



Bekos and Koutropoulos v. Greece

Application no. 15250/02

Country: Greece

Region: Europe

Year: 2005

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Prisons, Violence

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment

Facts

On 8 May 1998, the applicants, who were Greek nationals of Roma origin, were arrested by three police officers for the attempted burglary of a kiosk. The applicants claimed that they were physically abused while being interrogated in custody and could hear each other screaming; they also claimed that they were threatened with sexual assault and suffered verbal abuse relating to their Roma origins. The respondent state disputed that the applicants had been subjected to any abuse. After being released from police custody on 9 May 1998, the applicants went to a regional hospital, which documented that they had bruises. In order to obtain further evidence of their injuries, the applicants went to a forensic doctor who documented their injuries more extensively, as "moderate bodily injuries caused in the past 24 hours by a heavy blunt instrument".

Two human rights organizations "the Greek Helsinki Monitor and Greek Minority Rights Group" brought public attention to the incident by sending a joint open letter to the Ministry of Public Order, protesting about the incident and providing 30 statements documenting similar incidents by the police against Roma. In response, on 12 May 1998, the Ministry of Public Order ordered an informal inquiry into the matter; the internal investigation was subsequently upgraded to an administrative inquiry. The inquiry found that two police officers had treated the applicants with particular cruelty during their detention, and recommended that the officers be suspended. However, the two officers were never suspended; a fine of 59 was imposed on one of the officers by the Chief of Greek Police.

On 1 July 1998, the applicants filed a criminal complaint against the Deputy Commander in Chief of the police station where they had been held in custody and any officers responsible for the abuse. The domestic court found that the officers were not guilty.

On 4 April 2002, the applicants filed an application with the European Court of Human Rights, claiming that they had been subjected to police brutality and that the authorities had failed to carry out an adequate investigation, violating Articles 3 and 13 of the Convention; they further claimed that there had been racial motives behind their ill-treatment and the lack of an adequate investigation, in breach of Article 14. The application was declared admissible on 23 November 2004.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Court held that:

(1) with regard to Article 3, the Convention prohibited in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct;

(2) strong presumptions of fact arose in cases where injuries occurred during a period of detention and the state had the burden of providing a satisfactory and convincing explanation;

(3) the state had failed to provide an adequate explanation for the injuries suffered by the applicants;

(4) the determination of the severity of ill-treatment required for a violation of Article 3 depended on the circumstances of the case including, the duration of treatment, its physical and/or mental effects, and in some cases, the sex, age and state of health of the victim;

(5) in considering whether treatment was "degrading" the Court had to consider whether the object of such treatment was to humiliate and debase the person concerned and whether it adversely affected his or her personality in a manner incompatible with Article 3;

(6) the applicants had suffered serious physical harm by the police, as well as feelings of fear, anguish, and inferiority, which had resulted in suffering that was severe enough to be categorised as inhuman and degrading within the meaning of Article 3;

(7) there was a further breach of Article 3 due to the state's failure to punish the police officers involved, and its failure to provide an adequate investigation with any tangible results or an opportunity for the applicants' claims to be addressed;

(8) in the light of the findings of a violation of Article 3 in relation to the procedural aspects of the case, it was not necessary to address a potential violation of Article 13;

(9) with respect to Article 14, racial violence was a particular affront to human dignity, and, in view of its perilous consequences, required special vigilance and a vigorous reaction from the state, which must use all available means to combat racism and racist violence;

(10) although the police officers' conduct during the applicants' detention was to be seriously criticized, there was no adequate evidence to show that it had been racially motivated; in this context, the Court could not consider allegations about police abuse against the Roma in general, and it had to focus on whether, in the applicants' case, the treatment inflicted had been racially motivated;

(11) the failure of the state to carry out an adequate investigation did not shift the burden of proof to the state for the purpose of assessing an alleged violation of Article 14;

(12) accordingly, there had been no violation of Article 14 with respect to the claim that the treatment of the applicants by the police had been racially motivated;

(13) however, with respect to the applicants' claim under Article 14 that the state's inadequate investigation had been racially motivated, when investigating violent incidents, the state had an additional duty to take all reasonable steps to unmask any racist motives and establish whether ethnic hatred played a role in the events;

(14) the state was required to do what was reasonable to gather evidence and what is practical to discover the truth;

(15) despite the plausible information available to the authorities that the alleged assaults had been racially motivated, the respondent state had failed in its duties under Article 14, taken together with Article 3, to take all possible steps to investigate whether discrimination could have played a role in the events, and had therefore violated Article 14; and

(16) the applicants were awarded €10,000 as non-pecuniary damage.

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Decision Excerpts

"According to the Court's case-law, "where an individual is taken into police 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 as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention... 48. The Court considers that in the present case the domestic authorities have failed to provide such an explanation." Paragraphs 47-48.

"49. The question which therefore arises next is whether the minimum level of severity required for a violation of Article 3 of the Convention can be regarded as having been attained in the instant case... The Court recalls that the assessment of this minimum is relative: it depends on all the circumstances of the case, such as the

duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim ...

50. In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will also have regard to whether its object is 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...

51. In the light of the above circumstances, the Court considers that the serious physical harm suffered by the applicants at the hands of the police, as well as the feelings of fear, anguish and inferiority which the impugned treatment had produced in them, must have caused the applicants suffering of sufficient severity for the acts of the police to be categorised as inhuman and degrading treatment within the meaning of Article 3 of the Convention." Paragraphs 49-51

"[T]urning to the facts of the present case, the Court considers that whilst the police officers' conduct during the applicants' detention calls for serious criticism, that behaviour is of itself an insufficient basis for concluding that the treatment inflicted on the applicants by the police was racially motivated. Further, in so far as the applicants have relied on general information about police abuse of Roma in Greece, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the treatment inflicted on the applicants was motivated by racism (see *Nachova and Others v. Bulgaria*, cited above, ¶ 155). Lastly, the Court does not consider that the failure of the authorities to carry out an effective investigation into the alleged racist motive for the incident should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 in conjunction with the substantive aspect of Article 3 of the Convention." Paragraph 66.

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