



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

SECOND SECTION

CASE OF PEKASLAN AND OTHERS v. TURKEY

(Applications nos. 4572/06 and 5684/06)

JUDGMENT

STRASBOURG

20 March 2012

FINAL

20/06/2012

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

In the case of Pekaslan and Others v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in two applications (nos. 4572/06 and 5684/06) 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 five Turkish nationals, Ms Nihal Pekaslan, Ms Refika Meltem İspir, Ms Kıvanç Pekaslan, Mr İbrahim Bozay and Ms Leyla Bozay (“the applicants”), on 24 January 2006 and 2 February 2006.

2. The applicants were represented by Mr Serkan Cengiz and Ms Nalan Erkem, lawyers practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that the intervention of a number of police officers and the force used by those police officers against them in a demonstration in which they were taking part had violated their rights under Articles 3 and 11 of the Convention.

4. On 7 June 2010 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. Introduction

5. The applicants were born in 1961, 1972, 1985, 1956 and 1962 respectively and live in Malatya.

6. As the facts of the case are in dispute between the parties, they will be set out separately. The facts as presented by the applicants are set out in section B below (paragraphs 7-13). The Government's submissions concerning the facts are summarised in section C below (paragraphs 14-20). The documentary evidence submitted by the applicants and the Government is summarised in section D (paragraphs 21-41).

B. The applicants' submissions on the facts

7. On 8 March 2005 the applicants took part in International Women's Day celebrations in the city of Malatya, during which a group comprising hundreds of police officers formed a cordon around the crowd. The police chief warned the participants that no prior permission had been obtained for the gathering.

8. The first applicant, Ms Nihal Pekaslan, who was a spokesperson for the Women's Democratic Platform, told the police chief that they were exercising their constitutional right and that the applicable legislation required no prior permission.

9. Police officers then dragged a number of persons, including four of the applicants, into waiting police vehicles. In the course of so doing, the police officers sprayed the crowds with tear gas and hit some of them, including the four applicants.

10. The second applicant, Ms Refika Meltem İspir, was not arrested. She was not beaten up, but was sprayed with tear gas. She was accompanied by her eleven-year-old daughter and her mother, both of whom were also sprayed with tear gas.

11. The ill-treatment continued in the police vehicles. Male police officers started squeezing the arms and legs of the detained women. When the women told the police officers that they had no right to behave like that and asked for female police officers to accompany them, they were sworn at. The episode in the police vehicles lasted for approximately twenty minutes.

12. The four applicants were then taken to a police station and subsequently to the Forensic Medicine Institute for a medical examination. According to the medical reports drawn up that day, the four applicants who

had been hit by the police officers had a number of injuries on their bodies, rendering them unable to work for periods of between one and three days.

13. Later that same day the four applicants were released from police custody.

C. The Government's submissions on the facts

14. On 8 March 2005 the applicants took part in International Women's Day Celebrations in Malatya where three different groups of demonstrators were carrying placards, flags and posters, and holding demonstrations which hindered the flow of traffic.

15. A group of police officers tried to convince the group to disperse, and requested them to hold their demonstrations without impeding the circulation of the traffic. A police chief warned the participants that no prior permission had been obtained for the gathering, but told them that they could carry on with their demonstration on the pavement and walk in an orderly manner without violating public order. Nevertheless, the group, including the applicants, refused to disperse and continued with their demonstration.

16. The police chief made several unsuccessful attempts to tell the participants that the manner in which they were conducting their demonstration was unlawful because they were impeding the flow of traffic. The police chief also told the participants that they could leave their placards – which were too large – and walk on the pavement; the placards would be returned to them later.

17. The group insisted on blocking the street and continued with their demonstration. In spite of the police officers' warnings and efforts, the group shouted slogans and continued to protest. Meanwhile, ten to fifteen police officers formed a cordon around the participants who had been giving orders to the rest of the demonstrators. The demonstrators inside the police cordon continued to protest, saying that they would not end the illegal demonstration even if they were arrested.

18. Police officers then put a number of persons, including four of the applicants, into the waiting police vehicles by force which could not be considered disproportionate. They were taken to the Malatya Court House. On the way to the court house the applicants insulted the police officers present in the vehicle and tried to provoke them. However, the police officers kept their calm. Female demonstrators were accompanied by female police officers in the vehicle.

19. The remaining members of the group who had not been arrested continued with their demonstration and read out their press release after having complied with the police officers' request to fold their placards and walk on the pavement.

20. The Government submitted the video footage of the incident to the Court, and argued that the footage supported their submissions summarised above.

D. Documentary evidence submitted by the parties

21. The following information emerges from the documents submitted by the parties.

1. Documents pertaining to the incident

22. According to a report signed by eighteen police officers, at 2.00 p.m. on 8 March 2005, police received intelligence that a number of non-governmental organisations were planning to gather at the junction of Milli Egemenlik Street with a view to marching from there to the square outside the post office. The police put in place all necessary security measures at the junction at 11.00 a.m. and the demonstrators began arriving at midday.

23. The police officers unsuccessfully urged the demonstrators not to march with their placards to the square, where a press release was scheduled to be read out. When the demonstrators ignored the police and started marching, thus blocking a main road, the police officers had to use force to arrest the applicants – with the exception of the second applicant, Ms Refika Meltem İspir – and five other demonstrators because they resisted arrest and insulted the police officers.

24. According to another police report drawn up on the same day, the arrested persons behaved in a rowdy manner while they were being transported to the court house in a vehicle. They also insulted the police officers present in the vehicle by shouting things such as “Who do you think you are? You have no right to behave like this. Shame on you, are you going to tell your children that you are torturers?”.

25. The Government submitted to the Court the video footage of the incidents recorded by police officers. However, the part where the police officers used force and arrested the applicants does not feature in the footage. The footage begins with the police officers trying to persuade the demonstrators to leave their placards behind, and then resumes with the demonstrators protesting against the use of force by the police officers and asking for their arrested friends to be released.

26. It can be seen from the footage that before they were arrested the applicants drew the police officers’ attention to a circular issued by the Ministry of the Interior on 11 June 2004. In the circular, a copy of which was made available to the Court by the applicants, the Ministry urges police officers to respect certain rights and freedoms, including freedom of expression and assembly, and reminds them that those rights and freedoms can only be restricted in limited circumstances. In the circular, police

officers are also urged to show restraint when faced with demonstrations, and to use their powers to promote the rights of civil society.

27. On the same day the four arrested applicants were examined by doctors at the local branch of the Forensic Medicine Institute. The details of their injuries, as noted in the medical reports, are as follows:

Ms Nihal Pekaslan: four ecchymosed areas measuring between one and five centimetres, and grazes on both forearms and on the left hand. Her injuries prevented her from working for three days.

Ms Kıvanç Pekaslan: an ecchymosed area measuring 2 x 2 centimetres on the inside of the right arm, which prevented her from working for one day.

Mr İbrahim Bozay: two ecchymosed areas, each measuring 1 x 1 centimetre, on the forehead, and two ecchymosed grazes on one of the fingers of the right hand and on the right forearm, measuring 1 x 1 and 2 x 2 centimetres respectively. These injuries prevented Mr Bozay from working for one day.

Ms Leyla Bozay: Ms Bozay told the doctor that she had been hit on the nape of the neck and that her hair had been pulled. The doctor observed two ecchymosed areas measuring 1 x 1 and 2 x 1 centimetres on the insides of both arms, which prevented her from working for one day.

28. On 10 March 2005, at 2.40 p.m., the first applicant, Ms Nihal Pekaslan, was examined by another doctor at the Malatya State Hospital, who observed two ecchymosed areas measuring 15 x 15 centimetres on her arms, and various other ecchymosed areas on her knee and hand. According to the doctor, the injuries had been caused some thirty-six to forty-eight hours previously.

2. Documents pertaining to the investigation into the allegations of ill-treatment

29. On 8 March 2005 the second applicant, Ms Refika Meltem İspir, lodged an official complaint with the prosecutor against the police officers who, she alleged, had sprayed her and her daughter with tear gas. On the same day Ms İspir orally informed the prosecutor that she would recognise the police officer who had sprayed her and her daughter with tear gas. When, some thirty-five days later, she was asked by the investigating police officer whether she would be able to identify the police officer responsible, she stated that she had only seen him once and then only for a few seconds, but that had they asked her immediately after the incident she would have been able to recognise him.

30. On 11 March 2005 the remaining four applicants lodged an official complaint with the prosecutor against the police officers allegedly responsible for the ill-treatment. They complained, *inter alia*, that they had been beaten up and assaulted while exercising their right to freedom of

expression and assembly. They also referred to Articles 3 and 10 of the Convention.

31. On 16 March 2005 a police chief in Malatya sent a verbatim transcription of the video footage of the incidents to the Malatya prosecutor.

32. Between 4 April 2005 and 3 May 2005 the Malatya prosecutor took statements from eighteen police officers who had been on duty on the day of the incidents. A police chief told the prosecutor that female demonstrators had attacked the police and that the police had had to use force in response. He maintained that the force used by the police had been proportionate.

33. Four of the police officers told the prosecutor that the demonstrators had blocked the street and that the police had had to arrest them. While they were arresting the demonstrators there had been scuffles and the demonstrators had attacked the police officers with sticks. The police officers had had to use force, as a result of which the demonstrators might have suffered minor injuries.

34. The remaining thirteen police officers' statements concerned solely the complaints made by the applicants regarding the alleged assaults by male police officers on their way to the court house. These officers denied that the demonstrators had been assaulted in the police vehicles. They also added that the arrested persons had been accompanied by female officers in the vehicles.

35. On 18 April 2005 the prosecutor examined the video footage submitted to his office by the police, and recorded his findings in a report. In the opinion of the prosecutor, the demonstrators had tried to break the police cordon and march. The police officers had not behaved in an arbitrary manner and the use of force by them had not been excessive.

36. On 12 May 2005 the Malatya prosecutor decided not to prosecute the police officers. In his decision the prosecutor stated that the second applicant, Ms İspir, had been unable to recognise the police officer who had sprayed her with tear gas. The prosecutor stated that the applicants had gathered in the area without having sought prior permission. In dispersing the unauthorised demonstration, the police officers had been impelled to resort to the use of force in order to apprehend the applicants because they had resisted arrest and insulted them. In the opinion of the prosecutor, other than the applicants' unsubstantiated allegations, there was no evidence justifying the prosecution of the police officers.

37. The applicants lodged an objection against the prosecutor's decision. They argued, in particular, that although they had not resisted arrest, the police officers had proceeded to arrest them by using force. The applicants also maintained that they had tried to exercise their right to freedom of expression, which was guaranteed by the Constitution as well as by Article 10 of the Convention. They also pointed out that, according to the applicable legislation, no prior permission was necessary to hold demonstrations. Moreover, the police officers had acted contrary to the

circular issued by the Ministry of the Interior (see paragraph 26 above), and their actions had also been in breach of Article 3 of the Convention.

38. The objection filed by the applicants was rejected by the Elazığ Assize Court on 28 July 2005. That decision was communicated to the applicants in September 2005.

3. Documents pertaining to the applicants' trial

39. On 8 March 2005 four of the applicants – that is, all the applicants with the exception of the second applicant, Ms Refika Meltem İspir – were questioned by the Malatya prosecutor as suspects. They told the prosecutor that before they could even begin their demonstration the police had arrested them without warning and, in the course of doing so, had hit them. They denied that they had insulted the police officers. Lawyers representing the applicants told the prosecutor that the arrests had been arbitrary and in breach of their clients' fundamental rights and freedoms under the Convention, including the prohibition of torture. The lawyers added that their clients had been exercising their democratic rights and had not committed any offences.

40. On the same day, the Malatya prosecutor filed an indictment with the Malatya Criminal Court of First Instance and brought criminal proceedings against the four applicants, as well as against the remaining five persons who had been arrested together with the applicants, for insulting the police officers and contravening the Meetings and Demonstration Marches Act (Law no. 2911).

41. On 2 June 2005 the Malatya Criminal Court of First Instance acquitted the four applicants and the remaining defendants. It held that there was no evidence to show that the four applicants had put up resistance against the police officers.

THE LAW

42. Given the similarity of the applications, as regards both fact and law, the Court deems it appropriate to join them.

I. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

43. The applicants complained that they had been subjected to ill-treatment contrary to Article 3 of the Convention. Under Articles 3, 6 and 13 of the Convention they also complained that their allegations had not been examined adequately.

44. The Government contested the applicants' complaints.

45. The Court considers that these complaints should be examined solely from the standpoint 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.”

A. Admissibility

46. The Government argued that the applicants had failed to exhaust the domestic remedies available to them within the meaning of Article 35 § 1 of the Convention because they had not brought an administrative or a civil action for compensation.

47. The Court reiterates that it has already examined and rejected similar preliminary objections made in similar cases (see, most recently, *Gazioğlu and Others v. Turkey*, no. 29835/05, §§ 29-30, 17 May 2011, and the cases cited therein; see also *Saçılık and Others v. Turkey* (partial just satisfaction), nos. 43044/05 and 45001/05, §§ 68-69, 5 July 2011). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases. It therefore rejects the Government’s objections to the admissibility of the complaint.

48. As for the complaints made by the second applicant Ms Refika Meltem İspir, who argued that she had been sprayed with tear gas, the Court observes that that applicant failed to submit to the Court any evidence in support of her allegations. It follows, therefore, that the complaints made by Ms İspir are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

49. The Court notes that the complaints made by the remaining four applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

50. The four applicants alleged that they had been subjected to ill-treatment in breach of Article 3 of the Convention. In support of their allegations they relied on the medical reports described above which detail their injuries, and argued that the force used by the police had been unwarranted and in breach of the domestic legislation.

51. The four applicants submitted that throughout the incidents they had behaved in accordance with the circular issued by the Ministry of the Interior and had not behaved in a way which necessitated the use of force against them. In support of this submission they argued that the fact that they had been acquitted of the charges brought against them proved that they had not put up resistance against the police officers. The applicants also submitted that, even though they had complied with the police officers’

request and accepted to walk on the pavement without displaying their banners, the police officers had proceeded to arrest them by forceful means.

52. The Government considered the applicants' allegations of attacks by the police officers without a prior warning to be baseless. In their opinion the applicants had not submitted concrete evidence in support of their allegations of ill-treatment. They also argued that no struggle had taken place between the police and the demonstrators.

53. According to the Government, the video footage of the incident showed that the police had done everything to persuade the applicants not to act in breach of the applicable legislation. However, when the applicants and other demonstrators ignored the warnings and impeded the traffic circulation, the police officers had formed a cordon around them and arrested them by using force which could not be considered excessive. The force used by the police officers had been proportionate and the injuries on the applicants' bodies had been caused as a result of their resistance. Since the force used by the police officers had been proportionate to the aim of maintaining public order, there had been no violation of Article 3 of the Convention.

54. The Government also argued that an effective investigation had been carried out by the national authorities into the applicants' allegations of ill-treatment.

55. The Court observes that the Government accepted that force had been used by the police officers when arresting these four applicants, but argued that the force used could not be considered to have been excessive. They further submitted that since the use of force by the police officers had been proportionate to the aim of maintaining public order, there had been no violation of Article 3 of the Convention.

56. The Court reiterates from the outset the absolute nature of the prohibition of torture or inhuman or degrading treatment or punishment. It is true that, according to the Court's case-law, Article 3 does not prohibit the use of force for effecting an arrest. Nevertheless, such force may be used only if it is indispensable and it must never be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, and the cases cited therein).

57. Furthermore, recourse to physical force which has not been made strictly necessary by a person's own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. In this connection, the Court reiterates that the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336, and the case cited therein).

58. It appears from the above-mentioned judgments that only in certain well-defined circumstances can recourse to physical force by police officers be deemed not to amount to ill-treatment. Thus, the Court cannot accept the Government's submissions that the use of force by the police officers was

proportionate to the aim of maintaining public order (see paragraph 53 above). It is crucial to stress that Article 3 of the Convention does not allow for a balancing exercise to be performed between the physical integrity of an individual and the aim of maintaining public order.

59. While the Government submitted, on the one hand, that no struggle had taken place between the police and the demonstrators (see paragraph 52 above), they also stated: “when the applicants and other demonstrators ignored the warnings and impeded the traffic circulation, the police officers formed a cordon around them and arrested them by using force” (see paragraph 53 above). Having regard to the Government’s admission that the police officers used force against the applicants, the Court considers that the burden rests on the Government to demonstrate by convincing argument that the use of force was rendered strictly necessary by these applicants’ own behaviour and that the force used by the police officers was not excessive.

60. The Court is faced with two conflicting conclusions reached by the domestic authorities in relation to the Government’s submission that the four applicants resisted arrest and that their resistance justified the use of force against them. According to the prosecutor’s decision of 12 May 2005, the police officers were impelled to resort to the use of force in order to apprehend the applicants because they had resisted arrest and insulted them (see paragraph 36 above). According to the decision of 2 June 2005 of the Malatya Criminal Court of First Instance, however, there was no evidence to show that these four applicants had put up resistance against the police officers (see paragraph 41 above).

61. Nor can the video footage of the incidents, which does not contain the part during which the police officers arrested the applicants, lend assistance to the Court in assessing whether the use of force was indispensable, not excessive, and rendered strictly necessary by the four applicants’ own behaviour. Concerning the Government’s failure to submit to the Court an unedited copy of the video footage, the Court stresses that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances the respondent State has access to information capable of corroborating or refuting these allegations. A failure on a Government’s part to submit such information as is in their hands without a satisfactory explanation may not only reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention, but may also give rise to the drawing of inferences as to the well-foundedness of the allegations (see *Timurtaş v. Turkey*, no.

23531/94, § 66, ECHR 2000-VI; see also Rule 44A and C of Rules of Court). In the present case, and having particular regard to the fact that the Government already bear the burden of providing a plausible explanation for the four applicants' injuries (see paragraph 59 above), the Court does not deem it necessary to examine whether the Government fell short of their obligation under Article 38 of the Convention.

62. Finally, the Court notes that the prosecutor who decided not to prosecute the police officers did not make any attempt to establish whether the force used had been indispensable and not excessive.

63. Instead, the rationale behind the prosecutor's decision to close the investigation appears to be that the applicants had not obtained prior permission to hold the demonstrations. The Court notes, however, that according to Article 34 of the Constitution everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. It further notes that the applicants unsuccessfully reminded the police officers (see paragraph 8 above) and the Elazığ Assize Court (see paragraph 37 above) that no prior permission was necessary under Turkish law to hold demonstrations.

64. The Court notes that, according to the report summarised above (see paragraph 22 and 24), the police had been aware of the planned demonstration and had taken the necessary measures at the scene of the incident one hour before the demonstrators began to arrive. Thus, it cannot be said that the police were called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). They may therefore have been expected to show a degree of patience and tolerance before attempting to disperse a crowd which did not present a danger to public order and was not, as established by the Malatya Criminal Court of First Instance, engaging in acts of violence.

65. In the light of the above, in particular the prosecutor's failure to establish whether the force used had been indispensable and not excessive and the Government's failure to send the Court the complete video footage of the incident, the Court considers that the Government have failed to furnish convincing or credible facts which would provide a basis to explain or justify the degree of force used against the four applicants, whose injuries are corroborated by medical reports. As a result, it concludes that the injuries sustained by these applicants were the result of ill-treatment contrary to Article 3 of the Convention, for which the State bears responsibility.

66. It follows that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

67. Lastly, the applicants complained that their rights guaranteed by Articles 10 and 11 of the Convention had been subject to interference and restriction without justification.

68. The Government contested that argument.

69. The Court considers that the applicants' complaints should be examined from the standpoint of Article 11 of the Convention alone, which reads, in so far as relevant, as follows:

“1. Everyone has the right to freedom of peaceful assembly ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of ... public safety [or] for the prevention of disorder ...”

A. Admissibility

70. The Government were of the opinion that the applicants had failed to invoke their right to freedom of peaceful assembly before the national courts.

71. The Court observes that the applicants expressly referred to their rights under the Convention in various statements and petitions (see paragraphs 30, 37 and 39 above). The Court thus rejects the Government's objection as to the admissibility of this complaint.

72. The Court has already concluded that the applicant Refika Meltem İspir failed to substantiate her allegation that she had been sprayed with pepper gas (see paragraph 48). It also notes that, unlike the remaining four applicants, Ms İspir was not arrested (see paragraph 10 above). It follows that there has been no interference with Ms İspir's rights under Article 11 of the Convention. Her complaints are therefore manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

73. The Court notes that the complaints made by the remaining four applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the applicants' exercise of their freedom of peaceful assembly

74. The Government maintained that there had been no interference with the applicants' rights under Article 11 of the Convention.

75. The Court considers that the intervention of the police officers, which led to the subsequent arrests of the four applicants for participating in the meeting, as well as the ill-treatment to which they were subjected, constituted an interference with their rights under Article 11 of the Convention.

2. Whether the interference was justified

76. The Government stated that the meeting in issue had been organised unlawfully. They pointed out that the second paragraph of Article 11 of the Convention imposes limits on the right of peaceful assembly in order to prevent disorder.

77. The Court reiterates that an interference will constitute a breach of Article 11 of the Convention unless it is “prescribed by law”, pursues one or more legitimate aim under paragraph 2 of that provision and is “necessary in a democratic society” for the achievement of those aims.

78. In this connection, it is noted that the interference in the present case had a legal basis, namely sections 23 and 24 of the Meetings and Demonstration Marches Act, and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. As regards a legitimate aim, the Government submitted that the interference pursued, among others, the legitimate aim of preventing public disorder, and the Court finds no reason to differ.

79. Turning to the question of whether the interference was “necessary in a democratic society”, the Court has examined the applicants’ complaints in the light of the fundamental principles underlying its judgments relating to Article 11 of the Convention (see, in particular, *Oya Ataman v. Turkey*, no. 74552/01, §§ 35-44, ECHR 2006-XIII, and the judgments cited therein; *Bukta and Others v. Hungary*, no. 25691/04, §§ 33-39, ECHR 2007-IX; and *Éva Molnár v. Hungary*, no. 10346/05, §§ 23-46, 7 October 2008).

80. In the instant case the police officers arrested four of the applicants, together with a number of other people taking part in the demonstration, on the ground that they had breached the Meetings and Demonstration Marches Act. However, having regard to the findings of the Malatya Criminal Court of First Instance, the Court observes that the applicants and the other demonstrators did not act in breach of this law, contrary to the allegations of the Government (see paragraph 76 above).

81. The decision adopted by the Malatya Criminal Court of First Instance also shows that the group neither presented a danger to public order nor engaged in acts of violence. In this connection, the Court reiterates that where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02,

32137/02 and 32138/02, § 46, 18 December 2007). The Court is concerned by the fact that the four applicants were prosecuted – albeit subsequently acquitted – on account of the mere fact of their participation in a peaceful demonstration. It considers that a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction (see, *mutatis mutandis*, *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011).

82. In the light of the foregoing, the Court considers that the intervention of the police officers in the demonstration, coupled with the subsequent prosecution of the applicants for their participation in a peaceful demonstration, was disproportionate and not necessary for preventing disorder within the meaning of the second paragraph of Article 11 of the Convention.

83. There has accordingly been a violation of Article 11 of the Convention in respect of the four applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. In respect of non-pecuniary damage, the first applicant, Nihal Pekaslan, claimed 30,000 euros (EUR), and each of the remaining four applicants claimed EUR 25,000.

86. The Government considered the claims to be unsubstantiated and excessive.

87. The Court considers that, in view of the violations found under Articles 3 and 11 of the Convention, the four applicants, namely Ms Nihal Pekaslan, Ms Kıvanç Pekaslan, Mr İbrahim Bozay and Ms Leyla Bozay, may be taken to have suffered a certain amount of distress. Ruling on an equitable basis, the Court awards each of these four applicants EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant Ms Nihal Pekaslan claimed EUR 5,123.50 and the remaining applicants claimed EUR 1,441 for the costs and expenses incurred before the Court. In respect of their claims the applicants submitted

to the Court a time sheet showing the time spent by their legal representatives on the case.

89. The Government considered the claims to be unsubstantiated.

90. According to the Court's case-law, an applicant is entitled to the 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 2,500 jointly to the four applicants to cover costs under all heads.

C. Default interest

91. 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 UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaints made by the applicant Ms Refika Meltem İspir inadmissible and the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment to which the remaining four applicants, namely Ms Nihal Pekaslan, Ms Kıvanç Pekaslan, Mr İbrahim Bozay and Ms Leyla Bozay, were subjected by the police officers;
4. *Holds* that there has been a violation of Article 11 of the Convention in respect of the four applicants on account of the police officers' intervention in the demonstration and their arrests;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish lira at the rate applicable on the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to each of the four applicants, namely Ms Nihal

Pekaslan, Ms Kıvanç Pekaslan, Mr İbrahim Bozay and Ms Leyla Bozay, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), jointly to the four applicants, plus any tax that may be chargeable to them, 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President