



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

SECOND SECTION

CASE OF YAVUZ ÇELİK v. TURKEY

(Application no. 34461/07)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

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

In the case of Yavuz Çelik v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Giorgio Malinverni,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in an application (no. 34461/07) 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 a Turkish national, Mr Yavuz Çelik (“the applicant”), on 31 July 2007. The Turkish Government (“the Government”) were represented by their Agent.

2. On 27 August 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1968 and lives in Istanbul.

A. The applicant’s arrest and detention in police custody

4. On 11 August 2006 the Muğla Magistrates’ Court issued an arrest warrant against the applicant in order to obtain his statement in relation to a charge of slander.

5. According to incident reports drawn up at the Üsküdar Doğancılar police station, an officer was sent to the applicant's house early on 27 October 2006 to execute the arrest warrant. Upon discovering that the applicant was not at home, he left a note inviting him to present himself at the Üsküdar Doğancılar police station to make a statement regarding the charge brought against him.

6. Later the same day, at approximately 2.30 p.m., the applicant telephoned the police station and quarrelled with the officer Y.A. on the phone, arguing that the police had no authority to ask him to go to the police station as he had not received a summons from the court to make a statement. It is indicated in the incident report that the applicant was very aggressive on the phone and that he insulted and threatened officer Y.A. The applicant denied these allegations.

7. Immediately after this phone conversation, three police officers were sent to the applicant's home to effect his arrest. Upon the applicant's failure to cooperate and surrender, oral instructions were given from the office of the Üsküdar public prosecutor to make a forcible arrest. A scuffle then ensued between the parties, and the applicant attempted to throw himself off the balcony. He was, however, detained by the police, with the assistance of his neighbour E.A.

8. The applicant was subsequently taken to the Üsküdar Doğancılar police station at approximately 3.30 p.m. According to the police report, the applicant continued to behave aggressively and defiantly at the police station, shouting that the police had no authority to keep him there, and at one point he tried to jump out of the window to escape. The officers, however, managed to grab hold of him and restrained him with handcuffs. The applicant confirmed this, but claimed that he had only attempted to jump out of the window as a reaction to two police officers hitting him on the chest and foot.

9. On 27 October 2006 at 5.20 p.m. the applicant was examined by a doctor at the Haydarpaşa Numune Hospital, who noted no signs of ill-treatment on his body. Following the medical examination, the applicant was taken back to the Üsküdar Doğancılar police station.

B. Criminal proceedings against the applicant and the medical certificates concerning his alleged ill-treatment

10. In the meantime, after handing the applicant over to the police station, two of the police officers who had made the arrest, namely M.Al. and M.Ak., underwent a medical examination at the Haydarpaşa Numune Hospital. Slight abrasions were noted on both officers' right hands.

11. On 27 October 2006 the three police officers who were in charge of the applicant's arrest, namely M.Al., M.Ak. and M.K., and the police officer the applicant had allegedly insulted on the phone earlier that day, namely

Y.A., lodged criminal complaints with the Üsküdar public prosecutor against the applicant, accusing him of resisting police officers on duty and insulting them. In their complaints, they each gave identical accounts of the events that took place prior to and during the applicant's arrest, which were also consistent with the official incident reports (see paragraphs 6 and 7 above).

12. At approximately 6 p.m. on the same day the applicant's neighbour E.A., who had witnessed the whole incident and had assisted the police in restraining and arresting the applicant, was asked to testify as a witness. E.A. verified that the applicant had violently resisted arrest, including by shouting insults, whereas the arresting police officers had in no way assaulted or otherwise mistreated him.

13. On an unspecified date the Üsküdar public prosecutor initiated an investigation against the applicant on charges of obstructing police officers in the performance of their duties by insulting and assaulting them (investigation no. 2006/22778).

14. On 28 October 2006 at half past midnight the applicant was questioned at the police station in relation to the charges brought by the police officers. According to the official statement (*sanık ifade tutanağı*), which he declined to sign, the applicant chose to remain silent and refused the assistance of the lawyer appointed by the Bar Association. He declared that he would make his statement before the public prosecutor.

15. At around noon the same day the applicant was taken to the Üsküdar police headquarters by two police officers, K.B. and Ö.M., for a physical identity check, including the taking of fingerprints. The applicant claimed that when he inquired about the purpose of the identity check, K.B. started swearing at him and then punched him on the nose, eye and cheek and squeezed him by the throat in the yard of the headquarters, while his hands were cuffed behind his back.

16. At 2.45 p.m. on the same day he was referred to the Haydarpaşa Numune Hospital for a medical examination.

17. At 2.55 p.m. a doctor at the Haydarpaşa Numune Hospital examined the applicant and noted an oedema on his nose, hyperaemia of 5 x 5 cm on the right side of his neck, ecchymosis (bruising) of 2 x 1 cm on the left side of his neck, hyperaemia on his right shoulder blade and hyperaemia and abrasion of 1.5 cm on his left shin. An otolaryngologist who examined him at 3.15 p.m. also noted sensitivity on his cervix. No information was provided in the medical reports as to how the indicated injuries might have been sustained by the applicant.

18. The applicant was subsequently brought before the Üsküdar public prosecutor. In his statement, which was made in the presence of his lawyer, the applicant denied the charges against him in relation to the insult and assault of police officers on duty. He lodged a counter-complaint against the officers who had carried out his arrest for trespass and violation of the right

to privacy of the home. He also complained that earlier that day he was beaten, strangled and sworn at by a police officer, K.B., outside the Üsküdar police headquarters, where he had been taken for an identity check, and that another officer who had accompanied them, namely Ö.M., had witnessed the incident. After having identified both police officers, who were waiting outside the office of the public prosecutor, he demanded that the public prosecutor initiate an investigation against K.B. for subjecting him to ill-treatment.

19. On 28 October 2006 at 10.30 p.m. the applicant was referred to the Istanbul Forensic Medicine Institute for a further medical examination. The doctor who examined him noted, in a preliminary report, that the applicant complained of having been hit on the face and squeezed around the neck earlier that day, as well as of having his chest crushed the day before during his arrest, on account of which he was suffering breathing problems. The doctor found an ecchymosis on the right side of the applicant's nose, an ecchymosis of 1 x 0.5 cm on the front left side of the base of his neck and an abrasion of 2 x 2 cm on the front side of his left forearm, just below the joint. He referred the applicant to a specialist in pulmonary diseases before drawing up the final report. This preliminary report was apparently not made available to the applicant.

20. On 30 October 2006 the applicant was examined by a pulmonary specialist, who did not note any damage to his lungs apart from a scar from a previous operation.

21. There is no information in the case file as to the outcome of the investigation against the applicant.

C. Investigation into the alleged ill-treatment of the applicant

22. On 28 October 2006 the Üsküdar public prosecutor questioned police officer K.B. regarding the applicant's allegations of ill-treatment (investigation no. 2006/23358). K.B. stated that at approximately 11.30 a.m. that day he had taken the applicant to the Üsküdar police headquarters together with officer Ö.M. When the applicant asked why he had been brought there, they explained that the Üsküdar public prosecutor had issued written instructions for him to have a physical identity check for the purposes of the ongoing investigations against him. The applicant thereafter became extremely agitated and starting shouting loudly and swearing. When they tried to get him inside the building, he tried to hurt himself by hitting his head against the front window of the building. K.B. alleged that he then tried to cuff the applicant's hands behind his back in order to get better hold of him. When the applicant resisted, Ö.M. tried to hold him down by the waist while he stabilised the applicant by putting his neck in an arm-lock and cuffing his hands behind his back. K.B. claimed that some police officers on patrol duty at the relevant time had witnessed these events. K.B.

also pressed charges against the applicant on account of the insults and the injuries he had sustained, which consisted of a red line of 3 cm x 5 cm on his right forearm, as had been noted by the public prosecutor.

23. The public prosecutor subsequently took a statement from Ö.M., the police officer who had accompanied K.B. at the time of the impugned incidents. Ö.M., who was also a relative of K.B. by marriage, repeated the latter's statement. He also claimed that two police officers on duty at the Üsküdar police headquarters had witnessed the events.

24. On 9 November 2006 the public prosecutor heard E.A., the applicant's neighbour who had witnessed his arrest. E.A. verified his earlier police statement, except for the part about the applicant insulting the police officers, which he claimed had been misrecorded. E.A. stated that the applicant had at no point insulted the police officers, yet he had very strongly resisted arrest. He further stated that the police officers carrying out the arrest had not used excessive force or otherwise ill-treated the applicant.

25. On the same day the Üsküdar public prosecutor issued a decision not to prosecute the accused police officers M.Al., M.Ak., M.K. and K.B. He held that both the applicant and the police officers who had carried out his arrest had sustained slight injuries as a result of the applicant's aggressive resistance to his arrest on 27 October 2006. However, as E.A. had also confirmed in his witness statement, the police had not used excessive force to effect the arrest. The public prosecutor did not indicate in the decision the medical reports and other evidence he relied on for the purposes of the investigation.

26. On 27 November 2006 the Forensic Medicine Institute delivered its final report regarding the applicant. After repeating the findings of the previous medical reports, it concluded that the injuries observed on the applicant's body were not life-threatening and could be treated by a simple medical intervention.

27. On 4 December 2006 the applicant objected to the decision of the public prosecutor. The applicant argued, *inter alia*, that on 28 October 2006 at approximately 1.15 p.m. he had been punched on the face and strangled by police officer K.B., who had cuffed his hands behind his back to render him more defenceless. The injuries he had sustained as a result of this beating had been clearly indicated in the medical report issued by the Haydarpaşa Numune Hospital at 2.55 p.m. that day. The Forensic Medicine Institute, where the public prosecutor had referred him after taking his statement, had also noted his injuries in its preliminary report and had photographed them. However, neither the report of the Forensic Medicine Institute nor the photographs had been submitted to the investigation file at the Üsküdar public prosecutor's office by the police officer in charge. The applicant asserted that when he had requested the Forensic Medicine Institute's preliminary report from the public prosecutor's office, the prosecutor had informed him in person that the report was not in the

investigation file. In the absence of this report, his complaints against K.B. regarding the ill-treatment he had been subjected to had not been duly examined by the public prosecutor. He further claimed that the public prosecutor had not heard his witnesses regarding the impugned incidents.

28. On 18 January 2007 the Kadıköy Assize Court upheld the decision of the public prosecutor, without responding to the applicant's specific objections. That decision was served on the applicant on 10 February 2007.

29. On 7 February 2007 the applicant requested from the Forensic Medicine Institute the medical report issued by its Istanbul branch following his examination on 28 October 2006.

30. On 19 February 2007 the Forensic Medicine Institute informed the applicant that a copy of the report containing the findings of his medical examination had been sent to the Üsküdar public prosecutor's office on the same date as the examination. In the event that it could not be found in the investigation file, a new copy could be supplied at the request of the public prosecutor's office. It appears that no such request was made by the office of the Üsküdar public prosecutor.

31. In the meantime, on 12 February 2007 the applicant applied to the Üsküdar public prosecutor's office, requesting, *inter alia*, that his medical report prepared by the Forensic Medicine Institute, together with the photographs, be found and communicated to him, and that the authorities responsible for concealing these documents be punished. He also demanded an explanation as to why K.B. had been charged with "excessive use of force" rather than "ill-treatment" and why the public prosecutor had heard evidence from a witness called by the police against him, E.A., but not accepted the examination of witnesses on his behalf. The applicant did not receive a reply from the public prosecutor's office.

32. On 29 May 2007 the applicant applied once again to the Üsküdar public prosecutor's office for the medical report issued by the Forensic Medicine Institute, which was not available in the investigation file. It appears that he did not receive a reply to this request either.

D. Disciplinary proceedings against police officers

33. In the meantime, administrative proceedings were also initiated against the police officers who had effected the applicant's arrest, namely M.Al., M.Ak., M.K. and Y.A. It appears that no administrative action was taken against K.B. in respect of the applicant's allegations of ill-treatment.

34. On an unspecified date the chief superintendent officer in charge of the investigation submitted an investigation report, in which he expressed the opinion that the officers involved in the applicant's arrest had acted strictly under orders from the public prosecutor and had not committed any offences which required disciplinary action.

35. On 8 January 2007 the Üsküdar District Governor's Office discontinued the investigation against the police officers on the basis of the report of the chief superintendent officer.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

36. The applicant complained under Articles 3 and 13 of the Convention that he had been subjected to ill-treatment outside the Üsküdar police headquarters on 28 October 2006 and that the domestic authorities had failed to conduct an effective investigation into his allegations of ill-treatment.

37. The Court considers that these complaints should be examined from the standpoint of Article 3 alone.

A. Admissibility

38. The Government argued that the applicant had failed to exhaust available domestic remedies within the meaning of Article 35 § 1 of the Convention. In this connection, they submitted that the applicant had not availed himself of the civil and administrative law remedies which could have provided reparation for the harm which he had allegedly sustained. The Government further submitted that the applicant had failed to comply with the six-month time-limit with regard to his complaints under Articles 3 and 13. They contended that the final domestic decision regarding the applicant's complaints had been delivered by the Kadıköy Assize Court on 18 January 2007.

39. The applicant disputed the Government's arguments.

40. The Court reiterates that it has already examined and dismissed the Government's preliminary objections in similar cases (see, for example, *Dur v. Turkey*, no. 34027/03, § 26, 18 September 2008; *Eser Ceylan v. Turkey*, no. 14166/02, § 23, 13 December 2007; *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 72, 17 March 2009; and *Arif Çelebi and Others v. Turkey*, nos. 3076/05 and 26739/05, § 53, 6 April 2010). It finds no particular circumstances in the instant case requiring it to depart from its findings in the above-mentioned applications. The Court particularly notes in this connection that the final decision of the Kadıköy Assize Court was served on the applicant on 10 February 2007 and the applicant lodged his

application with the Court within six months of this date. It therefore rejects the Government's preliminary objections.

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

B. Merits

42. The Government submitted that the facts of the case as a whole did not support the allegations that the injuries observed on the applicant's body, which in their opinion had not attained the level of severity proscribed by Article 3, were caused by a treatment for which the Government bore responsibility. They submitted that bearing in mind the applicant's reckless conduct from the moment of his arrest, it was likely that the injuries noted in the medical reports had been self-inflicted. Moreover, if any force had been used against the applicant by the police, such use of force had been proportionate and had been made strictly necessary by the applicant's own aggressive conduct. The Government further contended that an effective investigation had been immediately carried out in respect of the applicant's allegations and that the authorities had taken the necessary steps to identify and prosecute the alleged perpetrators. However, the mere fact that the outcome of the proceedings had not been favourable for the applicant did not mean that the remedy in question had been inadequate.

43. The applicant alleged that his injuries had been caused by the ill-treatment he had been subjected to on 28 October 2006 by a police officer and had not resulted from the resistance he had shown at the time of or subsequent to his arrest, contrary to the allegations of the Government. He further argued that an effective investigation had not been conducted into his allegations of ill-treatment and that the public prosecutor had failed to act impartially by accepting witness statements on behalf of the police while ignoring the witnesses proposed by him.

44. The Court reiterates at the outset that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

45. The Court further reiterates that where an individual is taken into custody in good health but is found to be injured by 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 corroborated 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, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

46. The Court notes from the documents in the case file, in particular the statements of the applicant, the police officers and the witness E.A. and the medical certificates of the relevant police officers, that the applicant in the instant case was arrested on 27 October 2006 after some considerable resistance and struggle. Nevertheless, the medical report drawn up by the Haydarpaşa Numune Hospital immediately after the arrest, the findings of which were not contested by the applicant, found no injuries or other signs of physical violence on the applicant's person.

47. On the other hand, the two medical reports issued the following day by the Haydarpaşa Numune Hospital and the Istanbul Forensic Medicine Institute found that the applicant had sustained some injuries on his body, notably on his nose, neck and shoulder blade, some time between the two medical examinations at the Haydarpaşa Numune Hospital. It is undisputed that the applicant sustained these injuries after his arrest, but while he was still in the hands of police officers from the Üsküdar Doğancılar police station. The Government, therefore, bear the burden of providing a plausible explanation for the cause of those injuries (see *Selmouni*, cited above, § 87).

48. The Court notes in this connection that the parties put forward different versions as to how the applicant actually sustained the injuries in question. The applicant alleged fairly consistently before both the Court and the domestic authorities that he had been ill-treated by a police officer, namely K.B., outside the Üsküdar police headquarters prior to his identity check. He claimed, in particular, that he had been punched on the nose and strangled, which appears consistent with the findings in his medical reports. The Government, on the other hand, contended that the police bore no responsibility for the applicant's injuries, which had either been self-inflicted or had been caused by use of proportionate force made strictly necessary by the applicant's own conduct. Relying on the statements of the two police officers involved in the incidents (K.B. and Ö.M.), they argued that prior to his identity check, which had taken place before his medical examination on 28 October 2006, the applicant had begun acting violently and had hit his head against the front window of the Üsküdar police headquarters in a fit of frenzy. The applicant's rowdy conduct had necessitated his being restrained by forceful means, including being handcuffed while in a stranglehold. All of the injuries found on the applicant's body could thus be traced back to these incidents, which had taken place outside the Üsküdar police headquarters on 28 October 2006.

49. In order to establish whether the Government have satisfactorily discharged their burden of providing plausible explanations for the injuries sustained by the applicant in the instant case, regard must be had, *inter alia*, to the investigation carried out by the national authorities into the incident and the conclusions reached by them. The Court reiterates here that, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of

Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible (see, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII; *Beker v. Turkey*, no. 27866/03, § 53, 24 March 2009; and *Özcan and Others v. Turkey*, no. 18893/05, § 73, 20 April 2010).

50. The Court notes in this regard that promptly after the applicant lodged his complaints, the public prosecutor initiated an investigation into his allegations of ill-treatment, albeit under the charge of excessive use of force, and questioned K.B. as the alleged perpetrator and Ö.M. as the main witness. However, it appears that after taking these initial steps, the public prosecutor put the applicant's allegations of ill-treatment against K.B. aside and took no further action, making no decision which demonstrated a commitment to establishing the actual circumstances surrounding the applicant's injuries.

51. The Court firstly notes in this regard that despite the entirely differing accounts provided by the applicant and the implicated police officers as to the events that occurred on 28 October 2006 outside the Üsküdar police headquarters, the public prosecutor did not summon any more witnesses, from amongst the police or other persons in the vicinity at the relevant time, in order to establish a fair and objective account of events. This is despite the explicit statements from K.B. and Ö.M. that a number of police officers had witnessed the incidents.

52. Secondly, the fact that the decision not to prosecute had already been rendered by the time the Istanbul Forensic Medicine Institute delivered its final report on the injuries sustained by the applicant on 27 November 2006 leads the Court to consider that the public prosecutor acted too hastily to close the investigation, without showing the requisite diligence in collecting all the relevant evidence to complete the case file. In fact, there is a considerable amount of evidence provided by the applicant, which the Government failed to rebut, to suggest that the investigation file which formed the basis of the public prosecutor's decision did not even contain a copy of the Istanbul Forensic Medicine Institute's preliminary report of 28 October 2006. Although the findings in the Haydarpaşa Numune Hospital's report of 28 October 2006 alone were sufficient to establish the extent of the injuries sustained by the applicant, the public prosecutor's apparent indifference as to the incompleteness of the case file casts doubt on the accuracy, breadth and fairness of the entire investigation, particularly in view of the repeated attempts by the applicant to have this particular deficiency remedied.

53. Lastly, and most strikingly, the Court notes that the decision not to prosecute taken by the public prosecutor failed altogether to deal with the accusations made by the applicant against K.B. Confining the examination solely to the events surrounding the applicant's arrest on 27 October 2006, the public prosecutor concluded that the applicant's injuries had been caused by his resistance to arrest and that the police had not used excessive force while taking him into detention. In coming to this conclusion the public prosecutor relied mainly on the arrest report, the statements made by the police officers who had conducted the applicant's arrest and the witness statement by E.A., who had testified on behalf of the police. The public prosecutor also took into account whatever medical certificates he had in the investigation file, including those establishing the injuries sustained by two of the arresting officers. However, the public prosecutor failed to answer the obvious question as to why the medical report issued immediately after the applicant's arrest bore no sign of ill-treatment, if the injuries noted in subsequent reports had really been sustained at the time of arrest. Nor did he refer, even briefly, to the events that allegedly occurred the next day outside the Üsküdar police headquarters, not even to endorse K.B.'s version of events. The Court notes in this connection that even assuming that the events had indeed occurred as recounted by K.B., the national authorities were still under an obligation to demonstrate with convincing arguments that the force used by K.B. to restrain the applicant was not excessive and was indispensable, particularly in view of the hyperaemia noted on the applicant's neck which indicated forceful strangulation (see above paragraph 17 and 19). The applicant's allegations of ill-treatment against K.B. were, therefore, left completely unexamined.

54. The Court moreover considers that the complete disregard by the national authorities of the applicant's allegations against K.B. is also manifested in the lack of disciplinary action against that police officer. The Court notes that although disciplinary proceedings were initiated against the police officers who had effected the arrest, and whom the applicant had only reproached for trespass, no similar action was taken against K.B., despite the unambiguous complaints lodged by the applicant against him.

55. In the light of the foregoing, the Court considers that the documents in its possession show that the entire investigation was not carried out in a thorough manner and thus failed to meet the requirements of an effective investigation within the meaning of the Convention. The Court notes in particular that the facts of the dispute concerning the applicant's ill-treatment have not been the subject of any determination by a national court or other judicial authority and that, consequently, the investigation was not capable of establishing the true circumstances surrounding the applicant's treatment. The Court therefore considers that the Government, who simply relied on the unscrutinised statements of K.B. and Ö.M., that is the perpetrator of the alleged ill-treatment and his colleague and relative by

marriage, have failed to meet their responsibility to provide a plausible explanation as to how the applicant suffered his injuries while he was in the hands of agents of the State. In those circumstances the Court finds that the violence inflicted on the applicant on 28 October 2006, as described by the applicant himself and which appears consistent with the findings of the medical report of the same date, reaches the threshold of inhuman and degrading treatment within the meaning of Article 3 of the Convention.

56. There has accordingly been a violation of Article 3 of the Convention under its substantive limb as well as under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

57. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested this claim.

59. The Court considers that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Ruling on an equitable basis, it therefore awards the applicant EUR 11,700.

60. The applicant did not claim any costs and expenses. Accordingly, no award is made under this head.

B. Default interest

61. The Court considers it appropriate that the default interest 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

1. *Declares* the application admissible unanimously;
2. *Holds* by 6 votes to 1 that there has been a violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment that the applicant was subjected to;
3. *Holds* unanimously that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* by 6 votes to 1

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge A. Sajó is annexed to this judgment.

F.T.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE SAJÓ

While I fully agree with the applicability in the present case of the standards developed by the Court, I have come to the conclusion that in the light of those standards there has been no violation of the substantive prong of Article 3. Therefore I have to respectfully dissent.

First, as to the applicant's arrest, there is independent evidence that the applicant, who was already very agitated (see paragraphs 6-8 of the judgment), forcibly resisted his arrest on 27 October 2006. This is confirmed by the witness statement of a neighbour and the slight abrasions suffered by the arresting police officers. The medical report that was drawn up after the arrest did not indicate any signs of ill-treatment on the body of the arrested person (see paragraph 9).

The applicant also complained about the incident that took place when he was taken to the Üsküdar police headquarters for an identity check (see paragraph 15). According to the second and third medical reports (see paragraphs 17 and 19) drawn up on 28 October, the applicant must have suffered injuries while in police custody as abrasions and ecchymosis (bruising) were noted on his body. In such circumstances the Government have the duty to provide a plausible explanation that the injury did not result from inhuman or degrading treatment. This duty to provide a plausible explanation is to be understood in the context of the requirement that a State can be held responsible for a violation of its international law obligations when facts conducive to such responsibility are proven "beyond reasonable doubt", where such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The issue in the present case concerns the rebuttal of a presumption (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

While the investigative measures in the case are subject to criticism, I find the explanation provided by the Government plausible. Witness Ö.M. did in fact corroborate the version provided by police officer K.B., according to which it was the applicant who had provoked the police and behaved in a self-destructive way. The injuries sustained by police officer K.B. (see paragraph 5 of the judgment) indicate that the applicant continued to behave aggressively. Such behaviour would be consistent with the pattern that was observed earlier by other witnesses (aggressiveness, several attempts to throw himself out of the window – see paragraphs 7-8). The injuries suffered by the applicant while being restrained do not indicate that the use of force by K.B. was disproportionate (see paragraph 26).

For the above reasons I also felt unable to vote in favour of the excessive compensation granted for non-pecuniary damage.