



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

SECOND SECTION

CASE OF ERIŞEN AND OTHERS v. TURKEY

(Application no. 7067/06)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

03/07/2012

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

In the case of Erişen 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 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 7067/06) 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 six Turkish nationals, Mr Cığırhun Erişen, Mr Ergin Demir, Mr Abdülkadir Akgül, Mr Şirin Sekmen, Mr Ekrem Kaplan, and Mr Sedrettin Altay (“the applicants”), on 30 January 2006.

2. The applicants were represented by Mr C. Demir, a lawyer practising in Van. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. Following the communication of the application, the Government, but not the applicants, filed further written observations (Rule 54 § 2). However, the applicants indicated their wish to pursue their application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1982, 1982, 1968, 1967, 1966, and 1971 respectively.

A. The applicants' detention in police custody

6. On 21 July 2005 Mr Erişen, Mr Demir and Mr Akgül were arrested and taken into custody by gendarmes at the Erciş District Gendarmerie Command on suspicion of membership of an illegal organisation, namely the PKK (the Workers' Party of Kurdistan). The same day, along with ten other persons, they were taken to the Erciş State Hospital and examined there by a doctor. According to the submissions of Mr Erişen, Mr Demir and Mr Akgül, during their examination gendarme officers were present in the room. The medical report issued at the end of the examination indicated that there were no signs of ill-treatment on the applicants.

7. On 22 July 2005 Mr Erişen, Mr Demir and Mr Akgül were taken to the Erciş State Hospital for a medical check. The applicants were examined together with ten other persons, again in the presence of gendarme officers. The doctor noted no signs of ill-treatment on the bodies of Mr Erişen and Demir; however, he observed a swelling on Mr Akgül's right eye. Mr Erişen, Mr Demir and Mr Akgül were subsequently brought before the Public Prosecutor and the investigating judge. In their statements, taken in the presence of a lawyer, they denied the charges against them. On the same day, on the basis of the evidence in the case file, the investigating judge ordered their detention pending trial.

8. The other applicants, Mr Sekmen, Mr Kaplan and Mr Altay, were also placed in detention on remand, on 29 July, 1 August and 3 August 2005 respectively, on suspicion of membership of the PKK.

B. Criminal proceedings against the applicants

9. On 26 July 2005 the representative of Mr Erişen, Mr Demir and Mr Akgül filed an objection against the decision dated 22 July 2005, which had ordered the applicants' detention pending trial. On 29 July 2005 the court dismissed their request, without holding a hearing, having regard to the nature of the offence, the state of the evidence and the content of the case file. On 8 August 2005 the applicants' representative filed another objection against the latter decision, which was dismissed on 17 August 2005.

10. On 4 October 2005 Mr Erişen, Mr Demir and Mr Akgül requested the Van Assize Court to order their release. On 6 October 2005 the court decided to release Mr Demir pending trial, but it rejected the requests of Mr Erişen and Mr Akgül having regard to the nature of the offence, the state of the evidence and the content of the case file.

11. On 21 November 2005 Mr Erişen and Mr Akgül applied to the Van Assize Court and requested to be released. On 22 November 2005 their request was rejected on the basis of the case file, and having regard to the nature of the offence and the state of the evidence.

12. On 30 November 2005 the Van Public Prosecutor filed a bill of indictment with the Van Assize Court against the applicants and fifteen other suspects, accusing them of aiding and abetting an armed illegal organisation.

13. On 5 and 19 December 2005 respectively, Mr Erişen requested his release pending trial. On 7 and 19 December 2005 respectively, the Van Assize Court, relying on the nature of the offence, the state of the evidence and the content of the case file, dismissed his request for release without holding a hearing.

14. On 30 December 2005, 2 January 2006, 27 January 2006 respectively, Mr Erişen and Mr Akgül requested their release once again. Their requests were again rejected on the basis on the content of the case file and the state of the evidence.

15. On 17 February 2006 Mr Sekmen, Mr Kaplan and Mr Altay were released pending trial. The remaining applicants, namely Mr Erişen and Mr Akgül, were released on 10 April 2006 pending trial.

16. On 6 March 2009 the Van Assize Court acquitted all of the applicants of the charges against them. This decision became final on 16 March 2009.

C. Investigation into the applicants' alleged ill-treatment

17. In the meantime, on 26 and 27 July 2005 respectively, Mr Erişen and Mr Demir wrote handwritten letters to the Erciş Public Prosecutor's office, claiming in a detailed account that during their custody they had been subjected to ill-treatment by the gendarmes. They requested to see a doctor. They did not receive any reply to their letters. On 29 July 2005, upon his request, Mr Akgül was examined by a doctor at Erciş State Hospital. According to the medical report, there was a 3x3 cm bruise on his right arm and a 2x3 cm bruise on his left arm, as well as sensitivity on the left side of his chest. Upon the request of the Public Prosecutor, photographs of the applicant's injuries were taken at the prison. These pictures show extensive bruises on Mr Akgül's arms.

18. On 1 August 2005 Mr Erişen, Mr Demir and Mr Akgül lodged complaints with the Erciş Public Prosecutor's office against the gendarmes who had allegedly ill-treated them in custody, and against the doctors who had examined them during this time, for failing to conduct a proper medical examination, and for conspiring with the gendarmes. In this connection, the applicants claimed that thirteen persons had been examined together in the presence of gendarmes.

19. The Van Public Prosecutor initiated an investigation against the gendarme officers. In this connection, both Mr Erişen and Mr Demir gave statements to the Bitlis Public Prosecutor on 17 and 26 August 2005. They both stated that they had been ill-treated by the gendarmes during their

custody period. Mr Erişen further explained that he had heard that two of the gendarmes' names were Seydi and Orhan, and that Seydi spoke with an accent of the Black Sea region.

20. On 22 and 26 August 2005 respectively, Mr Erişen and Mr Demir underwent a medical examination at the Bitlis State Hospital. No signs of ill-treatment were found on their bodies. In November 2005, Mr Akgül underwent a medical examination at the Thoracic Surgery Department of the Van State Hospital. The doctor indicated Mr Akgül suffered from post trauma, and that with appropriate medication he would recover in 2 to 3 days.

21. On 9 March 2006 Mr Akgül was taken before the Bitlis Public Prosecutor. The prosecutor showed the applicant fifteen photographs and asked him to identify the gendarme officers who had allegedly ill-treated him. The applicant was not able to recognise any of the gendarme officers.

22. On 22 February 2007 Mr Demir applied to the Erciş Public Prosecutor and withdrew his complaint against the gendarme officers. He stated that he had alleged that he had been ill-treated because he had been suffering from depression after arrest.

23. On 8 August 2008 the Erciş Public Prosecutor held that the ill-treatment allegations of Mr Erişen and Mr Demir were not supported by any medical report. He further underlined the fact that Mr Demir had subsequently withdrawn his complaint against the gendarme officers. Finally, the prosecutor noted that Mr Akgül had not been able to recognise the gendarme officers, who had allegedly ill-treated him, from photographs. He accordingly issued a non-prosecution decision. On 16 September 2008 the Van Assize Court dismissed the objections lodged by the applicants against the aforementioned decision.

24. In the meantime, regarding the complaint lodged against the doctors, on 6 February 2006 the Public Prosecutor's office asked the Erciş Provincial Administrative Council for leave to open an investigation against the doctors who had examined the applicants in custody. On 6 March 2006 the Council, relying on a report prepared by one of its members, refused leave to open a judicial investigation, on the ground that the allegations were unsubstantiated. On 8 May 2006 the Van Regional Administrative Court dismissed the objection lodged by the applicants and upheld this decision. In the meantime, on 28 March 2006, the Erciş Public Prosecutor discontinued the proceedings against the doctors on the basis of the Administrative Council's aforementioned decision. On 13 June 2006 the Van Assize Court dismissed further objections by the applicants to this decision.

II. RELEVANT LAW AND PRACTICE

25. The Protocol regarding the effective management of Prison Administration and Health Services in Prisons, signed by the Ministries of Justice, Health and the Interior (dated 6 January 2000, revised on 26 December 2003) provides:

Article 61

“...during the medical examination at the hospital of those who are remanded or convicted in connection with terror-related crimes, the gendarmerie will wait in the consultation room to secure the area, at a distance so as not to hear the conversation between the doctor and the patient...”

26. The CPT Standards (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) concerning health care services in prisons (see the CPT standards, document no. CPT/Inf/E (2002) 1- Rev. 2006, pages 31 and 34) provide as follows:

“... All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the doctor concerned requests otherwise – out of the sight of prison officers...”

If recourse is had to a civil hospital, the question of security arrangements will arise. In this respect, the CPT wishes to stress that prisoners sent to hospital to receive treatment should not be physically attached to their hospital beds or other items of furniture for custodial reasons. Other means of meeting security needs satisfactorily can and should be found; the creation of a custodial unit in such hospitals is one possible solution.”

27. Article 271 of the Criminal Procedure Code (Law no. 5271) reads:

“With the exception of cases laid down by law, objections shall be decided on the basis of the case file, without holding a hearing. If deemed necessary, the court may hear the Public Prosecutor, and subsequently the defence counsel or the representative of the detainee.”

THE LAW

I. AS TO THE COMPATIBILITY *RATIONE PERSONAE* OF THE APPLICATION IN RESPECT OF MR ŞİRİN SEKMEN, MR SEDRETTİN ALTAY and MR EKREM KAPLAN

28. The Court reiterates that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings (see *Blečić*

v. Croatia [GC], no. 59532/00, § 67, ECHR 2006-III). Thus, even though the Government raised no plea of inadmissibility concerning lack of jurisdiction *ratione personae* in respect of the instant case, the Court nevertheless has to examine it of its own motion (see *Kolaric-Kisur v. Croatia* (dec.), no. 17129/05, 17 September 2009).

29. The Court notes that the applicants introduced their application through their representative, Mr C. Demir, and have never been directly in contact with the Court. Moreover, despite repeated requests, the last one of which was made on 19 May 2010, the representative has failed to submit a legal authority form in respect of three applicants, namely Mr Şirin Sekmen, Mr Sedrettin Altay and Mr Ekrem Kaplan.

30. The Court considers it essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim(s) within the meaning of Article 34 of the Convention on whose behalf they purport to act. In the present case, the file contains no document in which these three applicants have indicated that they wished Mr C. Demir to lodge an application with the Court on their behalf. Consequently, in the circumstances of the case, the application in so far as lodged in respect of Mr Şirin Sekmen, Mr Sedrettin Altay, and Mr Ekrem Kaplan must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention (see, *mutatis mutandis*, *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009; *K.M. and Others v. Russia* (dec.), no. 46086/07, 29 April 2010).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The first three applicants, namely Mr Erişen, Mr Demir and Mr Akgül, complained under Article 3 of the Convention that they had been ill-treated during their police custody. They further alleged that the ensuing criminal proceedings against the accused police officers had been ineffective. Article 3 of the Convention reads as follows:

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

A. Admissibility

32. The Government argued that the application should be rejected for non-exhaustion of domestic remedies. In this connection, they stated that the applicants should have brought compensation proceedings before the administrative or civil courts to seek compensation for the harm they had allegedly suffered.

33. The Court reiterates that it has already examined and rejected the Government’s argument in previous cases (see, in particular, *Karayığit*

v. Turkey (dec.), no. 63181/00, 5 October 2004; *Emirhan Yıldız and Others v. Turkey*, no. 61898/00, §§ 35-38, 5 December 2006). The Court finds no particular circumstances, in the present application, which would require it to depart from that conclusion. Consequently, the Court rejects the Government's preliminary objection.

34. As regards the second applicant, Mr Ergin Demir, the Court observes that although he had lodged a complaint with the Public Prosecutor in 2005 alleging that he had been ill-treated in custody, subsequently in 2007 he withdrew his complaint, stating that he had claimed to have been ill-treated because he had been depressed (see paragraph 22). The Court observes that following the communication of the application, the applicant's representative has not replied to the Government's observations but solely stated that he intended to pursue the application. As a result, there is no reason to conclude that the applicant withdrew his ill-treatment allegation under duress. In view of the foregoing, the Court concludes that Mr Demir's complaint raised under Article 3 of the Convention should be rejected for being manifestly ill-founded.

35. The Court notes that for the remaining applicants, namely for Mr Erişen and Mr Akgül, this complaint 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

36. The Government contested the applicants' allegations. In particular, they maintained that the applicants' allegations were unsubstantiated and their complaints did not attain a sufficient level of severity to fall within the scope of Article 3 of the Convention.

37. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrıkulu and Others v. Turkey* (dec.), 45907/99, 22 October 2002). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 161, Series A no. 25). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

38. In that respect, 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; *Aksoy v. Turkey*, judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, p. 2278, § 62; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111; and *Ribitsch v. Austria*, judgment of 4 December 1995, § 34, Series A no. 336).

39. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and raise a "reasonable suspicion" (see, in particular, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, Reports of Judgments and Decisions 1998-VIII).

(a) The substantive aspect of Article 3

40. The first applicant, Mr Erişen, submitted that he had been subjected to ill-treatment in police custody. In particular, he stated that he had been severely beaten and his head had been hit against the wall several times. He also alleged that the medical reports, according to which there was no sign of ill-treatment on his body, had not reflected the truth. In this connection, he explained that he had been threatened by the gendarme officers not to complain about ill-treatment and that the medical examination had taken place in the presence of gendarme officers. The third applicant, Mr Akgül, also complained that he had been ill-treated. In this respect, he alleged that he had been severely beaten and insulted. In support of his claim, Mr Akgül submitted medical reports, indicating that he had a swelling on his right eye, bruises on both of his arms and sensitivity on his chest.

41. As regards Mr Erişen, the Court observes that the medical reports issued on the first and last days of Mr Erişen's custody indicate no signs of ill-treatment on his body. The Court is aware of the lack of details in this report. However, the applicant has not adduced any material which could add probative weight to his allegations. The Court therefore considers that there is nothing in the case file to show that the applicant was ill-treated as alleged during his police custody. Consequently, in the absence of any decisive evidence in support of the first applicant's allegations, the Court cannot find beyond all reasonable doubt that this applicant was subjected to ill-treatment. The Court is therefore led to conclude that there has been no violation of Article 3 of the Convention under its substantive limb in respect of Mr Erişen.

42. As regards Mr Akgül, the Court observes that the medical report drawn up on the first day of Mr Akgül's arrest showed no signs of ill-

treatment on his body. However, the report issued the following day noted the presence of a swelling on his right eye. Furthermore, when the applicant was examined on 29 July 2005, the medical report indicated the presence of a 3x3 cm bruise on his right arm, a 2x3 cm bruise on his left arm and sensitivity on his chest. The Court notes that the Government have failed to provide an explanation for these injuries, which were undoubtedly sustained by Mr Akgül while he was under the complete control of the State authorities. The Court further considers that the findings of the medical reports match at least this applicant's allegation of having been beaten. In the circumstances of the present case, and considering the absence of a plausible explanation from the Government as to the cause of the injuries sustained by this applicant, the Court finds that these injuries were the result of ill-treatment for which the Government bore responsibility. It follows that there has been a substantive violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which Mr Akgül was subjected.

(b) The procedural aspect of Article 3

43. The Court has not found it proved, on account of a lack of evidence, that the first applicant was ill-treated as alleged. Nevertheless, as it has held in previous cases, that does not preclude his complaint in relation to Article 3 from being "arguable" for the purposes of the positive obligation to investigate (see *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009). In reaching this conclusion the Court has had particular regard to the consistency of the first applicant's allegations both when he approached the national authorities and in his submissions to the Court. As regards the third applicant, Mr Akgül, the Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by this applicant. An effective investigation was therefore required in respect of both applicants.

44. The Court observes, at the outset, that a preliminary investigation was indeed conducted by the Public Prosecutor. However, for the reasons explained below, it is not persuaded that the investigation was conducted effectively.

45. In this connection, the Court firstly takes into consideration the deficiencies in the medical examination of the applicants during their custody period. When the applicants were brought to the Erciş State Hospital for a medical control, they were taken to the examination room with other accused persons, and the gendarme officers did not leave the room during the examination. The Court notes that the CPT has underlined the importance of proper medical examinations as an essential safeguard against ill-treatment of persons in custody. Such examinations must be carried out by a properly qualified doctor, without any police officer being present (see paragraph 26 above). In the present case, the Court notes that

according to the domestic legislation, the gendarme officers had to stay in the examination room as the applicants were in custody in relation to a terrorism-related crime (see paragraph 18 above). Nevertheless, the cursory and collective nature of the examinations, such as in the present case, undermines their effectiveness and reliability (see, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X.; *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 642, 13 November 2003).

46. Furthermore, according to the documents in the case file, neither the doctors who examined the applicants nor the accused gendarme officers were heard by the Public Prosecutor. The only step taken by the Public Prosecutor was to obtain the statements of the applicants and to ask the third applicant, Mr Akgül, to identify the accused police officers from certain photographs. In view of the foregoing, the Court concludes that the first and third applicants' allegations of ill-treatment were not the subject of an effective investigation by the domestic authorities as required by Article 3 of the Convention.

47. There has accordingly been a violation of Article 3 under its procedural limb in respect of Mr Erişen and Mr Akgül.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

48. The applicants complained under Article 5 § 4 of the Convention that they did not have an effective remedy to challenge the lawfulness of their detention. Article 5 § 4 of the Convention reads:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

49. The Government submitted that the applicants had been able to challenge their continued pre-trial detention by lodging objections pursuant to Article 267 of the Code of Criminal Procedure No. 5271. They further submitted that their objections were decided speedily by the domestic courts. Consequently, they argued that there had been no violation of Article 5 § 4 in the present case.

50. The Court notes that this complaint 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.

51. Although it is not always necessary for proceedings under Article 5 § 4 to be attended by the same guarantees as those required under Article 6 § 1 for criminal or civil litigation, they must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov*, cited above, § 162, and *Wloch*

v. Poland, no. 27785/95, § 125, ECHR 2000-XI, both with a reference to *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A). The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person. The first fundamental guarantee which flows naturally from Article 5 § 4 of the Convention is the right to an effective hearing by the judge examining an appeal against detention (see *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III (extracts)), which the detainee should be able to exercise at regular intervals (*Knebl v. the Czech Republic*, no. 20157/05, § 85, 28 October 2010).

52. The Court notes that in the Turkish system (Article 108 of the Criminal Procedure Code) the question of prolonging detention is examined *ex proprio motu* at regular intervals (every month during the pre-trial stage and at each hearing on the merits or more frequently at the trial stage). Furthermore, the detainee may lodge a request for release at any time during both the pre-trial stage and the trial stage and repeat that request without having to wait for any particular period. In addition, against every decision concerning detention on remand, whether taken at the detainee’s request or *ex proprio motu*, an objection can be lodged (see *Altınok v. Turkey*, no. 31610/08, § 53, 29 November 2011). The Court accepts that in such a system, the requirement to hold a hearing each time an objection is lodged could lead to a certain paralysis of the criminal proceedings (see *Knebl*, cited above, § 85). In the light of these considerations and taking into account the specific nature of the proceedings under Article 5 § 4, in particular the requirement of speed, the Court considers that it is not necessary for a hearing to be held in respect of each objection, unless there are exceptional circumstances (see *Altınok*, cited above, § 54); in that respect, it recalls that domestic courts dealing with requests of release during pre-trial detention must provide the “guarantees of a judicial procedure”, so that the proceedings must be adversarial and must always ensure equality of arms between the parties – the prosecutor and the detainee (see, *Karatay and Others v. Turkey*, no. 11468/02, § 47, 15 February 2007).

53. Turning to the particular circumstances of the present case, the Court observes that the applicants were placed in detention on remand on 22 July 2005 and the Van Public Prosecutor filed his indictment with the Van Assize Court on 30 November 2005, after almost four months (with the exception of the second applicant, who was released on 6 October 2005, after being denied appearance before a court for more than two months). The first and third applicants did not have a right to appear before a court for more than four months, namely between 22 July and 30 November 2005, while the second applicant did not have a right to appear for more than two months. The Court observes in this connection that although they filed objections against their detention on remand on several occasions,

pursuant to Article 271 of the Criminal Procedure Code their objections were decided by the court without holding a hearing (see paragraph 27 above). The Court therefore considers that the fact that the applicants did not have a right to appear before a court during the pre-trial stage, after their detention was initially ordered by the investigating judge, is not compatible with the requirement to hold a hearing at regular intervals, as required by Article 5 § 4.

54. There has therefore been a violation of Article 5 § 4 of the Convention in that regard.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicants complained under Article 5 § 3 of the Convention about the excessive length of their detention on remand. They further invoked Articles 6, 8, 13, 14 and 17 of the Convention, without substantiating their complaints.

56. However, an examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application in respect of Mr Şirin Sekmen, Mr Sedrettin Altay, and Mr Ekrem Kaplan inadmissible for being incompatible *ratione personae*;
2. *Declares* the complaints concerning the alleged ill-treatment of Mr Erişen and Mr Akgül during their police custody and the failure of the authorities to conduct an effective investigation into this claim, and Mr Erişen's, Mr Demir's and Mr Akgül's lack of appearance before a judge in the context of the proceedings relating to their pre-trial detention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive aspect in respect of Mr Ciğerhun Erişen;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural aspect in respect of Mr Ciğerhun Erişen;
5. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural aspects in respect of Mr Abdülkadir Akgül;
6. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of Mr Ciğerhun Erişen, Mr Ergin Demir and Mr Abdülkadir Akgül on account of the lack of appearance before a judge in the context of the proceedings relating to their pre-trial detention.

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

Stanley Naismith
Registrar

Françoise Tulkens
President