



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

SECOND SECTION

CASE OF UĞUR v. TURKEY

(Application no. 37308/05)

JUDGMENT

STRASBOURG

13 January 2015

FINAL

13/04/2015

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

In the case of Uğur v. Turkey,

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

Guido Raimondi, *President*,

Işıl Karakaş,

András Sajó,

Nebojša Vučinić,

Egidijus Kūris,

Robert Spano,

Jon Fridrik Kjølbro, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 37308/05) 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 two Turkish nationals, Mr Ferdi Uğur and Mr Atilla Uğur (“the applicants”), on 28 September 2005.

2. The applicants were represented by Mr Bülent Kurt, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. Relying on Articles 3 and 5 of the Convention, the applicants alleged, in particular, that they had been subjected to ill-treatment by a number of police officers in police custody and deprived of their liberty unlawfully.

4. On 15 March 2010 the application was communicated to the Government.

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

5. The applicants were born in 1985 and 1987 respectively and live in Istanbul. They are brothers. 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 6-17). The

Government's submissions concerning the facts are summarised in Section C (paragraphs 18-20). The documentary evidence submitted by the applicants and the Government is summarised in Section D (paragraphs 21-74).

B. The applicants' submissions on the facts

6. On 23 November 2002 at about 2.30 a.m. the applicants' neighbour, B.S., was shot in the street. The applicants, who were at their aunt's house at the time, and a number of their friends, took the injured neighbour to hospital, where he died on arrival.

7. A police chief and a number of police officers arrived at the hospital at 3 a.m. and asked the applicants and their friends to accompany them to Beyoğlu police station, where they could be questioned as witnesses in relation to the incident. By the time they arrived, however, the police officers had already established that the applicants' neighbour had been shot by a police officer. They then decided to detain the applicants at the station. Although the applicants had been taken to the station at 3 a.m., the time of their arrival was stated as 5.30 a.m. in the relevant police report (see paragraph 24 below).

8. The necessary formalities concerning their detention at the police station were not complied with. For example, their names were not entered in the custody ledgers, and although they were minors and should have been taken to a special police station for minors, this was not done. Furthermore, they were not informed of their rights or allowed to contact a lawyer, nor were their next of kin informed.

9. On 24 November 2002 two police officers working at the special police station for minors went to Beyoğlu police station and questioned the applicants in the absence of a lawyer and thus in contravention of the applicable procedure, which stipulates that the presence of a lawyer is compulsory during the questioning of minors. Furthermore, although the applicants were questioned there, it was written in the statements taken from them that they had been questioned at the special police station for minors.

10. While detained at the police station, the applicants were stripped naked, doused with cold water, kicked, punched and beaten with truncheons. The reason for the ill-treatment was to force them to implicate themselves in the incident. As they were illiterate and unrepresented by a lawyer, they had no way of verifying the statements before they were forced to sign them. As a result of those incriminatory statements the prosecutor instigated an investigation against the second applicant, but it was subsequently closed for lack of evidence (see paragraph 35 below).

11. At around 4 or 5 p.m. on 25 November 2002 the police officers hit the applicants with their truncheons and told them to leave the police station.

12. The following day the applicants went to the Istanbul branch of the Human Rights Association and were referred to the Human Rights Foundation, also in Istanbul, where they were examined by a number of doctors the same day. The reports pertaining to their medical examination were drawn up on 8 April 2003.

13. With the assistance of their lawyer, Bülent Kurt, the applicants made an official complaint against the police officers on 29 November 2002. The prosecutor referred them to doctors, who examined them and described their injuries in medical reports. During the prosecutor's investigation, police chief K.Ş.S., one of the police officers who had been responsible for the applicants' ill-treatment, continued to serve as the chief of Beyoğlu police station and made numerous attempts to stall the investigation. It was not until he was posted elsewhere and another police chief was appointed to replace him that the necessary information could be handed over to the prosecutor to enable him to start the investigation (see paragraph 42 below).

14. When the prosecutor subsequently started taking meaningful steps to investigate their allegations of ill-treatment, the police officers started putting pressure on the applicants and their family. The applicants were unable to withstand the pressure and were forced to dismiss Bülent Kurt. At the behest of the police officers, they appointed Ali Tufan as their new legal representative and informed the Beyoğlu Assize Court on 8 June 2004 that they were withdrawing their complaints. They were also forced to tell the authorities that their allegations of ill-treatment had been fabricated. Mr Tufan made submissions against them during the first hearing, held on 7 October 2004 (see paragraph 53 below).

15. Although during that hearing the Assize Court decided to hold its next hearing on 28 December 2004, it held an unscheduled hearing on 15 December 2004 without informing the applicants or their legal representative. Police chief K.Ş.S. was thus heard by the Beyoğlu Assize Court in the absence of their lawyers and in breach of the applicable rules of criminal procedure (see paragraph 54 below). This deprived them and their lawyers of the opportunity to formally identify the police chief and put questions to him.

16. Although they subsequently dismissed Mr Tufan, reappointed Mr Kurt and informed the Beyoğlu Assize Court of the change of representation on 28 December 2004, the Assize Court did not entertain the new power of attorney until 12 October 2005. It thus attempted to prevent their lawyer from representing them.

17. As a result of the indifference of the national authorities to their allegations of ill-treatment and the collusion between the police authorities and the judiciary, the criminal proceedings against the police officers were not conducted diligently and were intentionally allowed to become time-barred. The investigation into their allegations of ill-treatment showed

that the judiciary did not have the courage to prosecute people responsible for ill-treating children as young as 15 and 17 years old.

C. The Government's submissions on the facts

18. In their observations, the Government summarised the investigation documents (also summarised below in paragraphs 21 to 74), and submitted that the applicants had been taken to Beyoğlu police station with a view to being questioned as witnesses of a serious crime, namely the killing of B.S. The applicants, who were minors at the time, were taken to the station at 6.30 a.m. with a view to being referred to a special police station for minors. No custody reports were drawn up because the applicants had not been arrested, just taken in as witnesses. They were questioned at the special police station for minors.

19. On 29 November 2002 the applicants lodged a formal complaint with the Beyoğlu prosecutor against the police officers. According to the medical reports drawn up at the request of the prosecutor, both applicants had a number of injuries.

20. The information provided by the national authorities showed that the applicants were substance users and had regular problems with the police. During the trial, the applicants gave conflicting versions of events, and withdrew their complaints.

D. Documentary evidence submitted by the parties

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

22. According to a report signed by three police officers, at 2.55 a.m. on 23 November 2002 a number of police officers arrived at Tarlabası Boulevard in the centre of Istanbul, where they saw an off-duty police officer, A.Ö., lying on the ground with various injuries to his head. Next to him was his pistol loaded with thirteen bullets and a spent bullet case. The officers also noted in their report that the applicants' neighbour, B.S., had been shot some seventy-five metres from where A.Ö. was lying, and had since been taken to a hospital in Taksim.

23. The report also stated that hand swabs had been taken from four individuals with a view to establishing whether or not they had gunpowder residue on their hands. The four individuals included the first applicant who, according to the report, "had been taken in by the police in connection with the incident".

24. According to another police report drawn up the same morning, six teenagers, including the two applicants, "who had been apprehended in connection with the incident" were "placed in the custody of the police" and

taken to Beyoğlu police station at 5.30 a.m. with a view to being transferred to a special police station for minors.

25. Some twenty four hours later, at 5.15 a.m. on 24 November 2002, K.Ş.S., the chief of Beyoğlu police station, wrote in a report that he had contacted a prosecutor by telephone, who had given him permission to question the applicants and the four other teenagers as “statement makers” (*ifade sahibi*) in relation to the death of B.S. and the injuries caused to A.Ö.

26. The same day, between 9.30 and 11.30 a.m., statements were taken from the applicants and the remaining four teenagers by police officers S.Ö. and N.K., who worked at the special police station for minors. It is written in the statements that they were taken at the special police station for minors.

27. In the statements, the applicants were reported to have told the two police officers that they had been walking along the street with a number of their friends when they had seen A.Ö. They had noticed that he was drunk, and had attempted to rob him. However, he had produced a pistol and they had unsuccessfully tried to take it from him. During the scuffle, the pistol had gone off and their friend B.S. had been shot.

28. One of their friends had then pursued the armed man and started hitting him. When his pistol had fallen to the ground, their friend had taken it and shot him in the head. They had then taken B.S. to hospital and had been arrested there by the police.

29. There are no documents in the Court’s possession showing the time and date of the applicants’ release from the police station.

30. According to two medical reports, on 26 November 2002 the applicants were examined by doctors at the Human Rights Foundation. The first applicant told them that he had been beaten up at the police station, doused with cold water, hit on the back and the torso with a police truncheon, and grabbed by the throat by a police officer. The second applicant told them that a police officer had grabbed him by the throat, while another had held his hands behind his back, and the two officers had then pulled at his legs.

31. The doctors observed that the first applicant had a number of injuries. These included a scratch on the upper right side of his torso measuring 4 centimetres, as well as bruising on the back of his body in four places, measuring 14 x 1.5, 14 x 1, 10 x 1 and 7 x 1 centimetres. The doctors concluded that his description of the ill-treatment was compatible with their findings.

32. The second applicant did not appear to have any external injuries, but his description of the ill-treatment was deemed by the doctors to be compatible with his unsettled and nervous state of mind. They concluded that further medical examinations, including a bone scintigraphy and a psychological assessment, were necessary in order to reach a definitive conclusion.

33. On 29 November 2002 the applicants, assisted by their lawyer Bülent Kurt, lodged a formal complaint with the Beyoğlu prosecutor against the police officers. They informed him that their statements had been taken in the absence of the necessary safeguards, and contained things they had never said. They alleged that during their time in police custody, they had been subjected to ill-treatment. At the end of their detention they had not been taken to see a doctor, but had been hit with truncheons and told to “leave and never be seen again”. The applicants referred to their rights guaranteed by the European Convention on Human Rights and the Convention on the Rights of the Child, and asked the prosecutor to investigate their allegations.

34. The same day, the prosecutor referred the applicants to a doctor, who noted in his report that they had no visible signs of ill-treatment. He considered it necessary, however, that the applicants be examined more thoroughly at a hospital.

35. An investigation which had been started by a prosecutor against the second applicant and his neighbour B.S. for the “attempted robbery” of A.Ö. was discontinued on 3 December 2002, because the prosecutor observed that the applicants’ neighbour had been killed by the police officer, and there was no evidence implicating the second applicant in the incident.

36. On 11 December 2002 the Beyoğlu prosecutor questioned the applicants in relation to their allegations of ill-treatment, and opened a criminal investigation file. The first applicant told the prosecutor that he and his brother, the second applicant, had been beaten up by the chief of Beyoğlu police station, whose first name was “Kenan”. The ill-treatment to which they had been subjected included having been stripped naked and doused with cold water. During their time at the station, they had not been given any food or allowed to inform their family or a lawyer. They had been released “at 4 or 5” in the afternoon.

37. The same day, the prosecutor referred the applicants to Haseki Research Hospital, where further medical examinations were carried out on them on 12 December 2002. According to the reports drawn up at that hospital, both applicants had a number of injuries.

38. On 31 December 2002 the Beyoğlu branch of the Forensic Medical Institute drew up two reports, concluding that the first applicant’s injuries were of a nature to render him unfit for a period of three days. The second applicant’s injuries, which included a number of cuts and grazes on his lip, arms and the backs of his legs, rendered him unfit for a period of five days.

39. On 15 January 2003 the Beyoğlu prosecutor questioned police officers S.Ö. and N.K., who worked at the special police station for minors and had questioned the applicants on 24 November 2002 (see paragraph 26 above). They told the prosecutor that on 24 November 2002 they had been asked to go to Beyoğlu police station to take statements from a number of

children. When they had arrived, they had been presented with four statements allegedly taken from the children and had been asked to sign them as if they had prepared them. They had refused to do so and insisted on questioning the children themselves before returning to their own police station at around 1 p.m. the same day.

40. In a letter of 24 February 2003 addressed to the Beyoğlu prosecutor, the chief of Beyoğlu police station, K.Ş.S., stated that no records existed at his station to show that the applicants had been detained there from 23 to 24 November 2002.

41. Between 20 March 2003 and 14 October 2003 the Beyoğlu prosecutor sent four letters to K.Ş.S., unsuccessfully requesting him to ensure that twelve police officers working at Beyoğlu police station attended his office. On 13 January 2004 the Beyoğlu prosecutor wrote to him for a fifth time, repeating his previous requests. In the same letter he also warned that a criminal investigation would be opened against him if he failed to comply with the request.

42. On 15 January 2004 the new chief of Beyoğlu police station replied to the prosecutor's letter and gave him the names of the twelve police officers. He also informed him that he had been unable to contact eleven of them because they were working at different police stations around the country.

43. On 11 March 2004 the Beyoğlu prosecutor filed an indictment with the Beyoğlu Criminal Court of First Instance charging a total of twenty police officers with ill-treatment, an offence defined in section 245 of the Criminal Code in force at the time of the events. Those indicted included the former Beyoğlu police chief K.Ş.S.

44. The applicants joined as interveners in the criminal proceedings before the Istanbul Criminal Court of First Instance, which decided on 20 April 2004 that the police officers should have instead been charged with the offence of torture, an offence defined in section 243 of the Criminal Code which fell within the jurisdiction of the Assize Courts. The file was thus forwarded to the Beyoğlu Assize Court.

45. On 18 May 2004 the first applicant was shown photographs of the twenty defendant police officers. He identified K.Ş.S. and three other police officers, R.E., H.Y. and M.A.

46. In the meantime, a police chief was appointed to carry out a disciplinary investigation and questioned the applicants at Şişli police station on 8 June 2004. They were accompanied by their father, Mahmut Uğur, and Ali Tufan, a lawyer. In two almost identical statements drawn up by the investigating police officer the applicants were reported to have stated that on the day of the incident they had been taken to the special police station for minors and not Beyoğlu police station. Furthermore, they had never been beaten up there by officers. They added that a couple of days after they had left the police station, they had been sniffing glue and

had been high when one of their friends had suggested they go to the Human Rights Association and make a complaint against the police. That way, their friend had told them, the police would never bother them ever again. That was how they had come to make the official complaint against the police officers. The injuries detailed in the medical reports had in fact been caused in a fight they had been involved in on the street that day. The lawyers and the Human Rights Association had then manipulated everything on their behalf.

47. The same day, the applicants gave two petitions to the Beyoğlu Assize Court stating that they wanted to withdraw their complaints “which, in any event, had been made as a result of a misunderstanding”. Also that day, the applicants officially dismissed Bülent Kurt, the lawyer who had been representing them since the lodging of their official complaint against the police officers.

48. On 14 June 2004 K.Ş.S. also made a statement at Şişli police station in the course of the same disciplinary investigation. He stated that when he had found out on the day of the incident that the applicants and their friends had been taken to his station, he had had them transferred to the special police station for minors. He had never beaten them up. In his opinion, the Human Rights Association had been interested in the incident because it concerned the killing of a civilian by a police officer, and it had then manipulated the incident with the assistance of a number of lawyers.

49. On 25 June 2004, at the end of the disciplinary investigation, the investigating police officer recommended that no disciplinary punishment should be imposed on the defendant police officers. In line with that recommendation, the police disciplinary committee decided on 20 August 2004 not to impose any such punishment.

50. On 30 June 2004 the applicants made a complaint to the Beyoğlu prosecutor, complaining that the police officers who had ill-treated them had also been responsible for, *inter alia*, their unlawful detention. They informed the prosecutor that they had been treated and questioned as suspects at the police station, and had had swabs taken from their hands. Nevertheless, no official records had been kept by the police officers in relation to their arrest, detention or release. This, in their opinion, meant that the police officers had committed an offence, the unlawful deprivation of their liberty. Moreover, although they had been detained for over twenty-four hours, no authorisation had been sought or obtained from the prosecutor for the period exceeding that time. They argued that although they had been under the age of 18 at the time, and should have been questioned directly by a prosecutor and in the presence of their lawyer, they had been questioned by police officers and in the absence of a lawyer.

51. These complaints were rejected by the prosecutor on 6 January 2005, who considered that the applicants had been questioned as “statement makers”, and that in an investigation into an unlawful killing there was

nothing unusual about questioning people who had been seen in the vicinity of the incident. The applicants filed an objection against the prosecutor's decision, submitting that in the Turkish legal system there was no such concept as a "statement maker". They referred to the applicable legislation setting out the procedure to be followed when persons are deprived of their liberty, and argued that none of those formalities had been observed in their case. The objection was rejected by the Istanbul Assize Court on 4 March 2005 and the decision served on the applicants on 1 April 2005.

52. In the meantime, Bülent Kurt, who had initially represented the applicants but had been dismissed by them on 8 June 2004, sent a letter to the Istanbul Bar Association on 28 September 2004 stating that the applicants and the other children who had been arrested and ill-treated between 23 and 24 November 2002 were being threatened by the defendant police officers. For example, police chief K.Ş.S. had personally gone to court with the second applicant and a lawyer, and had made the second applicant sign certain documents there. He and other police officers had then threatened the applicants and their father, and had forced them to withdraw their complaints. Mr Kurt added that when he had suggested to the applicants and their father that they inform the prosecutor about the pressure being exerted on them by the police officers, they had declined to do so because they had been very scared. Mr Kurt further stated in his letter that K.Ş.S. had given the applicants' father the business card of a lawyer and had asked him to appoint him to represent the applicants.

53. The trial of the police officers began before the Beyoğlu Assize Court. During the first hearing on 7 October 2004, the newly appointed lawyer, Ali Tufan, told the court that the applicants were known to the police because of their past criminal activities. Their initial lawyer Bülent Kurt also attended the hearing, and informed the court of the pressure being exerted on the applicants by the defendant police officers. In the official court transcript, Mr Kurt was referred to as the lawyer on record for the applicants. The court decided to hold a second hearing on 28 December 2004.

54. On 15 December 2004 the court held an unscheduled hearing and heard the defendant police chief K.Ş.S. The following entry features in the transcript of the hearing: "Although a second hearing in this case had been scheduled for 28 December 2004, the defendant K.Ş.S. and his lawyer came to court and told us that he was now working in the town of Halfeti and had come to Istanbul on other business. As it would be difficult for him to come back to Istanbul for the next scheduled hearing, he informed us that he would like to give his testimony now". According to the transcript, apart from the three judges on the bench, a prosecutor, a court clerk and K.Ş.S., no one else was present. The defendant police chief told the court that the applicants and the other teenagers had been taken to his police station to be questioned as witnesses, but had subsequently been transferred to the

special police station for minors. Neither he nor any of his colleagues had ill-treated them.

55. The applicants submitted their written observations to the trial court, complaining that the hearing held on 15 December 2004 had been unlawful. They argued that the court's failure to ensure their attendance had deprived them of the opportunity to confront the police chief.

56. On 27 December 2004 the first applicant went to the Istanbul Bar Association and informed the lawyers there that pressure was being exerted on him and his brother by K.Ş.S. to dismiss their lawyers and withdraw their complaints. He further stated that the police chief had accompanied them to see a notary public, where they had signed a power of attorney giving their new lawyer authority. He informed the Bar Association of his wish to be represented by his previous lawyer Bülent Kurt.

57. According to a report drawn up on 28 December 2004 by Mr Kurt and signed by one of his colleagues, when he and the applicants arrived at court for the second hearing, which had been scheduled for that day, Ali Tufan was waiting there with some of the defendant police officers. When he asked the applicants what they were doing at court, the applicants told him that they wanted to attend the hearing and continue to press charges against the police officers. Mr Tufan then unsuccessfully tried to dissuade the applicants and urged them not to attend the hearing. When they insisted on attending, all but one of the defendant police officers waiting for the hearing left the building and did not attend.

58. During the hearing that took place later that day, the applicants repeated their allegations of ill-treatment. Mr Tufan, who claimed to be representing them, told the court that he had been unaware of any allegations of ill-treatment made by his clients against the police officers. The applicants then informed the court that their lawyer was Mr Kurt and not Mr Tufan.

59. On 28 February 2005 the applicants officially reappointed their previous lawyers, including Mr Kurt, dismissed Mr Tufan, and informed the court of the change of representation. At a hearing on 12 October 2005 the court decided to accept the applicants as "participants" (*katılan*) in the proceedings. In all subsequent hearings they were referred to as such.

60. On subsequent dates the lawyers representing the applicants continued to inform the Istanbul Bar Association and the court about the pressure being exerted on them and the applicants by the defendant police officers. They also submitted official documentation to the court showing that neither applicant had a criminal record, criticising the submissions made by Mr Tufan, who had told the court that "the applicants were known to the police because of their past criminal activities" (see paragraph 53 above).

61. The two police officers who worked at the special police station and had questioned the applicants on 24 November 2002 (see paragraph 39

above) attended one of the hearings, and told the court that when they had arrived at Beyoğlu police station they had been presented with two statements prepared by the police officers working there, and had been asked to sign them as if they themselves had taken them. However, they had refused to do so and had questioned the applicants personally. They also told the court that when they had urged the police officers at Beyoğlu police station to release the applicants because they were being kept there unlawfully, they had been told to mind their own business.

62. During the proceedings, the court was informed that the special police station for minors did not have in its possession the custody records pertaining to the relevant period. As a result, it was not known whether or not the applicants had been detained there in November 2002.

63. A large number of defendants failed to attend the majority of the hearings held by the trial court. On each occasion the court urged them in writing to attend.

64. The lawyers representing the applicants drew the court's attention to a number of shortcomings in its handling of the case, and the defendant police officers' failure to attend the hearings. They asked the court to ensure the officers' participation by, if necessary, ordering their remand in custody. The other teenagers who were taken to Beyoğlu police station with the applicants (see paragraph 24 above) also gave evidence during the trial, describing how the defendant police officers had beaten them up and tried to force them to admit that they had killed B.S. who, as it later turned out, had in fact been killed by a police officer (see paragraph 35 above).

65. In the course of a hearing held on 22 May 2007 the applicants' father gave evidence. He told the court that his two children had not come home for three days. When they had finally come home, they had told him that they had been detained at Beyoğlu police station and beaten up there by officers. Mr Uğur explained to the court how his two sons' mental state had deteriorated after the incident. In his testimony he also detailed the threats made to him and his family by the defendant police officers, and explained how, as a result of those threats, he and his sons had had to withdraw their complaints.

66. On 21 July 2009 the applicants submitted their written submissions to the trial court, urging it to conduct its proceedings effectively and fairly. They warned the court that the proceedings had been continuing for such a long period of time that they could soon risk becoming time-barred.

67. During one of the hearings a lawyer representing the defendant police officers complained about the press coverage given to the trial, and criticised suggestions published in various newspapers that his clients' continued failure to attend the hearings would cause delays, which would cause the proceedings to become time-barred.

68. In a hearing held that day, the prosecutor made his final submissions to the trial court. He argued that police chief K.Ş.S. had ill-treated the

applicants and caused them minor injuries, which had necessitated minor medical treatment. The prosecutor requested the court to conclude that the offence the police chief had been charged with should be changed to ill-treatment, as defined in section 245 of the Criminal Code. In his opinion, the police chief had not committed torture, an offence defined in section 243 of the Code, because he had not ill-treated the applicants in order to obtain information from them. In any event, they had not been detained as suspects at Beyoğlu police station. The prosecutor also recommended that the remaining police officers be acquitted.

69. In the course of a hearing held on 19 November 2009 the lawyers representing the police officers were due to present their final defence arguments to the trial court. Nevertheless, they informed the court that they were unable to attend the hearing that day, and it was thus postponed until 29 December 2009. According to the transcript of the hearing, the court also decided to remind the lawyers representing the police officers that attending hearings in which they were scheduled to submit their final defence submissions was a legal requirement.

70. During the twenty-first hearing, held on 29 December 2009, the court decided that there was insufficient evidence to prove that ten of the defendant police officers had subjected the applicants to “torture” within the meaning of section 243 of the Criminal Code, and acquitted them. It also considered that the actions of the remaining ten police officers, including police chief K.Ş.S., had amounted to “ill-treatment” within the meaning of section 245 of the Criminal Code and not “torture”, because there was no evidence to show that the applicants had been ill-treated in order to force them to confess to a crime or give evidence. Nevertheless, as the end of the prescription period for the offence had been reached, the court discontinued the criminal proceedings against the ten police officers.

71. In support of its conclusion that the ten police officers had ill-treated the applicants, the court stated that they had been “unnecessarily kept at the police station for hours, and that their injuries had been caused when they had been pushed and jostled for no apparent reason”.

72. The applicants appealed and drew the Court of Cassation’s attention to the statements taken from them by the police officers, in which they argued they had been forced to incriminate themselves for offences they had never committed (see paragraphs 26-28 above). They argued that in the light of those statements, the police officers should have been found guilty of torture and not ill-treatment, because the statements had been obtained from them under ill-treatment. By finding them guilty of ill-treatment, for which the prescription period was shorter, the police officers had been allowed to go with impunity.

73. On 2 May 2011 the Court of Cassation held that the applicants had withdrawn their complaints against the police officers on 8 April [*sic*] 2004 (see paragraph 47 above), and that they did not, therefore, have the requisite

standing to appeal against their acquittals. It upheld the trial court's judgment of 29 December 2009.

74. In the meantime, a disciplinary investigation was conducted by the Istanbul Bar Association into the complaints made by Bülent Kurt. In a decision of 16 October 2007 its Disciplinary Council decided to reprimand Ali Tufan for failing to inform Mr Kurt of his appointment to take over representation of the applicants.

II. RELEVANT DOMESTIC LAW AND PRACTICE

75. The relevant provisions of the Criminal Code, in force at the time of the events, provided as follows:

Section 243 § 1

“Any public servant ... who inflicts torture or cruel, inhuman or degrading treatment on any person to make them confess their crimes ... shall be sentenced to up to eight years' imprisonment and temporarily or permanently barred from public service.”

Section 245

“Any law-enforcement officer ... who, in the course of duty ... and in circumstances other than those prescribed by law ... ill-treats, injures or strikes a person or causes him bodily harm shall be sentenced to between three months' and five years' imprisonment and temporarily barred from public service...”

76. The Regulations on Arrest, Detention and Questioning, which was in force at the time of the events (Regulation No. 23480, entered into force in 1998 and repealed and replaced by a new set of Regulations in 2005) dealt with the issue of detention of persons at the time. Sections 12 and 19 of the Regulations required, among other things, recording in official custody logs of the identity details of the detainees, the exact time, date and place of their detention, the name of the custody officer who placed them in custody, the name of the doctor who carried out their medical examination, the exact time and date of release, the name of the custody officer effecting the release and the name of the doctor who conducted the medical examination at the time of release. The Regulations required that the detainee be informed of the accusations against him or her and his or her right to be represented by a lawyer. The Regulations also set out the procedure applicable to detainees between the ages of 12 and 18, and made it compulsory to appoint a lawyer to represent them regardless of their wishes. The child's family also had to be informed and the initial investigation had to be conducted directly by a prosecutor. He or she had to be brought before a prosecutor and could only be questioned in the presence of his or her lawyer. His or her family could also be present during questioning.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

77. The applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment which amounted to torture. Relying on Articles 6 and 13 of the Convention, they also complained that the investigation into their allegations of ill-treatment had not been effective.

78. The Court considers that the complaints can 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.”

79. The Government contested that argument.

A. Admissibility

80. The Government considered that the applicants had failed to exhaust domestic remedies. To that end, they submitted that the complaints had neither been brought to the attention of nor raised in substance before the domestic authorities. Had the applicants relied on their Convention rights, the national authorities would have been in a position to examine them.

81. The applicants disputed the Government's submissions and maintained that they had exhausted domestic remedies. In this connection, they argued that despite the indifference displayed by the national authorities towards their complaints and all the hurdles put in their way, they had followed them up at the national level.

82. The Court observes that, as detailed in the Government's own observations summarising the investigation and trial, the applicants brought their complaints to the attention of the national authorities on many occasions (see paragraphs 33, 36, 58 and 72 above). In their initial official complaints petition, they also referred to their rights under the Convention (see paragraph 33 above).

83. Furthermore, the applicants and their lawyer attended the hearings before the trial court and lodged an appeal when it decided to discontinue the proceedings (see paragraph 72 above).

84. In the light of the foregoing, the Court rejects the Government's preliminary objection. It also notes that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

85. The applicants maintained that they had been subjected to ill-treatment in police custody. The injuries caused as a result had been documented in medical reports and had been found by the doctors to be compatible with their allegations. They alleged that they had been ill-treated in order to take the blame for the actions of A.Ö. in the killing of B.S. The accuracy of their submissions had been established by the Beyoğlu Assize Court, which had found that the actions of the police officers had amounted to ill-treatment.

86. The applicants also argued that the national authorities had not conducted their investigations in a timely manner. For example, they had failed to question the defendants for a period of over two years. The trial court had held only three hearings per year. The proceedings had thus become time-barred, and the police officers responsible for the ill-treatment had gone unpunished.

87. The Government submitted that throughout the criminal proceedings, the applicants had displayed a contradictory attitude. According to the facts collected by the authorities, they were drug addicts and had regular problems with the police. They had told the authorities that their injuries had been caused during a street fight, and not at the police station. The medical reports drawn up by the Human Rights Foundation could not therefore be taken as credible evidence.

88. Since the applicants had not been taken into police custody, but heard as witnesses, there had been no violation of Article 3 of the Convention.

89. In the opinion of the Government, the judicial authorities had complied with their procedural obligation under Article 3 of the Convention. The Beyoğlu prosecutor had immediately started an investigation into the applicants' allegations, and the subsequent criminal proceedings against the police officers had been conducted with due diligence and expedition.

90. The applicants responded to the Government's submissions and drew the Court's attention to the fact that they had been based entirely on the petitions by which they had been forced to withdraw their complaints against the police officers and dismiss their lawyers (see paragraphs 46-47 above). It was clear from the facts of the case that they had been forced to appoint Ali Tufan as their lawyer because of the threats and intimidation exerted on them by the police officers. Mr Tufan, who had been supposed to represent them, had in fact taken sides with the defendant police officers and had made submissions against them. They had subsequently dismissed him, reappointed their initial lawyer, Bülent Kurt, and this change of representation had been accepted by the trial court. The pressure exerted by

the police officers and their attempts to stall the investigation had been obvious and did not require substantiation.

91. The applicants also challenged the Government's submissions that they were substance users and had had problems with the police. As evidenced by official documents (see paragraph 60 above), neither of them had a criminal record. In any event, even if those allegations were true and they were substance users, it would not give the police the right to ill-treat them.

92. The Court must stress at the outset that in a case such as this, which concerns allegations of ill-treatment of minors in police custody, it is unable to see the relevance of the Government's submissions that the applicants were drug users. Thus, having regard to their irrelevance, the Court considers it unnecessary to entertain in its examination the Government's allegations directed towards the applicants.

93. Secondly, the Court also finds irrelevant the Government's submissions that "[...] since the applicants had not been taken into police custody, but heard as witnesses, there had been no violation of Article 3 of the Convention" (see paragraph 88 above).

94. The Court observes that despite the Government's submissions to the contrary, a criminal court found it established that the applicants had been ill-treated by ten police officers (see paragraphs 70-71 above). Having examined the documentary evidence in its possession (see paragraphs 22-74 above), the Court does not find any reason to depart from the findings of facts of the trial court, and accepts that the applicants were indeed ill-treated by the police officers.

95. Thus, as it has done in a number of its judgments concerning similar issues, the Court considers that the conclusion reached by the trial court amounts to an acknowledgment in substance that the applicants' rights under Article 3 of the Convention have been breached (see, *mutatis mutandis*, *Kasap and Others v. Turkey*, no. 8656/10, § 56, 14 January 2014 and the cases cited therein; *Böber v. Turkey*, no. 62590/09, § 30, 9 April 2013; *Eski v. Turkey*, no. 8354/04, §§ 29-30, 5 June 2012; and *Taylan v. Turkey*, no. 32051/09, § 38, 3 July 2012).

96. The Court's examination of the applicants' complaint will therefore be limited to ascertaining whether or not the national authorities afforded appropriate and sufficient redress for the violation, and whether they have thus complied with their substantive and procedural obligations under Article 3 of the Convention (see, *mutatis mutandis*, *Kulah and Koyuncu v. Turkey*, no. 24827/05, § 38, 23 April 2013; *Fadime and Turan Karabulut v. Turkey*, no. 23872/04, § 43, 27 May 2010; and *Bektaş and Özalp v. Turkey*, no. 10036/03, § 48, 20 April 2010). To that end, although redress may consist of pecuniary compensation in certain cases, given that the applicant in the present case did not seek such compensation, the Court considers it appropriate to examine whether the measures taken by the

authorities to investigate the allegations and, if appropriate, identify and punish those responsible, could be regarded as providing redress in the circumstances of the case. In this connection, the Court will also have regard to the extent to which the national courts may be considered to have submitted the case before them to the scrupulous examination required by Article 3 of the Convention in order to maintain the deterrent power of the judicial system and the important role it plays in upholding the prohibition of ill-treatment (see, *mutatis mutandis*, *Okkaloğlu v. Turkey*, no. 52067/99, § 66, ECHR 2006-XII).

97. It must be emphasised at the outset that, while there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see *Okkaloğlu*, cited above, § 65; *Türkmen v. Turkey*, no. 43124/98, § 51, 19 December 2006; see also, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII). Thus, although the Court would grant substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment and homicide by State agents, it would also exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007).

98. The Court has examined a large number of applications against Turkey in which it has observed that law enforcement officials found guilty by the national courts of ill-treatment-related offences or unlawful killings have been allowed to go unpunished. It notes that three main practices adopted by the national judicial authorities have enabled the perpetrators of such offences to escape punishment.

99. Firstly, in accordance with an Act of Parliament adopted in 2000 (Law No. 4616), criminal proceedings instigated against law enforcement officials for committing certain illegal acts before 23 April 1999 were suspended. If when that Law entered into force the defendants had already been convicted, the execution of their sentences was suspended. In its judgments concerning such issues, the Court has considered that suspension of the proceedings or execution of the punishment is comparable to a partial amnesty. It has held that such suspensions are measures which cannot be considered permissible under its jurisprudence since, as a result, the convicted officers enjoy virtual impunity despite their conviction (see *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 69, 8 April 2008 and the cases cited therein).

100. Secondly, in accordance with an amendment made to section 231 of the Code of Criminal Procedure in 2008, if the prison sentence to be

imposed on an accused is less than two years, the criminal courts may decide to suspend pronouncement of the judgment. Subsequently, in a number of judgments the Court has observed that the sentences imposed on law enforcement officials for ill-treatment or unlawful killing have first been reduced to below two years by the trial courts, and then the pronouncement of their sentences suspended altogether. The Court has found that suspension of the pronouncement of a judgment has a stronger effect than the deferral of the execution of a sentence, and results in the impunity of the perpetrators. For the Court, such practice suggests that the national judges exercise their discretion to minimise the consequences of extremely serious unlawful acts rather than show that such acts can in no way be tolerated (see *Taylan*, § 46; *Eski*, § 36; *Böber*, § 35; and *Kasap*, § 60, all cited above).

101. Thirdly, in a number of its judgments the Court has observed that, owing to the national authorities' failure to act with due diligence and expedition in investigating and prosecuting incidents of ill-treatment and unlawful killings, proceedings have become time-barred on account of the expiry of the prescription period. For example, the Court held in the case of *Bati and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 146-148, ECHR 2004-IV), which concerned serious ill-treatment to which thirteen applicants had been subjected by police officers, that in view of the very substantial delays in the conduct of the proceedings at first instance, the Turkish authorities could not be considered to have acted with sufficient promptness or reasonable diligence, with the result that the main perpetrators of acts of violence have enjoyed virtual impunity, despite the existence of incontrovertible evidence against them. In the case of *Abdulsamet Yaman v. Turkey* (no. 32446/96, § 55, 2 November 2004) it added that, where a State agent has been charged with crimes involving ill-treatment, it is of the utmost importance that criminal proceedings and sentencing are not time-barred.

102. The present application falls into this third category of cases, and thus requires the Court to assess whether the national authorities did all that could be expected of them in order to examine the applicants' allegations of ill-treatment and prosecute the defendants in a timely fashion. That assessment will not only enable the Court to determine whether or not the national authorities did all they could to provide the applicants with adequate redress by prosecuting and punishing the persons responsible for their ill-treatment, but will also allow it to decide whether or not the same authorities complied with their separate and freestanding procedural obligation to act promptly and with reasonable expedition (see *Bati and Others*, cited above, § 136).

103. The Court observes that for a long period of time, the police officers implicated by the applicants in their ill-treatment refused to comply with the requests to attend the prosecutor's office. That refusal resulted in a

one-year delay at the initial and crucial stages of the investigation (see paragraph 41 above). Although the prosecutor finally threatened to start an investigation into the police chief's non-compliance with his requests, the Court notes that he did not make use of the sanctions available to him under Turkish law to ensure the police officers' attendance at his office much earlier.

104. When the trial finally began some two years after the incident, the defendant police officers failed to attend the majority of the hearings. No attempts were made by the court to ensure their attendance, and it chose instead to perpetually postpone the hearings. One such hearing, which was scheduled to take place immediately before the proceedings were to become time-barred, was postponed because of the failure of the defendants' lawyers to attend, in breach of the national legislation (see paragraph 69 above). Moreover, the Court cannot but note that the trial court held its hearings very infrequently; in the course of the trial which lasted for a period of just over five years between 7 October 2004 and 29 December 2009, twenty-one hearings were held, thereby averaging one hearing every three months.

105. In the light of the foregoing, the Court finds that the national authorities did not act with due promptness and diligence, and that as a result of that failure the proceedings against the police officers became time-barred. The time-barring of the proceedings, as has happened in many cases against Turkey, resulted in virtual impunity for the police officers who were found guilty of ill-treating the applicants. That, in turn, rendered the criminal remedy ineffective, and the authorities thus failed to provide adequate redress to the applicants for their ill-treatment.

106. The Court must also comment on the trial court's indifference to the pressure exerted on the applicants by the police officers, despite the fact that they brought those incidents to its attention (see paragraphs 53 and 60 above). The trial court not only failed to examine those allegations, but also failed to intervene when a lawyer assigned to represent the applicants at the request of the defendant police officers made accusations against his own clients, the applicants, at one of the hearings (see paragraph 53 above). Moreover, it did not seem to occur to the trial court to question the incorrect submissions made by that lawyer during one of the hearings, when he stated that "he had been unaware of any allegations of ill-treatment made by his clients against the police officers" (see paragraph 58 above).

107. By holding an unscheduled hearing with police chief K.Ş.S. as the sole attendee, without informing the applicants or their lawyers, the trial court not only denied the applicants and their lawyers the opportunity to confront and put questions to the police chief (see paragraph 54 above), but also displayed a lack of respect for the principle of equality of arms. Although the applicants made an official complaint about the unlawful nature of that hearing (see paragraph 55 above), it was not examined.

108. At this juncture the Court also reiterates the importance of the suspension from duty of an agent under investigation or on trial, as well as his dismissal if he is convicted, (see, *inter alia*, *Abdülşamet Yaman*, cited above, § 55). The importance of doing so is well evidenced in the present application, where the police officers who ill-treated the applicants – in particular police chief K.Ş.S. – used their powers to stall the investigation by failing to reply to the prosecutor’s requests for a long period of time and by putting pressure on the applicants.

109. Finally, the Court cannot but remark critically on the attitude of the Court of Cassation, which held that the applicants had no standing to appeal against the decision of the trial court because they had withdrawn their complaints (see paragraph 73 above). The Court notes in this connection that the applicants, after having overcome the hurdles put in their way by the defendant police officers, managed to reappoint their own lawyer who took part in each of the twenty-one hearings and represented them. In the transcripts of those hearings, the applicants were referred to as the interveners and their lawyer as counsel of record (see paragraphs 53 and 59 above). No authority, not even the trial court, questioned the applicants’ standing in those proceedings. To the contrary, the lawyer was able to make oral submissions before the trial court and submit written observations. Nevertheless, the Court of Cassation refused to examine the pertinent points raised by the applicants in their appeal. For the Court, the conclusion reached by that court sums up the attitude displayed by the judiciary throughout the criminal proceedings towards the two children who were ill-treated in police custody.

110. In the light of the foregoing, and having regard to the national authorities’ failure to provide adequate redress to the applicants for the ill-treatment to which they were subjected and carry out an effective investigation into their allegations of ill-treatment, the Court finds that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 to 4 OF THE CONVENTION

111. Lastly, the applicants complained that their detention at Beyoğlu police station had been in breach of Article 5 §§ 1 to 4 of the Convention. Relying on Article 5 § 1 (c) of the Convention, they alleged, in particular, that although they had initially been taken to the police station as witnesses, they had then been treated as suspects and kept there for a period of over two days in the absence of procedural guarantees. For example, their detention had not been entered into the official custody logs and they had not been informed of their rights. At the end of their detention, they had not

been examined by a doctor. Article 5 §§ 1 to 4 of the Convention, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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.

...”

112. The Government contested that argument.

A. Admissibility

113. 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. In this connection, the Court also observes that when the applicants realised that their allegations of unlawful detention were not being investigated by the prosecutor, they brought a separate complaint on this specific issue (see paragraph 50 above). When it was rejected by the prosecutor, they filed an objection against it. The decision in which their objection was rejected was served on them on 1 April 2005 (see paragraph 51 above), and they lodged their application with the Court on 28 September 2005.

B. Merits

114. The Government argued that the applicants had been transferred to the special police station for minors. They also submitted that since the purpose of the applicants’ detention at the police station had been for them

to be questioned as witnesses, there had been no violation of Article 5 of the Convention.

115. The applicants maintained that they had been deprived of their liberty unlawfully, and responded to the Government's submissions by arguing that the failure to enter their names into the custody logs had been in breach of the domestic law.

116. The Court reiterates the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the rights of individuals in a democracy to be free from arbitrary detention by the authorities. It has reiterated in this connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5 of the Convention, namely to protect the individual from arbitrary detention. In order to minimise the risks of arbitrary detention, Article 5 of the Convention provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty be amenable to independent judicial scrutiny and to secure the accountability of the authorities for that measure (see *Kurt v. Turkey*, 25 May 1998, § 122, *Reports of Judgments and Decisions* 1998-III).

117. The Court notes that it is not disputed between the parties that the applicants were taken to Beyoğlu police station in the early hours of 23 November 2002 (see paragraph 24 above). The applicants alleged that they were not released until "4 or 5" in the afternoon on 25 November 2002 (see paragraphs 11 and 36 above), allegations which were not disputed by the Government.

118. In any event, in the absence of any official documentation showing the time of the applicants' release, let alone a detailed account of where they were detained, the Court considers that the benefit of the doubt should be given to the applicants (see *Baisuev and Anzorov v. Georgia*, no. 39804/04, § 52, 18 December 2012). The Court accepts, therefore, that they were detained by the police between the early hours of 23 November 2002 and the late afternoon of 25 November 2002, that is for a period of approximately two and a half days. In view of the length of the time they were there and the absence of any indication that they were free to leave, the Court accepts that the applicants were deprived of their liberty within the meaning of Article 5 § 1 of the Convention.

119. What is in dispute between the parties is where the applicants were detained. The applicants alleged that they had been kept at Beyoğlu police station. The Government, on the other hand, submitted that they had been transferred to the special police station for minors. The Court notes that the Government's submissions are not supported by any evidence; in fact, they did not even attempt to argue that the applicants' detention had been documented in accordance with the domestic legislation. In any event, it is to be noted that the fact that the special police station did not keep the

custody records for the period in question was officially accepted by the police in a letter (see paragraph 62 above). Moreover, the Government's submissions are discredited by the testimonies given by two police officers who worked for the special police station for minors and confirmed before the investigating authorities on two occasions that "they had gone to Beyoğlu station to question the applicants" (see paragraphs 39 and 61 above).

120. The Court considers, in any event, that for the purpose of its examination of this complaint, it is irrelevant to establish in which of the two police stations the applicants were detained. The fact remains that for a period of two and a half days, they were deprived of their liberty within the meaning of Article 5 of the Convention. In this connection, the Court must also emphasise that the characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012). Thus, the fact that both the national authorities and subsequently the respondent Government considered that the applicants had not been arrested but had been kept in a police station as "statement makers" or as witnesses does not automatically mean that they were not deprived of their liberty since, regardless of its purpose, the deprivation of liberty must be lawful.

121. Thus, the Court must next ascertain whether the applicants' deprivation of liberty complied with the requirements of Article 5 § 1 of the Convention. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to the national law and state the obligation to conform to the substantive and procedural rules thereof (see *Jėčius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX).

122. The Court notes at the outset that, according to the Government, the applicants had been taken to the police station as witnesses and according to the national authorities, they had been taken there as "statement makers". It is to be noted in this connection that the Government did not make any attempts to explain what was meant by the phrase "statement maker". Nevertheless the Court notes that, as explained by the applicants' legal representative (see paragraph 51 above), the phrase "statement maker", which was initially coined by the police officer who detained the applicants (see paragraph 25 above), and which was later embraced by the judicial authorities (see paragraph 51 above), does not have a place in the Turkish legal system and cannot be used as a justification to detain individuals in police custody.

123. In any event, having regard to the police reports which state that the applicants were "apprehended" (see paragraphs 24 above), the nature of the statements taken from them (see paragraphs 27-28 above), and the fact that swabs were taken from one of them with a view to establishing whether or

not he had gunpowder residue on his hands (see paragraph 23 above), coupled with the fact that a prosecutor started an investigation against the second applicant (see paragraph 35 above), the Court considers that the applicants were detained at the police station as suspects.

124. The Court notes that the procedure applicable to and the safeguards from which arrested persons and detainees could benefit at the time of the applicants' detention were set out in the Regulations on Arrest, Detention and Questioning, which had entered into force in 1998 and were repealed and replaced by a new set of Regulations in 2005 (see paragraph 76 above). The Regulations had been prepared on the basis of, *inter alia*, the Code of Criminal Procedure then in force (Law No. 1412).

125. The Regulations required, among other things, that full details of the persons placed in police custody and the events surrounding their detention were entered into custody logs. They required, in particular, the recording in official documents of the identity details of the detainees, the exact time, date and place of their detention, the name of the custody officer who placed them in custody, the name of the doctor who carried out their medical examination, the exact time and date of release, the name of the custody officer effecting the release and the name of the doctor who conducted the medical examination at the time of release. The Regulations also required that the detainee be informed of the accusations against him or her and his or her right to be represented by a lawyer.

126. The Regulations also set out in detail the procedure applicable to detainees under the age of 18. According to those provisions, the appointment of a lawyer to represent the child was compulsory and did not depend on their wishes. The child's family also had to be informed and the initial investigation had to be conducted directly by a prosecutor. He or she had to be brought before a prosecutor and could only be questioned in the presence of his or her lawyer. His or her family could also be present during questioning.

127. Nevertheless, as can be seen from the summary of the documents above, none of these binding provisions was respected in the detention of the applicants.

128. In fact, not even a custody report in its most rudimentary form appears to have been prepared. In order to explain the absence of a custody record, the Government proffered the explanation that one had not been necessary because the applicants had not been arrested; they had merely been taken to the police station as witnesses. They did not explain, however, the reason why the applicants – even assuming that they had been taken there as witnesses – had to be detained for two and a half days. Nor did they explain why the applicants had not benefited from the other and equally important safeguards whilst in police custody.

129. In a number of comparable cases against Turkey the Court has highlighted deficiencies in the keeping of custody records, noting in

particular that, although not allowed by domestic law, there had been a practice of detaining persons for various reasons in gendarmerie stations without entering their names and details into custody records (see, *inter alia*, *Orhan v. Turkey*, no. 25656/94, § 372, 18 June 2002, and *Er and Others v. Turkey*, no. 23016/04, § 69, 31 July 2012). The serious deficiencies in the keeping of such records, according to the Court, attested to the absence of effective measures to safeguard individuals in detention against the risk of disappearance (see *Orhan*, cited above, §§ 313 and 372). In those cases the Court also refused to entertain the unsatisfactory and arbitrary distinctions drawn by the respondent Government between being taken into custody and being taken in for the purposes of assisting the military (see *Çiçek v. Turkey*, no. 25704/94, § 137, 27 February 2001).

130. The Court considers that parallels can be drawn between the cases referred to above in which the unlawful nature of the detention contributed to those detainees' subsequent enforced disappearances in the hands of the military, and the present application. In the present case it cannot be excluded that the incommunicado nature of the applicants' detention contributed to their ill-treatment by the police. It is noteworthy in this connection that a number of defendant police officers defended themselves by denying that the applicants had been detained at their police station, and thus attempted to benefit from their own act of detaining the applicants unlawfully.

131. Last but not least, it is crucial to note that the trial court also considered that the detention of the applicants in police custody for no apparent reason had been unnecessary (see paragraph 71 above). As explained above, however, the trial court not only failed to punish the police officers for the ill-treatment they inflicted on the applicants, but also for their false imprisonment.

132. Having found it established that the applicants were detained unlawfully, the Court does not deem it necessary to examine the applicants' remaining complaints under Article 5 of the Convention.

133. It follows that there has been a violation of Article 5 § 1 of the Convention on account of the applicants' unlawful detention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. Each applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

136. The Government considered the sums claimed to be excessive and therefore unacceptable.

137. The Court awards each applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

138. The applicants also claimed EUR 4,400 for the costs and expenses incurred before the domestic courts, and EUR 1,535 for those incurred before the Court. These sums included a claim of EUR 335 in respect of translation, postal and stationery expenses and a claim of EUR 5,600 in respect of the fees of their legal representative. In support of the claim for legal fees the applicants submitted to the Court a breakdown of the hours spent by their lawyer in representing them both in Turkey and before the Court. According to that breakdown, the lawyer spent a total of forty-four hours during the proceedings at the national level and twelve hours in the course of the proceedings before the Court.

139. The Government were of the opinion that the expenses relating to the proceedings at the national level could not be claimed under Article 41 of the Convention. They also considered the claim to be excessive and unsupported with adequate documentary evidence.

140. 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 response to the Government's argument concerning the costs and expenses relating to the proceedings at the national level, the Court reiterates that, if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred before the national courts for the prevention or redress of the violation (see *Société Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III). As set out above (see paragraphs 33, 36, 50-51, 58 and 72), the applicants in the present case brought the substance of their complaints regarding a violation

of their Convention rights to the attention of the national authorities, and effectively participated in the criminal proceedings against the police officers. In the light of the foregoing, the Court considers that they have a valid claim in respect of the costs and expenses incurred at the national level.

141. As for the Government's submissions that the applicants' claims were not supported with adequate evidence, the Court would draw their attention to its previous judgments in which breakdowns of the hours spent by legal representatives were accepted by the Court as proof of the work carried out by them in representing the applicants (see, most recently, *Benzer and Others v. Turkey*, no. 23502/06, § 249, 12 November 2013). In any event, the Court observes that the applicants' legal representative, who has also represented them in the proceedings before the Court, provided them with legal assistance from the moment they lodged their complaints with the prosecutor (see paragraph 33 above), subsequently attended each of the twenty-one hearings before the trial court, and, finally, represented them before the Court of Cassation. He therefore represented the applicants at the national level for a period of almost nine years. He has also been representing the applicants before the Court in the proceedings since 2005.

142. In light of the foregoing, and regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 5,600 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaints under Article 5 §§ 2-4 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;

(ii) EUR 5,600 (five thousand six hundred euros), to the two applicants jointly, 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 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President