



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

SECOND SECTION

CASE OF BOUDRAA v. TURKEY

(Application no. 1009/16)

JUDGMENT

STRASBOURG

28 November 2017

FINAL

09/04/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Boudraa v. Turkey,

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

Robert Spano, *President*,

Julia Laffranque,

Işıl Karakaş,

Nebojša Vučinić,

Valeriu Griţco,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 1009/16) 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 an Algerian national, Mr Rıda (Reda) Boudraa (“the applicant”), on 23 December 2015.

2. The applicant was represented by Mr A. Yılmaz, Ms S.N. Yılmaz and Mr F. Amca, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant complained under Article 3 of the Convention about the conditions of his detention at the Yalova police headquarters.

4. On 28 June 2016 the aforementioned complaint was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1974 and lives in Yalova.

A. The applicant’s arrest and detention

6. The applicant lived in Turkey between 2001 and 2003, when he met his wife and got married. The applicant and his wife have four children. In

2003 the applicant was deported to Algeria by the Turkish authorities. Between 2003 and 2006 he was imprisoned in Algeria, where he alleges he was subjected to various forms of ill-treatment.

7. The applicant and several other individuals founded the Rachad Movement in Algeria, a political organisation which opposes that country's government through non-violent means. After the protest movement known as the Arab Spring began in 2010, he was taken into police custody in Algeria and he alleges he was subjected to ill-treatment there.

8. On an unspecified date he fled from Algeria to Syria, where he worked as a teacher. Subsequently, in August 2013, he arrived in Yalova, Turkey, where his wife and children lived.

9. On 3 November 2013 he was taken into police custody as he did not have a passport. On the same day, the applicant was placed in a detention room at the Yalova police headquarters, where he was detained between 3 November 2013 and 7 January 2014.

B. The conditions of detention at the Yalova police headquarters

1. The applicant's account

10. The applicant submitted that the detention room in which he had been kept was in an ordinary police detention facility where arrestees were held for short periods (generally one day). During his detention, many people were detained in the room, at times as many as 10-12 people. The room was around 10 sq. m and there was no heating or ventilation, and no bed. Nor did it receive any natural light. He was confined in that room and was exceptionally allowed to use the other parts of the detention facility. He could use the hall in the centre of the facility only when his family members visited him. The applicant was provided with a mattress and a blanket and he slept on the floor. He was never taken out of the detention facility and did not have access to exercise in the open air. The facility had no shower and he therefore had to wash himself in the toilets. As he suffered from asthma, anaemia and back problems, he needed medical assistance. However, he was taken to hospital on only one occasion.

11. The applicant submitted a number of photographs in support of his submissions. In one of those photographs he is seen sitting on the bench in a small detention room behind bars.

2. The Government's account

12. In their submissions dated 18 January 2017, the Government submitted that the applicant had been detained in the "custody cell" of the public security branch of the Yalova police headquarters. The custody cell in question was used as a foreigners' detention centre because there was no separate foreigners' detention centre in Yalova at that time. The

Government stated that the custody facility measured approximately 92 sq. m and consisted of two detention rooms of 12.8 sq. m and 17.6 sq. m, two toilets (3.5 and 5.7 sq. m respectively), a room for the taking of police statements of 13.5 sq. m, a room used for interviews between arrestees and their lawyers of 6 sq. m, and an identification parade room of 6 sq. m. There was also a hall in the centre of the facility, which measured 21 sq. m, onto which the detention rooms opened. The hall had an air conditioner and two windows measuring 70 x 93 cm and 150 x 205 cm which provided natural light for the detention rooms.

13. In their additional observations dated 23 May 2017, the Government submitted that foreign nationals and Turkish nationals detained in the context of criminal investigations were kept separately in two detention rooms in the facility in question. They stated that at the material time the Turkish nationals had been kept locked in one of the detention rooms and that the applicant and other foreign nationals had had access at all times to the hall in the centre of the facility – where there were chairs and a table – and to the toilets. When there were no Turkish national detainees, the foreign nationals also had access to both detention rooms.

14. In support of their submissions the Government submitted a sketch map of the detention facility and a total of thirty-nine photographs. Nine of these photographs were taken outside and show the police station building. Eleven photographs were taken in the toilets, which appeared clean. There is a shower head installed in each of the toilets. Nine other photographs show the room for the taking of police statements, the room used for interviews between arrestees and their lawyers, and the identification parade room. Lastly, nine further photographs show the detention rooms and the hall. It is apparent that the detention rooms are separated from the hall by bars. There are no beds in the detention rooms but along their three walls there are concrete benches topped with a cushion. On the benches there are blankets, apparently used both for covering and as pillows. The detention rooms do not have windows but appear to receive light from the hall. The photographs of the hall show that there are two windows, a table and chairs on which towels were put in that area.

15. The Government also submitted custody registers showing the occupation rates at the detention facility for the period between 4 November 2013 and 7 January 2014. According to those documents, the applicant was detained alone for thirty-one days and for thirty days he was detained together with between one and six foreign nationals. On 26 November 2013 there were seven foreign nationals, including the applicant, detained at the facility. On 27 and 28 November 2013 the applicant was detained together with eleven other foreign nationals.

16. For thirty days between 4 November 2013 and 7 January 2014, there had been no Turkish nationals detained at the facility. In particular, on 26, 27 and 28 November 2013 no Turkish national had been held in

custody. During the remaining thirty-five days, a minimum of one and a maximum of five Turkish nationals had been in detention, except for 1 January 2014, when eleven Turkish nationals had been held in police custody. In particular, on 29 November 2013 one Turkish national had been detained at the facility in question.

C. Application to the Constitutional Court

17. On 27 December 2013 the applicant lodged an individual application with the Constitutional Court. The applicant alleged, *inter alia*, that the conditions of his detention at the Yalova police headquarters described above had amounted to ill-treatment (see paragraph 10 above).

18. On 21 January 2015 the Constitutional Court delivered its decision on the admissibility and merits of the applicant's case. As regards the applicant's complaint that the conditions of his detention at the Yalova police headquarters had amounted to ill-treatment, the Constitutional Court noted that he had complained that his health had worsened as a result of the conditions in which he had been detained. Since the applicant had been provided with medical assistance when he had fallen ill in detention, the Constitutional Court found that the administrative authorities had taken the necessary measures to protect the applicant's physical and psychological health. As a result, the court concluded that the treatment of the applicant had not attained the minimum level of severity required to be described as inhuman or degrading treatment.

19. On 24 June 2015 the Constitutional Court's decision was served on the applicant's representative.

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

20. The Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") concerning the conditions of detention of foreign nationals (see the CPT standards, document no. CPT/Inf(97)10-part) provide, in so far as relevant, as follows:

"27. In certain countries, CPT delegations have found immigration detainees held in police stations for prolonged periods (for weeks and, in certain cases, months), subject to mediocre material conditions of detention, deprived of any form of activity and on occasion obliged to share cells with criminal suspects. Such a situation is indefensible.

28. The CPT recognises that, in the very nature of things, immigration detainees may have to spend some time in an ordinary police detention facility. However, conditions in police stations will frequently - if not invariably - be inadequate for prolonged periods of detention. Consequently, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum.

29. In the view of the CPT, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel.

30. Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

...

79. Conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. For example, detained irregular migrants ... should be restricted in their freedom of movement within the detention facility as little as possible.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that the conditions of detention at the Yalova police headquarters where he had been detained between 3 November 2013 and 7 January 2014 did not comply with the requirements of Article 3 of the Convention, which reads as follows:

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

22. The Government contested that argument.

A. Admissibility

23. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The applicant claimed that his detention at the Yalova police headquarters had amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. He contended that the detention

facility was not designed to hold foreign nationals in an immigration context for long periods of time. In particular, there had been no bed in the detention room and he had not had access to the open air at all. He added that he had been kept in the small detention room which did not have a window and that the air conditioner had not functioned during the period of his detention. The applicant claimed that he had generally been detained along with two other detainees but that at times he had had to share the cell with more than ten people, among whom there had been Turkish nationals. The applicant also asserted that in general he had been confined to the detention room and that he had only exceptionally had access to the other parts of the facility.

25. The Government submitted that the detention conditions at the Yalova police headquarters did not attain the level of severity required to be considered as inhuman or degrading treatment within the meaning of Article 3 of the Convention. They provided photos of the detention facility, and copies of the logs recording the number of detainees held at the police headquarters throughout the applicant's detention. The Government also stated that the Constitutional Court had examined the applicant's complaint under Article 3 in the light of the principles enshrined by the Court. Bearing in mind the principle of subsidiarity, they claimed that there was no reason for the Court to depart from the conclusion reached by the Constitutional Court.

26. As regards the Government's submissions concerning the subsidiarity principle, the Court emphasises at the outset that it is mindful of the subsidiary nature of its role and it must be cautious in taking on the role of a first-instance tribunal of fact, unless this is rendered unavoidable by the circumstances of a particular case. As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the reasoned findings of fact reached by the national judicial authorities (see *Kyriacou Tsiakkourmas and Others v. Turkey*, no. 13320/02, § 165, 2 June 2015 and the cases cited therein).

27. The Court notes that in the present case the applicant applied to the Constitutional Court on 27 December 2013 complaining, *inter alia*, about the material conditions of his detention. On 21 January 2015 the Constitutional Court declared the applicant's complaint regarding the conditions of his detention at the Yalova police headquarters inadmissible as being manifestly ill-founded. However, the Court observes that in its decision, the Constitutional Court did not establish the facts surrounding the material conditions of the applicant's detention and confined its examination to the medical assistance provided to him while detained (see

paragraph 18 above). In the absence of an assessment of the facts surrounding the applicant's detention conditions in the Constitutional Court's decision, the Court considers that it cannot take that decision as the starting point in its examination. The Court will therefore carry out its own assessment of the facts and examine the case in the light of the submissions made by the parties, although its task is not easy in the absence of the establishment of the facts surrounding the material conditions of the applicant's detention by the Constitutional Court.

28. In that connection, the Court refers to the principles established in its case-law regarding conditions of detention (see, for instance, *Dougoz v. Greece*, no. 40907/98, §§ 45-49, ECHR 2001-II; *Kaja v. Greece*, no. 32927/03, §§ 47-50, 27 July 2006; *S.D. v. Greece*, no. 53541/07, §§ 49-54, 11 June 2009; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 216-22, ECHR 2011; *Rahimi v. Greece*, no. 8687/08, §§ 81-86, 5 April 2011; *Mahamed Jama v. Malta*, no. 10290/13, §§ 90-102, 26 November 2015; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 178-211, ECHR 2016 (extracts)).

29. It reiterates, in particular, that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are consistent with respect for human dignity and that the manner and method of executing the detention measure in question do not cause that individual to suffer distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. When assessing conditions of detention, account must be taken of the cumulative effects of those conditions, as well as of the specific allegations made by the applicant. The length of time during which a person is detained in the particular conditions must also be considered (see *Alimov v. Turkey*, no. 14344/13, § 71, 6 September 2016).

30. The Court is also well aware that Turkey is experiencing considerable difficulties in coping with the increasing influx of migrants and asylum seekers and it does not underestimate the burden and pressure this situation places on it. The Court is particularly aware of the difficulties involved in the reception of migrants and asylum seekers and of the disproportionate number of asylum seekers when compared to the capacities of the State. However, having regard to the absolute character of Article 3, that cannot release a State from its obligations under that provision (see, for a similar assessment, *M.S.S.*, cited above, § 223; *Khlaifia and Others* cited above, §§ 178-186; and *Aden Ahmed v. Malta*, no. 55352/12, § 90, 23 July 2013).

31. In the present case, the Court first notes that in their submissions dated 18 January 2017, the Government claimed, that the detention facility in question served as a foreigners' detention centre in the absence of a separate foreigners' detention centre in Yalova. In their observations of 23 May 2017 they stated that not only foreign nationals but also individuals in police custody were held in the detention facility in question. Hence,

while the Court cannot verify whether the photographs submitted by the Government were taken when the applicant was in detention in 2013 and 2014, or in 2016 or 2017, that is to say after the communication of the application to the respondent Government, on the basis of the photographs provided by the parties and their submissions as well as the sketch map and the custody logs provided by the Government (see paragraphs 14, 15 and 16 above), the Court finds it established that between 3 November 2013 and 7 January 2014 the applicant was held in an ordinary police detention facility.

32. The Court observes that the applicant submitted that he was detained in the room measuring 12.8 sq. m and that he did not have access to three rooms used in the context of criminal investigations. The Government did not dispute those claims. On the other hand, the Government submitted that the foreign detainees had access at all times to the hall in the centre of the detention facility which measured 21 sq. m and to the other detention room when there were no Turkish nationals held in the facility (see paragraphs 13 and 14 above). The applicant disputed the claim that he could use the hall at all times noting that he had been there only for family interviews (see paragraph 10 above). The Court is unable to verify the accuracy of the parties' submissions. As a result, it cannot establish whether the applicant had sufficient personal space at the Yalova police headquarters throughout his detention. However, even assuming that the applicant had sufficient space, the Court concludes that there has been a violation of Article 3 on the basis of the documents in the case file for the following reasons.

33. Firstly, the Court points out that, by its very nature, the detention facility in question was a place designed to accommodate people for very short periods. While the material conditions at the facility may be adequate for short periods of stay, the same cannot be held for the applicant's detention, which lasted for sixty-six days. In that regard, the Court notes that the European Committee for the Prevention of Torture (CPT) has emphasised that, although immigration detainees may have to spend some time in ordinary police detention facilities, given that the conditions in such places may generally be inadequate for prolonged periods of detention, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum (see paragraph 20 above, and also *Charahili v. Turkey*, no. 46605/07, § 77, 13 April 2010).

34. Secondly, the Court observes, on the basis of the photographs in the case file, that the applicant was not provided with a proper bed or an individual sleeping place. He was obliged to sleep on concrete benches topped with a cushion, without pillows or bedding for sixty-six days (see paragraph 14 above). What is more, on 27 and 28 November 2013 the detainees would have had to sleep in turns or on the floor, given that the benches in the detention rooms do not appear to accommodate the number of persons detained on those dates (see paragraphs 15 and 16 above).

35. Last not but least, the Court reiterates that access to outdoor exercise is a fundamental component of the protection afforded to persons deprived of their liberty under Article 3, and provision thereof cannot be left to the discretion of the authorities; according to the CPT, all detainees – even those confined to their cells as a punishment – have the right to at least one hour of exercise in the open air every day, regardless of how good the material conditions might be in their cells (see *Alimov*, cited above, § 83, with further references). This, however, was clearly not the case for the applicant. Despite having been expressly requested to do so by the Court, the Government have not provided any information with regard to the applicant's allegation that he was not allowed to have access to the open air and daily exercise during his detention, and the Court is therefore led to the conclusion that there was no provision for outdoor exercise at the Yalova police headquarters, meaning that the applicant was unable to go outside for the entire duration of his detention.

36. In sum, the Court has established above that from 4 November 2013 until 7 January 2014 the applicant was held in an ordinary police detention facility, that he was not afforded adequate sleeping facilities and that the situation was further exacerbated on 27 and 28 November 2013 when he had to sleep in turns or on the floor. The Court has also found that the applicant was not allowed access to outdoor exercise at any time. In the Court's opinion, these findings – coupled with the length of the applicant's detention and the likely anxiety caused by uncertainty as to when it would end – are sufficient to conclude that the conditions of his detention caused the applicant distress which exceeded the unavoidable level of suffering inherent in detention and attained the threshold of degrading treatment proscribed by Article 3 (see, *mutatis mutandis*, *Kaja*, cited above, §§ 45-50; *S.D.* cited above, §§ 49-54; *Tabesh v. Greece*, no. 8256/07, §§ 34-44, 26 November 2009; *Charahili*, cited above, §§ 75-78; and *Abdolkhani and Karimnia v. Turkey (no. 2)*, no. 50213/08, §§ 29-31, 27 July 2010). The Court therefore does not consider it necessary to examine the remaining aspects of the applicant's complaints under Article 3 (see *Alimov*, cited above, § 84).

There has accordingly been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant did not submit a claim for compensation for pecuniary damage. On the other hand, he claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested that claim as excessive.

40. Ruling on an equitable basis, the Court awards the applicant EUR 1,750 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant claimed EUR 8,496 for lawyer’s fees and EUR 300 for other costs and expenses incurred before the Court, such as travel expenses, stationery, photocopying, translation and postage. In that connection, he submitted a time-sheet showing that his legal representatives had carried out seventy-two hours’ legal work and a legal services agreement concluded with his representatives. The applicant also submitted invoices for transportation, translation, postal expenses and notary fees showing a total of expenditure of EUR 146.

42. The Government contested the applicant’s claims, submitting that the amounts requested were unsubstantiated and not supported by adequate documentary evidence.

43. According to the Court’s case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,146 covering costs under all heads.

C. Default interest

44. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,750 (one thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,146 (three thousand one hundred and forty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President