penitentiary institution's administration; also, by sending the application to the addressee Penitentiary Institution Directorate, it is asked to answer whether the situation is ongoing or not, if yes, what is the justification of the situation. As subject matter of the application was a request that is possible to be fulfilled by a simple agreement between the administration and the applicant, it was asked whether the grievances of the applicant had been satisfied; and it was requested from them to send the transcripts of conversations if the grievances had been satisfied.

Evaluation and Decision

In the response coming from the Penitentiary Institution Directorate; it is stated that the grievances that is subject to the application was satisfied by administration, but there are no CDs sent to the applicant by the Public Library since 21.11.2018, that both the applicant and the directorate are waiting for the package of CDs that will be sent by the Public Library, that Administration and Supervision Board has decided in favour of the application, and with the arrival of the CDs, the applicant is allowed to benefit from audio books in 4-hour periods for 3 days a week. Therefore, it is concluded that request subject to application is fulfilled by the addressee party and it is reported to the Institution; and as a result, in accordance with the Article 18 of the Law on the Human Rights and Equality Institution of Turkey and in accordance with the Procedures and Principles Regarding the Implementation of the Law on the Human Rights and Equality Institution of Turkey Article 71, the situation subject to the claim and request is removed; thus, the application is concluded with reconciliation.

4.1.3. Decision of S.G. no. 560-4609 dated 05/12/2018

Claims of the Applicant

In the application subject to the decision, according to the medical board report of the applicant, who is held in Penitentiary Institution, it is claimed that the applicant has 54% bodily function loss due to the applicant's mental and orthopaedic handicap, that the applicant receives a neurologic treatment, that the applicant has disability in mobility and trouble in personal care, that the wards are two-storey and standard, that the ward of the applicant is over capacity limit with 33 people, that there is no toilet bowl, also, that the applicant is deprived of personal hygiene because of limited means, the applicant's transfer to a new penitentiary institution with a ward suitable for disabled people has been requested due

to the applicant's physical condition besides informing the Ministry of Justice about the applicant's condition.

Procedure

Claims of the applicant have been evaluated within the scope of prohibition of ill treatment and discrimination. It may cause the violation of prohibition of torture and ill treatment if the conditions of being held are not suitable for the health conditions of the persons with disabilities and deprived of liberty. It is evaluated that some measures should be taken so that the pecuniary and non-pecuniary (physical and mental) results that occur from the incompatibility between the conditions of being held and special situation of the physically disabled person do not reach the state of "degrading treatment against human dignity." According to the Convention on the Rights of Persons with Disabilities Article 14 Paragraph 2, if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation and accessibility. Accordingly, the claims of the applicant are sent to the Ministry of Justice with the request of measures to be taken.

Evaluation and Decision

In the statement of Directorate General of Prisons and Detention Houses of the Ministry of Justice dated 21.09.2018; it is expressed that a procedure of getting the applicant a medical report has been started. In the records dated 30.12.2018 by the Directorate General, it is stated that referring to the applicant's medical board report, it is deemed suitable for the applicant to be transferred to Adana E-Type Closed Penitentiary Institution until a second instruction, that the applicant's punishment shall be executed in the special section that is opened according to the Article 18 of the Law on the Execution of Penalties and Security Measures, that all the required procedures related to the applicant's treatment shall be fulfilled completely, and reporting if it is necessary to continue the execution of punishment at aforementioned section by checking up regularly, if not necessary, it is decided that the medical board report is expected to be sent to Directorate General for a final decision on the new institution that the applicant will be transferred to right after the temporary section change of the applicant. Therefore, it is concluded that request subject to application is fulfilled by the addressee party and it is reported to the Institution; and as a result, in accordance with the Article 18 of the Law on the Human Rights and Equality Institution of Turkey and in accordance with the Procedures and Principles Regarding the Implementation of the Law on the Human Rights and Equality Institution of Turkey Article 71, the situation subject to the claim and request is removed; thus, the application is concluded with reconciliation.

4.1.4. Decision of Y.S. no. 2018/ 103 dated 27.11. 2018

Claims of the Applicant

In the application subject to the decision, the applicant has complaints on several issues which states that the applicant's newspaper request was not satisfied and only certain newspapers were given, that there were no social events in the penitentiary institution, that the visitor's hours are kept limited with 30 minutes, and that the applicant's demands for transfer were not accepted for various reasons; and the applicant requested attention for the necessary actions to be made, related to the claims in question.

Procedure

Claims of the applicant have been evaluated within the scope of the prohibition of ill treatment. In relation with the claims of the applicant and in accordance with the Law no. 6701 Article 18 Paragraph 2, a correspondence was made with the penitentiary institution. As required by the Law no. 6701 Article 18 Paragraph 2, addressee's written opinion has been communicated to the applicant, and the applicant is requested to present opinion. However, the applicant did not present any opinions regarding with the claims that take place in the application and responded by the penitentiary institution.

Response of the Addressee Institutions

In relation with the claims of the applicant and in accordance with the Law no. 6701 Article 18 Paragraph 2; it is stated in the written opinion sent by the Penitentiary Institution that the newspapers were not delivered or not distributed in time by the distributor, that when it was received, it was understood that terror organizations were praised in the content of the aforementioned newspapers as a result of the investigations made by the Board of Education; therefore, the newspapers were not delivered to the applicant with the decision taken. Regarding the claim that there is no social event in the institution; it is stated by the penitentiary institution that there were sentenced terrorists or detainees of terrorism in two different wards, that these prisoners could not be brought together due to security reasons, that it was impossible for those prisoners including the applicant to attend to conferences, special memorial days or fun activities that are set in the institution for their own safety and in accordance with the relevant legislation, also that, those sentenced terrorists and detainees of terrorism could not attend to the same courses with other sentenced or detained prisoners; furthermore, that courses could also be opened in institution by Public Education Centres in case of the number of participants had reached 12, but those courses could not be opened for those particular prisoners as they could never reach the number of minimum participant limit which is 12. As for the visitor's hours not being sufficient, it was stated that due to the capacity of the institution and the conditions of the visitor's room, non-contact visiting duration was 30 minutes and contact visit duration was 40 minutes in accordance with the relevant legislation, normatively for all sentenced and detained prisoners without any discrimination.

Evaluation and Decision

It is accepted that in the places where people are deprived of their liberty, incidents that can be accepted as ill treatment can appear in different forms, that as these can originate from the deliberate behaviours of the officers and penitentiary institution directorate, it can also occur as a result of organisational failings or inadequate resources; therefore, living conditions in the wards of a penitentiary institution should be evaluated with all aspects --from the service range of social events provided to the prisoners to the relations between prisoners and the officers of the penitentiary institution.

In this framework, it is considered that benefiting from periodical and non-periodical publishing that the wards can spend their time in the penitentiary institution, and actions like attending to events and social, cultural or sports courses that are organized in the institution, as a whole with other conditions of being held, have a great impact over the life quality of the prisoners, also that it is highly significant for prisoners to keep in touch with the outer world to a reasonable extent, in addition, in penitentiary institutions, in some cases, it is possible to restrict the rights of the prisoners for the security of institution and to avoid crime and disorder when there are acceptable and reasonable necessities.

It is concluded, as a result of the investigation made, that the applicant could not reach the periodical publishing, could not attend the regular events in the institution, and visitor's hours were less than an hour. In addition, it is evaluated that even though the institution does not deliberately deprive the applicant of these events, for the applicant to be deprived of attending culture and arts events, the justification of not having a sufficient number of sentenced terrorists and detainees of terrorism is not enough as a justification on its own, that to provide social integration of these people, who are held in penitentiary institutions, to the society after they are released and to enable these people to comply with the law and to spend a self-sustaining life, it is important for Public Education Centres to open courses in the institutions without considering the number of participants, and necessary precautions should be taken to provide the continuity of these courses.

Along with these, in view of these explanations especially in the present case, referring to the judgement of *Mursic v. Croatia* of the European Court of Human Rights (ECHR), it is concluded that in accordance with the Paragraph 4 of the Article 18 of the Law no. 6701 on the Human Rights and Equality Institution of Turkey dated 20.04.2016 there are no violations of human rights, as the applicant has access to all kinds of non-detrimental periodical and non-periodical publishing including books and magazines, as the applicant does not have any complaints over going outside, even though the applicant was not able to attend social and cultural activities, the applicant can be situated in exercising outside such as sports activities, and as it is evaluated that there are no violations of the prohibition of ill treatment beyond the sorrow that occurs inevitably due to imprisonment and the implementation of visitor's hours that is in

accordance with the relevant legislation as well as being a result of necessity.