



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

AFFAIRE ERDAGÖZ c. TURQUIE

CASE OF ERDAGÖZ V. TURKEY

(127/1996/945/746)

ARRET/JUDGMENT

STRASBOURG

22 octobre/October 1997

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SUMMARY¹

Judgment delivered by a Chamber

Turkey – treatment undergone during deprivation of liberty in a police station

I. SCOPE OF CASE

Government sought to limit scope of case to issues under Article 5 § 1 – Commission and applicant opposed limitation of matter referred.

“Compass of case” delimited by Commission’s admissibility decision not by its report – Court had full jurisdiction within limits of case referred to it.

Conclusion: plea dismissed (unanimously).

II. ARTICLE 3 OF THE CONVENTION

Establishment and verification of facts: primarily a matter for Commission, but Court remained free to make its own appreciation – moreover, not in principle for Court to substitute its own view of the facts for that of domestic courts, whose task it was to assess evidence adduced before them.

Allegation of ill-treatment: no evidence capable of persuading Court to repudiate findings in discontinuation order to the effect that, although traces of blows and injuries on applicant’s body were mentioned in medical report, there was no proof that these lesions resulted from ill-treatment allegedly inflicted by one of the police officers.

Conclusion: no violation (unanimously).

III. ARTICLE 5 § 1 OF THE CONVENTION

A. Government’s preliminary objection (non-exhaustion of domestic remedies)

Objection that applicant had omitted to rely on Law no. 466 of 7 May 1964 and had not instituted proceedings in Turkish courts under Article 19 § 8 of Constitution: not submitted at admissibility stage, therefore inadmissible on grounds of estoppel.

Conclusion: objection dismissed (unanimously).

1. This summary by the registry does not bind the Court.

B. Merits of complaint

“Reasonable suspicion [that a person has] committed an offence”: “suspicion” required need not be on same level as suspicion necessary to justify a conviction or the bringing of a charge – for there to be “reasonable suspicion” there must be facts or information which would satisfy an objective observer that person concerned may have committed an offence.

In instant case suspicion reached required level since it was based on specific facts – having regard to applicant’s conduct and nature of offences in question, Court able to agree with public prosecutor’s opinion.

Conclusion: no violation (seven votes to two).

COURT’S CASE-LAW REFERRED TO

6.11.1980, *Guzzardi v. Italy*; 29.11.1988, *Brogan and Others v. the United Kingdom*; 30.8.1990, *Fox, Campbell and Hartley v. the United Kingdom*; 22.9.1993, *Klaas v. Germany*; 28.10.1994, *Murray v. the United Kingdom*; 23.3.1995, *Loizidou v. Turkey (preliminary objections)*; 4.12.1995, *Ribitsch v. Austria*; 28.11.1996, *Nsona v. the Netherlands*

In the case of Erdagöz v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mr A.N. LOIZOU,

Sir John FREELAND

Mr B. REPIK,

Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 30 June and 22 September 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the Government of the Republic of Turkey (“the Government”) on 18 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 21890/93) against Turkey lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a Turkish national, Mr Mehmet Erdagöz, on 1 May 1993.

The Government’s application referred to Article 48 (d) of the Convention. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 127/1996/945/746. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. On 28 October 1996 the Delegate of the Commission filed observations on the Government's application referring the case to the Court.

3. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyers who would represent him (Rule 30).

4. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 29 October 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Matscher, Mr L.-E. Pettiti, Mr B. Walsh, Mr J. De Meyer, Mr A.N. Loizou, Mr B. Repik and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 24 and 27 March 1997 respectively. The Delegate of the Commission did not submit any observations.

6. On 10 June 1997 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President, who had given one of the applicant's lawyers leave to use the Turkish language (Rule 27 § 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 26 June 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mrs D. AKÇAY,
Mrs I. BOIVIN,

*Acting Agent,
Adviser;*

(b) *for the Commission*

Mr F. MARTÍNEZ,

Delegate;

(c) *for the applicant*

Mr H. KAPLAN, *avukat* (lawyer), of the Istanbul Bar,
Mr S. YILMAZ, *avukat* (lawyer), of the Diyarbakır Bar,

Counsel.

The Court heard addresses by Mr Martínez, Mr Kaplan, Mr Yılmaz and Mrs Akçay.

8. As Mr Walsh was unable to take part in the deliberations on 22 September 1997, Sir John Freeland, substitute judge, replaced him as a member of the Chamber (Rules 22 § 1 and 24 § 1).

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

9. Mr Mehmet Erdagöz, a Turkish national, was, at the material time, the owner of a shop in Adana. He now lives in Kars.

10. On 3 June 1992 a brawl broke out between the applicant and members of his family on one side and a Mr H.A. and his friends on the other. After the fight each of the protagonists lodged a complaint accusing the other, and on 16 June 1992 the public prosecutor's office charged H.A. and the others with armed assault, attempted murder and offences under the Firearms Act. The outcome of these proceedings is not known.

11. On 16 September 1992, at about 2 a.m., the police were informed by an anonymous telephone call to Bağlar police station that stones had been thrown against the applicant's shop and had smashed the windows. The police arrived on the scene half an hour later – before the applicant, who was not on the premises, had even been informed – noted that the windows had been broken and made out a damage assessment report.

Later that night, at 5.30 a.m., Mr Erdagöz, having been informed of the incident, unsuccessfully requested Deputy Inspector S.K., of Bağlar police station, to have the premises searched again before he opened the shop. He also named the persons he suspected of the attack, including H.A., but decided against lodging a complaint and left the police station.

12. At 10.45 a.m. on the same day, after consulting the security police, and on their advice, the applicant returned to the police station and handed over two spent cartridge cases which he claimed to have found inside his shop. He also lodged a complaint and demanded the arrest of H.A., who had allegedly organised the attack out of animosity towards the applicant. A police squad conducted a fresh search of the scene of the crime. According to the report drawn up at the time, at 11.30 a.m., no bullet marks were found.

13. On 16 March 1993, on account of the events of 16 September 1992, the Adana public prosecutor committed H.A. for trial in the Adana Criminal Court for threatening use of a firearm, criminal damage and an offence under the Firearms Act. In a judgment of 28 June 1993 the Criminal Court

acquitted him for lack of sufficient evidence. The Court of Cassation upheld this judgment on 28 February 1994.

A. Deprivation of the applicant's liberty

14. Shortly after 11.30 a.m. on 16 September 1992, as a result of the events of the previous night and on account of the conduct of the applicant, who was suspected of fabricating evidence (see paragraphs 11–12 above), Chief Inspector Enver Tunç ordered him to be transferred, together with H.A., who had been arrested in the meantime, to the security police headquarters. In the covering letter which he sent with the file to the public order branch of the security police, Mr Tunç wrote as follows:

“In view of the fact that Mehmet Erdagöz has frequently lodged ill-founded complaints against the station personnel, that there is animosity between him and [H.A.], that he has previously abused the police and the judicial authorities, that the version of the events put forward by Mr Erdagöz, namely an armed attack, is probably an invention, that he possesses a registered firearm and may well have another unregistered one and that he has already made several contradictory statements, Mr Erdagöz and [H.A.] have both been transferred to security police headquarters for detailed questioning.

I therefore request you to check whether these persons are wanted in connection with an offence, to inform the public order branch and our station of the result and to send a copy of the document to the criminal investigation branch.”

15. In an order of 17 September 1992 the chief inspector referred H.A. and the applicant, who was suspected of falsely reporting a criminal offence, to the public prosecutor's office.

16. On the same day, accompanied by summaries of their interviews prepared by Mr Tunç, the applicant and H.A. appeared before the Adana public prosecutor. Mr Erdagöz was released the same day, at a time which has not been specified.

B. The applicant's complaints against the police

1. The first complaint

17. On 17 September 1992 the applicant lodged a criminal complaint against the chief inspector and Deputy Inspector S.K. with the public prosecutor. He alleged that during the inquiries into the altercation of 3 June 1992 (see paragraph 10 above) the former had abused his authority by drawing up a biased report of the incident. He accused S.K. of inflicting ill-treatment on him when he first went to the police station, at 5.30 a.m., following the events of the night of 15 to 16 September.

18. The next day, at the request of the police, Mr Erdagöz had a medical examination at the social security hospital in Adana. The provisional report, drawn up on the same day, mentions the following injuries: superficial grazing on the left side of the back and bruises and swelling below both knees. On 24 December 1992 a doctor from the Adana Institute of Forensic Medicine drew up a new report confirming the findings of the report of 18 September.

19. On 29 December 1992 the Adana public prosecutor, after conducting an investigation, discontinued the proceedings. He concluded that the allegation of abusing authority was unfounded and decided not to pursue the investigation concerning the chief inspector. With regard to the complaint of ill-treatment, he noted:

“Following the telephone message to Bağlar police station reporting the fact that on 16 September 1992 the windows of the shop situated at 62B 677th Street had been smashed, Deputy Inspector [S.K.] sent a police squad to the scene. This squad made out a report at 3.30 a.m. At 7 a.m. on the same day the complainant went to the police station to complain of the incident. While his complaints were being taken down he decided not to lodge a formal complaint and left the police station. He returned soon after and asserted that he had found two [bullets] inside his shop. Thereupon Mr Enver Tunç, the senior officer at the station, ordered the complainant’s first statement to be altered and sent a squad to the premises. At 11.30 a.m. on the same day this squad made out a report noting that there were no bullet marks whatsoever in his shop. There being no such marks, the inference was drawn that the complainant had falsely produced the bullets in question for the sole purpose of ensuring that [H.A.], the person he had accused, would be arrested. Chief Inspector Tunç accordingly referred him to the criminal investigation branch for questioning. By an order of 17 September 1992 the applicant and [H.A.] were referred to the public prosecutor’s office, the former on suspicion of falsely reporting a criminal offence.

Although traces of blows and injuries on Mr Mehmet Erdagöz’s body are mentioned in the medical report of 18 September 1992, drawn up two days after the incident by the social security hospital to which he had been sent by Chief Inspector Tunç, there is no conclusive evidence that the lesions noted in the report were the result of blows inflicted by the deputy inspector; there is therefore insufficient evidence to prosecute him.”

20. On 27 January 1993 the applicant appealed against the above discontinuation order to the President of the Tarsus Assize Court, who dismissed the appeal on 23 February 1993.

21. On 8 March 1993 the applicant petitioned the Minister of Justice to lodge an appeal in the interests of the law. On 29 March 1993 the Minister of Justice refused.

2. *The second complaint*

22. During the investigation Mr Erdagöz lodged a complaint against the chief inspector and another policeman, A.K., alleging that they had insulted him and taken him into police custody for forty-eight hours even though he was the complainant.

23. On 6 December 1993 the Adana public prosecutor made an order discontinuing the proceedings against these two officers in the following terms:

“However, the investigation file (case no. 1992/22569) and the preliminary inquiry conducted in the case show that on 16 September 1992 ... the complainant went to the police station, where he made an oral statement to the effect that the windows of his shop had been smashed and that he wished to lodge a complaint against the person responsible; he was then asked to produce evidence or name a witness; he left the police station and came back two hours later bringing two [bullets] as evidence; police officers accordingly went to the scene to verify Mr Erdagöz’s allegations and found that the windows were broken but that there were no marks which might suggest that they had been smashed by bullets. In the light of the applicant’s history, he was suspected of falsely reporting a criminal offence and the object of the inquiry was therefore modified and an investigation in two branches conducted. However, as the police had not found any pertinent evidence that the offence had been committed, the complainant was referred to the public prosecutor’s office by an order of 17 September 1992. Contrary to his allegations, he was not taken into police custody for forty-eight hours but necessarily held for twenty-four hours so that the inquiry could be completed. Moreover, there is no evidence to support the allegations of defamation.”

24. On 15 February 1994 the applicant appealed against the above discontinuation order to the President of the Assize Court. He alleged in particular that his detention in police custody had lasted for two days and had been due to the resentment the police felt towards him on account of his previous complaints to the European Commission of Human Rights and the domestic courts. On 7 March 1994 the President of the Tarsus Assize Court dismissed the appeal and on 24 June 1994 the Minister of Justice refused a petition in which Mr Erdagöz had asked him to lodge an appeal in the interests of the law.

II. RELEVANT DOMESTIC LAW

A. **The Constitution**

25. Article 19 § 8 of the Constitution provides:

“A person deprived of his liberty for whatever reason shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.”

B. The Code of Criminal Procedure

26. Article 128 § 1 of the Code of Criminal Procedure, in the version in force at the material time, provided:

“Where the arrested person has not been released, and in order to avoid any unnecessary or unjustified delay, he must be brought before the investigating judge and examined within twenty-four hours, not including the time needed to escort him to the investigating judge nearest to the place of his arrest ...”

C. The Criminal Code

27. The relevant provisions of the Criminal Code are the following:

Article 245

“An enforcement official, a police officer or any other official responsible for enforcement who performs his duties in an unlawful manner, whether spontaneously or on the orders of a superior, or who ill-treats, assaults or injures a third party while doing so, shall be sentenced to between three months’ and three years’ imprisonment and suspended from duty.”

Article 266

“Anyone who, by word or action, offends the honour, reputation or dignity of an official in his presence and while he is performing his duties shall be punished ...”

Article 283

“Anyone who submits a complaint to a judicial authority or to the holder of a public office who is accountable to that authority or to the holder of another office who is empowered to initiate proceedings or order that proceedings be brought, concerning an offence which he knows has not been committed or who fabricates evidence of such an offence so as to enable criminal proceedings to be opened for the purpose of establishing that offence shall be punished ...”

Article 285

“Anyone who, by reporting an offence or lodging a complaint with a judicial authority or with an official who is required to forward it to that authority or with the authority competent to bring proceedings or have proceedings brought, accuses a person whom he knows to be innocent of an offence, or who fabricates material evidence implicating that person, shall be punished according to the classification and nature of that offence and the importance of the evidence fabricated ...”

D. Law no. 466

28. The relevant provisions of Law no. 466 of 7 May 1964 are the following:

Section 1

“Compensation shall be paid by the State in respect of all damage sustained by persons

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial; or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only ...”

Section 2 (1)

“Any person who has sustained damage for the reasons set out in section 1 may lodge a claim for damages ... with the assize court having jurisdiction in respect of his place of residence within three months of the date on which the decision concerning the allegations which form the basis of his claim becomes final.”

PROCEEDINGS BEFORE THE COMMISSION

29. The applicant applied to the Commission on 1 May 1993. Relying on Articles 3 and 5 § 1 of the Convention, he complained of ill-treatment allegedly inflicted by police officers and of the unlawfulness of his “detention in police custody”.

30. The Commission declared the application (no. 21890/93) admissible on 3 April 1995. On 14 May 1996 it refused the Government's request for application of Article 29 of the Convention. In its report of 23 May 1996 (Article 31) it expressed the unanimous opinion that there had been no violation of Article 3 of the Convention but a violation of Article 5. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

AS TO THE LAW

I. SCOPE OF THE CASE

31. Before the Commission Mr Erdagöz complained of ill-treatment allegedly inflicted on him at Bağlar police station and of the unlawfulness of his "detention in police custody"; he relied on Articles 3 and 5 of the Convention.

32. In their application bringing the case before the Court (Article 48 (d) of the Convention) the Government sought to limit the scope of the case referred to the Court to issues under Article 5 § 1. As far as Article 3 was concerned, they expressed agreement with the Commission's opinion. At the hearing they submitted that their application did not concern the relevant part of the Commission's report, since the issue in question did not raise any problem as regards the application or interpretation of the Convention for the purposes of Article 45. Pursuant to Article 32 § 1, the relevant part fell within the jurisdiction of the Committee of Ministers of the Council of Europe.

33. The applicant and the Delegate of the Commission disagreed. In referring the case to the Court the Government of the respondent State could not unilaterally restrict the Court's jurisdiction, as such a restriction was contrary to general principles.

34. The Court notes that the Convention provisions concerning reference to the Court, in particular Articles 43, 45 and 47, and Article 48 in the English text, speak of "the case", not of a point in issue or an aspect of the case. It reiterates that the "compass of the case" is delimited not by the report but by the admissibility decision (see the *Guzzardi v. Italy* judgment of 6 November 1980, Series A no. 39, p. 39, § 106).

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is available from the registry.

35. It is true that the Court, without ruling in general terms on the possibility of circumscribing the matter referred by limiting it to one or more of the questions on which the Commission has expressed an opinion, has already accepted a restriction of the scope of two cases (see the *Loizidou v. Turkey* judgment of 23 March 1995 (*preliminary objections*), Series A no. 310, p. 20, § 54, and the *Nsona v. the Netherlands* judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 2007, § 115). Nevertheless, the applicant Government in the former case and the applicants in the latter had requested or agreed to such a restriction of the scope of the case, and this had not been opposed by the other participants in the proceedings.

36. The Court, which has full jurisdiction within the limits of the case referred to it, accordingly dismisses the Government's plea that the scope of the case should be limited to issues under Article 5 § 1.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. Mr Erdagöz alleged that he had suffered treatment incompatible with Article 3 of the Convention, which provides:

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

He submitted that, when he first went to Bağlar police station to complain about the attack on his shop, Deputy Inspector S.K. had beaten and insulted him, refused to register his complaint and driven him out of the police station. He had then applied to the security police, with whom he had lodged a complaint against the officers concerned. Subsequently, on the advice of the head of the security police, he had returned to the police station and handed over two spent cartridge cases as evidence. The medical reports of 18 September and 24 December 1992 constituted irrefutable proof of the ill-treatment he had suffered.

38. The Government did not make any observation.

39. The Commission contested the applicant's argument. It noted that he had given a vague description of the events and had not provided any information about the manner in which the alleged ill-treatment had been inflicted; this lack of details cast serious doubt on the truth of Mr Erdagöz's allegations. The facts of the case taken as a whole, and particularly the fact that the applicant was not in police custody between 5.30 a.m. and 10.45 a.m., did not support the conclusion that the injuries noted in the medical reports had been caused by treatment for which the respondent State should bear responsibility.

40. The Court reiterates that the establishment and verification of the facts is primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). The Court is not, however, bound by the Commission's

findings of fact and remains free to make its own appreciation in the light of all the material before it (see, among other authorities, the *Klaas v. Germany* judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Moreover, it is not in principle for the Court to substitute its own view of the facts for that of the domestic courts, whose task it is to assess the evidence adduced before them (see the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, p. 24, § 32).

41. In the instant case a number of facts raise doubts as to whether Mr Erdagöz, as he maintained, suffered treatment prohibited by Article 3 when he first went to the police station to lodge a complaint about the damage to his shop.

Firstly, the file contains no trace of any complaint to the security police (see paragraph 12 above) against the police officers alleged to have inflicted ill-treatment on him at 5.30 a.m. on 16 September 1992.

Secondly, the applicant did not complain of ill-treatment until the following day, when he appeared before the public prosecutor, without first going to see a doctor to have his injuries recorded (see paragraph 17 above).

Lastly, the medical reports, the first of which was drawn up two days after the incident, contain no indication as to when the injuries were sustained or how they were caused (see paragraph 18 above).

42. That being so, the Court is not in possession of any evidence capable of persuading it to repudiate the findings set out in the discontinuation order of 29 December 1992 (see paragraph 19 above), to the effect that, although traces of blows and injuries on the applicant's body were mentioned in the medical report of 18 September 1992, there was no proof that these lesions were the result of ill-treatment allegedly inflicted by the deputy inspector.

43. Accordingly, the Court finds no breach of Article 3.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

44. The applicant asserted that the deprivation of his liberty from 16 to 17 September 1992 had breached Article 5 § 1 of the Convention, the relevant part of which provides:

“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;

...”

The Commission accepted this contention, whereas the Government rejected it.

A. The Government’s preliminary objection

45. The Government submitted that domestic remedies had not been exhausted, in that the applicant had omitted to rely on Law no. 466 of 7 May 1964, which guarantees persons who have been detained, whether lawfully or unlawfully, the possibility of obtaining damages in specific circumstances. Nor had he instituted proceedings in the Turkish courts under Article 19 § 8 of the Constitution, which gives any person deprived of his liberty the right to take proceedings before a judicial body.

46. The Court notes that this objection was not submitted to the Commission. It therefore dismisses it on grounds of estoppel.

B. Merits of the complaint

47. Mr Erdagöz alleged that he had been deprived of his liberty and arbitrarily held beyond the legal limit for detention in police custody even though he had gone to the police station in order to produce evidence of the offence committed against his shop. His “detention in police custody” had been prompted not because he was reasonably suspected of having committed an offence but by the resentment towards him of the police officers against whom he had previously lodged complaints. Even if he had produced false evidence, detention in police custody would not have been justified. He should have been brought before the public prosecutor, who, if necessary, could have instituted proceedings against him for fabrication of evidence. Lastly, his “detention in police custody” had exceeded the legal limit by thirteen hours.

48. The Government submitted that Mr Erdagöz’s transfer had not been effected for the purpose of detaining him in police custody but in order to take a detailed statement from him about the long-standing quarrel between him and H.A. The very short deprivation of the applicant’s liberty had been the result of his contradictory and indeed criminal behaviour, since he was suspected of attempting to pervert the course of justice by fabricating evidence, these being offences under Articles 266, 283 and 285 of the Criminal Code. This behaviour had obliged the police to conduct further on-the-spot investigations and to transfer the applicant to the security police for

questioning. The speed with which the police had reacted was due in particular to the need to prevent the concealment or fabrication of evidence and to avoid the occurrence of any further incidents between the applicant and H.A. in the district concerned.

49. The Commission, pointing out, *inter alia*, that no judicial investigation had been opened to examine whether the applicant had committed the offences mentioned by the Government, expressed the opinion that he was not “reasonably suspected” of having committed an offence. The Delegate submitted that there was no explanation why, if the police believed that such an offence had been committed, they did not bring Mr Erdagöz before the public prosecutor the same day, instead of holding him in police custody from 11.30 a.m. until some time it has not been possible to determine on the following day.

50. The Court notes that the complaint declared admissible by the Commission under Article 5 § 1 was limited to the applicant’s allegation that the deprivation of his liberty had been contrary to Article 5 § 1 (c) because he could not have been reasonably suspected of having committed an offence. The question whether the statutory maximum period had been exceeded was not considered by the Commission in either its decision on admissibility or its report.

51. The Court reiterates that the fact that an applicant has not been charged or brought before a court does not necessarily mean that the purpose of his detention was not in accordance with Article 5 § 1 (c). The existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody (see the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 145-B, p. 29, § 53). The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see the *Murray v. the United Kingdom* judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). However, for there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see the *Fox, Campbell and Hartley v. the United Kingdom* judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

52. In the instant case the suspicion reached the required level since it was based on specific facts (see paragraphs 11, 12 and 23 above). These showed that the purpose of the deprivation of liberty was to confirm or dispel the suspicion that the applicant had falsely reported a criminal offence and fabricated evidence. In both his letter of 16 September (see paragraph 14

above) and his order of 17 September 1992 (see paragraph 15 above) the chief inspector stated that the applicant was suspected of having committed an offence. Having regard to the applicant's conduct and the nature of the offences in question, the Court sees no reason to disagree with the public prosecutor's finding of 6 December 1993 (see paragraph 23 above) that Mr Erdagöz had been detained for twenty-four hours so that the inquiry concerning him could be completed.

53. It follows, therefore, that the deprivation of liberty was justified under paragraph 1 (c) of Article 5.

54. In conclusion, there has been no breach of that provision.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's plea that the scope of the case should be limited to issues under Article 5 § 1 of the Convention;
2. *Holds* unanimously that there has been no breach of Article 3 of the Convention;
3. *Dismisses* unanimously the Government's preliminary objection relating to Article 5 § 1 of the Convention;
4. *Holds* by seven votes to two that there has been no breach of Article 5 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 October 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) joint concurring opinion of Mr Gölcüklü, Mr Matscher and Mr Pettiti;
- (b) joint partly concurring and partly dissenting opinion of Mr Loizou and Sir John Freeland.

Initialled: R. B.

Initialled: H. P.

JOINT CONCURRING OPINION OF JUDGES GÖLCÜKLÜ,
MATSCHER AND PETTITI

(Translation)

In our opinion, Article 48 of the Convention gives a State the right to limit the matter it refers to the Court in a case to one or more of the complaints on which the Commission has expressed an opinion (in the present case the complaint relating to a violation of Article 5 § 1) in so far as any such complaint is a separate one based on different facts and is accordingly separable from the case as a whole. In our view, that can be inferred from general principles of procedure. It also corresponds in substance to what the Court decided in the *Loizidou v. Turkey* judgment of 23 March 1995 (*preliminary objections*), Series A no. 310, p. 47, § 54, and the *Nsona v. the Netherlands* judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 2007, § 115.

Further, we do not believe that the terminology used in Articles 28 (b), 32 § 1, 43, 45 and 47, the French text of which uses the general term “case”, weakens the validity of the above argument, especially as the purpose of the provisions cited is not to circumscribe the object and scope of the dispute submitted to the Court. We also note that in places the corresponding English terminology is different.

With regard to the complaint in question, as the Court found no violation, the problem is rather theoretical in the present case.

That is why we voted with the rest of the Chamber on the question (point 1 of the operative provisions), even though, in our opinion, it is compatible with the Convention system to refer a single complaint to the Court.

JOINT PARTLY CONCURRING
AND PARTLY DISSENTING OPINION
OF JUDGES LOIZOU AND Sir John FREELAND

1. We are in agreement with the majority of the Court on all its conclusions except that of holding that there was no violation of Article 5 § 1 (c) of the Convention. On the contrary, in the light of the relevant facts we conclude, as the Commission did unanimously, that there was a breach of that provision.

2. The reason for our conclusion is that the evidence relied upon by the Government for justifying the arrest and detention of the applicant was insufficient to substantiate the claim that the authorities had a “reasonable suspicion”, within the meaning of Article 5 § 1 (c), that the applicant had committed an offence (see the *Murray v. the United Kingdom* judgment of 28 October 1994, Series A no. 300-A, p. 27, §§ 55–57).

Having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as “reasonable” will however depend upon all the circumstances. For the ascertainment of whether the essence of the Convention safeguard has been secured, it is incumbent upon the Government to furnish at least some facts or information capable of satisfying the Court that the applicant was reasonably suspected of having committed the alleged offence (see the *Fox, Campbell and Hartley v. the United Kingdom* judgment of 30 August 1990, Series A no. 182, pp. 16 and 18, §§ 32 and 34).

3. The salient facts are that the police had ascertained by their visit to the scene that stones had been thrown against the applicant’s shop and that its windows had been smashed. They had been informed about this incident by an anonymous telephone call and on arrival at the scene they had observed the damage and made a damage assessment report. When the applicant arrived at the scene some three hours later he asked that the premises be searched again before he opened the shop. He named the persons he suspected of the attack, including H.A., but decided against lodging a complaint and left the police station. Subsequently, however, he returned to the police station with two spent cartridge cases which he claimed to have found in the shop, lodged a complaint and demanded the arrest of H.A. Shortly afterwards, when a police team had gone to the shop and found no evidence of shots having been fired there, he was placed in custody on a charge of producing false evidence. He was not released until some time the next day.

Six months later the Adana public prosecutor instituted proceedings in the Adana Criminal Court against the alleged perpetrator of the attack on the shop for “threatening use of a firearm, criminal damage and an offence under the Firearms Act”. No criminal investigation was opened to examine whether the applicant had produced false evidence to the police and breached the provisions of the Criminal Code on which the Government rely. Moreover, the tenor of the covering letter of Chief Inspector Tunç to the security police headquarters and the ensuing events (see paragraphs 14, 15 and 16 of the judgment) do not suggest the existence of a level of suspicion sufficient to amount to a “reasonable suspicion of having committed an offence” so as to justify detention in order to further a criminal investigation.

4. In the circumstances, we are not satisfied that the respondent State has discharged the burden of proof incumbent upon it.