



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

CASE OF TEKİN v. TURKEY

(52/1997/836/1042)

JUDGMENT

STRASBOURG

9 June 1998

In the case of Tekin 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 THÓR VILHJÁLMSSON,
Mr F. GÖLCÜKLÜ,
Mr C. RUSSO,
Mr J. DE MEYER,
Mr J.M. MORENILLA,
Mr L. WILDHABER,
Mr K. JUNGWIERT,
Mr V. TOUMANOV,

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

Having deliberated in private on 28 March and 22 May 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 27 May 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22496/93) against the Republic of Turkey lodged with the Commission under Article 25 by a Turkish national, Mr Salih Tekin, on 14 July 1993.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 2, 3, 5 § 1, 6 § 1, 10, 13, 14 and 18 of the Convention.

Notes by the Registrar

1. The case is numbered 52/1997/836/1042. 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. 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).

3. 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. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 3 July 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla, Mr L. Wildhaber, Mr K. Jungwiert and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Turkish Government (“the Government”), the applicant’s lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence and to the Government’s request for an extension of the time-limit for the filing of their memorial, the Registrar received the applicant’s memorial on 21 January 1998 and the Government’s memorial on 4 February 1998.

5. Subsequently Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who had died on 18 February 1998, as President of the Chamber (Rule 21 § 6, second sub-paragraph).

6. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 March 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M. ÖZMEN, *co-Agent*,
 Mr A. KAYA,
 Mr K. ALATAŞ,
 Mr F. POLAT,
 Ms A. EMÜLER,
 Ms M. ANAYAROĞLU, *Advisers;*

(b) *for the Commission*

Mr H. DANELIUS, *Delegate;*

(c) *for the applicant*

Mr K. BOYLE, Barrister-at-Law,
 Ms A. REIDY, Barrister-at-Law, *Counsel*,
 Mr K. YILDIZ, Kurdish Human Rights Project, *Adviser.*

The Court heard addresses by Mr Danelius, Mr Boyle and Mr Özmen, and also the Government’s replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Mr Salih Tekin, a Turkish citizen of Kurdish origin, was born in 1964 and lives in Diyarbakır. Prior to the events in question, he had been employed as a journalist for the newspaper *Özgür Gündem*.

The facts in the case are disputed.

A. The applicant's detention

8. It was not disputed that in February 1993, during a visit to his family in the hamlet of Yassitepe, the applicant was arrested, on suspicion of threatening village guards, by gendarmes under the command of Officer Harun Altın and taken to Derinsu gendarmerie headquarters.

The applicant alleged that his arrest took place on the morning of 15 February 1993, whereas the Government claimed that it occurred on 17 February 1993.

9. He was held at Derinsu until 19 February 1993.

He alleged that during his time in custody there he was detained in a cell without any lighting, bed or blankets, in sub-zero temperatures, and fed with only bread and water. He claimed to have been assaulted in his cell by gendarmes, including Officer Altın. He stated that he would have died of cold had his three brothers not been permitted to enter his cell on the night of 18 February and wrapped him in extra clothing.

The Government denied that Mr Tekin had been ill-treated. They stated that it would have been impossible for the temperature in the security room to have dropped below freezing-point, since it was situated in the centre of the building and surrounded by other units heated by coal-burning stoves. They also denied that his brothers had been allowed to join him there.

10. On the morning of 19 February 1993, the applicant was taken to Derik district gendarmerie headquarters. He was released on the same day.

He alleged to have been tortured at Derik, through the application of cold water, electric shocks and beatings, with the purpose of forcing him to sign a confession statement. He claimed that the district gendarmerie commander, Musa Çitil, threatened him with death if he returned to the area.

The Government contested that any ill-treatment had taken place.

B. The applicant's complaint to public prosecutor Hasan Altun

11. Prior to being released, Mr Tekin was brought before the public prosecutor, Hasan Altun.

It was not disputed that he complained to Mr Altun of having been tortured and ill-treated at both Derinsu and Derik. The applicant claimed in addition that he had handed Mr Altun a wet piece of cloth with which he had been blindfolded while being hosed with water. Mr Altun recorded these allegations, but took no further action in relation to them.

12. The Supreme Council of Judges and Prosecutors consequently decided to commence an investigation into the reasons for Mr Altun's inaction, which led to disciplinary proceedings being launched against him. During the hearing before the Court the Government confirmed that these proceedings had not yet been concluded.

13. Mr Tekin returned to Diyarbakır on 20 February 1993. He did not see a doctor after his release. The following week he lodged a complaint about his treatment with the Human Rights Association, which advised him to make an application to the Commission.

C. Criminal proceedings against the applicant

14. Since the offence with which the applicant was charged (see paragraph 8 above) fell within the competence of the National Security Courts (see paragraph 29 below), a Derik public prosecutor issued a decision of non-jurisdiction and referred the case to the Diyarbakır National Security Court.

Following a hearing on 13 May 1993, the applicant was acquitted on 2 August 1993.

D. Proceedings against gendarmerie officers Altın and Çitil

15. Following the Commission's communication to the Government on 11 October 1993 of Mr Tekin's application, the Ministry of Justice (International Law and External Relations General Directorate) contacted the public prosecutor's office in Derik on 18 December 1993, informing it of the applicant's complaints. A preliminary investigation was opened.

16. Officer Altın was questioned in connection with Mr Tekin's allegations by a public prosecutor in Daday district on 20 April 1994, at the request of the Derik public prosecutor, Bekir Özenir.

17. Mr Özenir issued a decision of non-prosecution in relation to officers Altın and Çitil on 4 May 1994, on the grounds that there was no evidence that they had ill-treated or threatened Mr Tekin, other than the latter's unsubstantiated allegations.

18. However, this decision was not made final following the intervention of the Ministry of Justice, which took the view that Mr Tekin should be given the opportunity to file an appeal against it. Furthermore, because of the identities of the defendants and the nature of the allegations against them, the Ministry of Justice considered that the alleged offences might fall within the scope of the Law on the Prosecution of Civil Servants, over which the public prosecutor had no jurisdiction (see paragraph 30 below).

19. A decision of non-jurisdiction was subsequently issued by the Derik public prosecutor's office on 4 May 1995 and the case was referred to the Derik District Administrative Council.

20. In this connection, on 14 July 1995, a statement was taken from Commander Çitil by a gendarmerie lieutenant-colonel.

21. The Derik District Administrative Council submitted its summary investigation report to the office of the Mardin provincial governor on 5 September 1995. On 12 September 1995, this report was referred to the Mardin Provincial Administrative Council (see paragraph 30 below). The latter decided, on 13 September 1995, that, due to lack of evidence, officers Altın and Çitil were exempt from public prosecution.

22. This decision was subject to an automatic appeal to the Supreme Administrative Court (see paragraph 30 below). The latter confirmed the decision of non-prosecution.

E. The Commission's findings of fact

23. The Commission conducted an investigation into the facts, with the assistance of the parties. It accepted written material, including witness statements, reports about Turkey, documents relating to the applicant's detention at Derinsu and Derik gendarmerie headquarters and to the investigation on the domestic level into the applicant's allegations, and a floor plan of Derinsu gendarmerie headquarters. In addition, three delegates of the Commission heard the oral evidence of seven witnesses in Diyarbakır on 8 November 1995 and a further hearing took place before the Commission in Strasbourg on 7 March 1996. The witnesses included the applicant, his father, Hacı Mehmet Tekin, officers Harun Altın and Musa Çitil, and three neighbours of the applicant's father, Sinan Dinç, Mehmet Dinç and Halit Tutmaz, who alleged to have spoken to the applicant shortly after his release.

The Commission had requested the attendance of the public prosecutors Hasan Altun, Bekir Özenir and Osman Yetkin (the latter was the public prosecutor at the Diyarbakır National Security Court), but none of them appeared to give evidence.

24. The Commission was unable to determine the date of the applicant's arrest or the precise details of his treatment in custody. However, cautiously evaluating the evidence, the Commission was satisfied that the applicant

had been kept in a cold and dark cell and blindfolded and treated in a way which left wounds and bruises on his body in connection with his interrogation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State of emergency

25. Since approximately 1985, serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has, according to the Government, claimed the lives of thousands of civilians and members of the security forces.

26. Two principal decrees relating to the south-eastern region have been made under the Law on the State of Emergency (Law no. 2935, 25 October 1983). The first, Decree no. 285 (10 July 1987), established a regional governorship of the state of emergency in ten of the eleven provinces of south-east Turkey. Under Article 4 (b) and (d) of the decree, all private and public security forces and the Gendarmerie Public Peace Command are at the disposal of the regional governor.

The second, Decree no. 430 (16 December 1990), reinforced the powers of the regional governor, for example to order transfers out of the region of public officials and employees, including judges and prosecutors, and provided in Article 8:

“No criminal, financial or legal responsibility may be claimed against the state of emergency regional governor or a provincial governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this Decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without justification.”

B. General provisions against ill-treatment, threats and unlawful detention

27. The Turkish Criminal Code makes it a criminal offence:

(a) to deprive an individual unlawfully of his or her liberty (Article 179 generally, Article 181 in respect of civil servants),

(b) to issue threats (Article 191),

(c) to subject an individual to torture or ill-treatment (Articles 243 and 245).

28. For all these offences complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and

the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

C. Prosecution for terrorist offences and offences allegedly committed by members of the security forces

29. In the case of alleged terrorist offences, the public prosecutor is deprived of jurisdiction in favour of a separate system of national security prosecutors and courts established throughout Turkey.

30. The public prosecutor is also deprived of jurisdiction with regard to offences alleged against members of the security forces in the state of emergency region. Decree no. 285, Article 4 § 1, provides that all security forces under the command of the regional governor (see paragraph 26 above) shall be subject, in respect of acts performed in the course of their duties, to the Law on the Prosecution of Civil Servants. Thus, any public prosecutor who receives a complaint alleging a criminal act by a member of the security forces must make a decision of non-jurisdiction and transfer the file to the Administrative Council. A decision by the Council not to prosecute is subject to an automatic appeal to the Supreme Administrative Court.

PROCEEDINGS BEFORE THE COMMISSION

31. Mr Tekin applied to the Commission on 14 July 1993. He alleged that he had been ill-treated while being held in detention at gendarmerie headquarters in Derinsu and Derik from 15–19 February 1993 and that this event had not been adequately investigated by the State authorities. He relied on Articles 2, 3, 5 § 1, 6 § 1, 10, 13, 14 and 18 of the Convention.

32. The Commission declared the application (no. 22496/93) admissible on 20 February 1995. In its report of 17 April 1997 (Article 31), it expressed the opinion that there had been no violation of Articles 2, 10, 14 and 18 (unanimously), but that there had been violations of Articles 3 and 13 (thirty-one votes to one) and that it was not necessary to examine the applicant's other complaints (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

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* 1998), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

33. In their written and oral submissions, the Government asked the Court to find that the applicant's allegations had been unsubstantiated and that there had been no violation of the Convention.

34. The applicant asked the Court to find violations of Articles 2, 3, 10, 13, 14 and 18 of the Convention and to award him just satisfaction under Article 50.

AS TO THE LAW

I. ESTABLISHMENT OF THE FACTS

35. The Government challenged the Commission's findings of fact.

They pointed out that had the applicant's allegations of severe ill-treatment been true, he would have required hospital treatment following his release. In these circumstances it was suspicious that he had not produced any medical reports, particularly since his work as a journalist would have made him aware of the need for this type of evidence. His claim that his brothers had been allowed to join him in his cell was unbelievable. In addition, the facts that he had denied all the charges against him, despite allegedly having been tortured with the purpose of extracting a confession, and that he had not made any allegation concerning electric shocks in his original application to the Commission but only during the hearing of witnesses in Ankara, raised further doubts about the truth of his testimony. Furthermore, they reasoned that if it was true that he had been subjected to electric shocks on the last day of his detention, this would have been easy to establish since this kind of torture leaves marks which remain noticeable for three or four days. Finally, the Government submitted that cloth of the type which the applicant had handed to the public prosecutor could not have been used as a blindfold because of its loose style of weaving.

36. At the hearing before the Court, the Commission's Delegate stated that the applicant's account of events at the hearing in Ankara had been precise, detailed and consistent and had not given the impression of being an invented story. It was true that he had made somewhat varying and probably exaggerated assessments of the temperature in his cell in Derinsu and it could not be excluded that he had also exaggerated the nature and intensity of the ill-treatment to which he claimed to have been subjected. Nonetheless some of the details of his account had the ring of truth: for instance, it was unlikely that he would have invented the incident when his brothers joined him in his cell. What undoubtedly weakened the applicant's

case was the lack of any medical evidence. The Commission had considered whether this omission was such as to undermine the reliability of his allegations in general, but considered that it could not be conclusive.

The Commission's delegates in Ankara had also found the applicant's father, Hacı Mehmet, to be a credible witness who had confirmed important elements in the applicant's story. For example, he had described how he and his other sons had waited in the cold outside the gendarmerie headquarters at Derinsu and how at some stage his sons had been allowed to visit their brother in his cell and had used this occasion to warm Salih Tekin's cold body. He also confirmed that after the applicant's release there had been bruises and wounds on his body which they had treated with medication.

Against these statements had to be weighed the testimony of other witnesses.

The Commission had requested the attendance of three public prosecutors, including Mr Altun (see paragraph 11 above), whose testimony would have greatly assisted the Commission in assessing the issues under Articles 3 and 13 of the Convention. Unfortunately, none of these public prosecutors appeared to give evidence at the hearings and no valid excuse had been given for their non-attendance.

Of the witnesses for the Government who did attend the hearings, the Commission's delegates had found the evidence of the three neighbours (see paragraph 23 above), who described the applicant's return to the village after his detention, to be unconvincing, particularly their statements concerning the applicant's praise for the quality of his treatment in police custody, which the Commission considered to be implausible in view of the fact that there was a record of Mr Tekin's complaint of ill-treatment made to the public prosecutor only hours previously.

Gendarmerie officer Altun (see paragraphs 8–9 above) had given a detailed account of the applicant's treatment at Derinsu, denying all allegations of ill-treatment and stating that Mr Tekin had been kept in good conditions, in a room which had not been cold, and had been provided with water and three meals a day. The Commission, however, had serious doubts about officer Altun's credibility in view of the fact that, two years earlier, he had told the public prosecutor that he had no recollection whatsoever of the applicant, despite the fact that there had apparently only been a small number of detainees at Derinsu gendarmerie headquarters during 1993.

When making a final evaluation of the evidence, the Commission had been convinced beyond reasonable doubt that Mr Tekin had been detained in extreme conditions and had undergone physical ill-treatment.

37. The applicant asked the Court to accept the Commission's findings of fact.

38. The Court reiterates that under its case-law the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). While the Court is not 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, it is only in exceptional circumstances that it will exercise its powers in this area. Such exceptional circumstances may arise in particular if the Court, following a careful examination of the evidence on which the Commission has based its conclusions, finds that the facts have not been proved beyond reasonable doubt (see the *Selçuk and Asker v. Turkey* judgment of 24 April 1998, *Reports of Judgments and Decisions* 1998-II, pp. 904–05, § 53).

39. The Court has examined the findings in the Commission's report and the evidence on which the latter based its conclusions, principally the transcripts of the hearings before it, with a view to determining whether any such exceptional circumstances arise in the present case.

40. In this connection, it considers it to be of particular significance that the Commission and its delegates had the opportunity to see and hear the applicant and other witnesses give their testimony and answer questions put by the members of the Commission themselves and by lawyers for the Government and the applicant. It notes that the Commission found the applicant's testimony to be consistent and convincing, whereas it found the evidence given by the witnesses for the Government to be flawed and unreliable (see paragraph 36 above).

41. It is true that, as the Government have pointed out, the applicant was unable to provide any independent evidence, for example medical reports, to substantiate his allegations of ill-treatment. However, in this respect the Court notes that the State authorities took no steps to ensure that Mr Tekin was seen by a doctor during his time in detention or upon his release, despite the fact that he had complained of ill-treatment to the public prosecutor, Mr Altun, who was under a duty under Turkish law to investigate this complaint (see paragraphs 11 and 28 above). Furthermore, it observes that those witnesses who were best placed to shed light on the veracity or otherwise of the applicant's story, namely the public prosecutors involved in his case, and particularly Mr Altun, who saw him immediately after his release from custody, failed without good cause to comply with the Commission's requests to attend its hearings.

The Court recalls that Article 28 § 1 (a) of the Convention places the State concerned under a duty to "furnish all necessary facilities" to the Commission for its investigation of the facts underlying a petition. It does not consider that, in the circumstances of the present case, when key witnesses failed to attend before the Commission, the respondent State can be justified in complaining of the insufficiency of the evidence on which the Commission based its findings.

42. In the light of the above considerations, and having itself examined the documents available in the case, the Court decides to accept the facts as found by the Commission.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

43. The applicant alleged that his treatment in police custody had amounted to a violation of Article 2 of the Convention, which provides, *inter alia*:

“1. Everyone’s right to life shall be protected by law...”

44. He alleged that he had been threatened repeatedly with death by officer Altın and other gendarmes on the way to Derinsu gendarmerie headquarters, where he had been held in sub-zero conditions with the intention on the part of the gendarmes that he would freeze to death. Moreover at Derik gendarmerie headquarters, Commander Çitil, after having tortured the applicant, threatened to “put two holes in his head” if he came back to the area.

45. The Government denied that the ill-treatment alleged by the applicant had taken place (see paragraph 35 above).

46. The Commission found no indication that the applicant’s right to life had not been protected by law.

47. The Court notes that the facts as found by the Commission, which it has decided to accept, do not support the conclusion that the applicant was treated in such a way as to amount to an interference with his right to life within the meaning of Article 2.

It follows that there has been no violation of Article 2.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant claimed to have been tortured in violation 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.”

49. He submitted that his experiences of suffering whilst in detention, taken as a whole, amounted to torture. Thus, at Derinsu gendarmerie headquarters he claimed to have been blindfolded while being aggressively interrogated, assaulted and threatened with death, detained for four days in total darkness in sub-zero temperatures with no bed or blankets, and denied food and liquids; all this despite the fact that the gendarmes were aware that he only had one kidney. At Derik gendarmerie headquarters he had again been blindfolded, and also stripped naked, hosed with cold water, beaten with a truncheon on his body and the soles of his feet, and had electric shocks administered to his fingers and toes.

50. In connection with this complaint also, the Government denied that Mr Tekin had been ill-treated.

51. The Commission, taking the treatment suffered by the applicant as a whole, found that the conditions of detention and the treatment to which he

had been subjected constituted at least inhuman and degrading treatment within the meaning of Article 3.

52. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see the above-mentioned Selçuk and Asker judgment, pp. 909–10, § 76).

53. The Court notes that the Commission found that the applicant was held in a cold and dark cell, blindfolded, and treated, in connection with his interrogation, in a way which left wounds and bruises on his body (see paragraph 24 above).

The Court has assessed these facts against the standards imposed by Article 3. It recalls that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, p. 26, § 38). It considers that the conditions in which the applicant was held, and the manner in which he must have been treated in order to leave wounds and bruises on his body, amounted to inhuman and degrading treatment within the meaning of that provision.

54. It follows that there has been a violation of Article 3.

IV. ALLEGED VIOLATIONS OF ARTICLES 5 § 1 AND 6 § 1 OF THE CONVENTION

55. Before the Court, the applicant did not pursue his claims in respect of Articles 5 § 1 and 6 § 1 of the Convention.

56. In such circumstances, it is not necessary for the Court to consider these complaints.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

57. The applicant alleged that his ill-treatment was linked to his employment as a journalist and that there had been a violation of Article 10 of the Convention, which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or

rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

58. He contended that the threats he experienced as well as the severity of his treatment, especially at Derinsu, were motivated in part by his employment as a journalist for the newspaper *Özgür Gündem*, which, because of its Kurdish separatist stance, was considered hostile by those who abused him. He stated that on his arrest and at Derinsu gendarmerie station he was questioned by officer Altın about his work as a journalist and was threatened with death because of it. At Derik gendarmerie headquarters, Commander Çitil had said to him:

“You want to come here and mix things up. *Özgür Gündem* is a banned newspaper. You are writing news about the region. Furthermore, you are threatening village guards. I am going to send you to the public prosecutor but if you come back to this region again we will put two holes in your head.”

59. The Government made no particular submissions in connection with this complaint.

60. The Commission did not find sufficient evidence to corroborate the applicant’s complaint that his arrest and detention were due to the fact that he was a journalist with *Özgür Gündem*.

61. The Court notes the above finding by the Commission. It does not find it established that the applicant’s detention and treatment in custody amounted to interferences with his right to freedom of expression.

It follows that there has been no violation of Article 10.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicant claimed to have been denied an effective domestic remedy in respect of his Convention complaints, in violation of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

63. Mr Tekin asked the Court not only to find that he in particular had been denied an effective remedy for his complaints of ill-treatment, but also to hold generally that the modifications to the law introduced by the state of emergency legislation (see paragraphs 25–30 above), by offering officials in the region *de jure* or *de facto* immunity, operated to deny any effective remedy to victims of abuse of power, thus rendering it impossible for the State to satisfy its obligations under Articles 1 and 13 of the Convention.

64. The Government submitted that domestic remedies in respect of allegations of ill-treatment in custody were effective and available to every citizen. This was borne out by the fact that the public prosecutor’s inactivity had led to an investigation being held into his conduct of Mr Tekin’s case.

65. The Commission observed that it was undisputed that the applicant had complained to Mr Altun, the Derik public prosecutor, of having been tortured during custody at Derinsu and Derik gendarmerie headquarters, but that Mr Altun took no action in this respect. It considered that the investigation subsequently commenced into the applicant's allegations was inadequate, and, in any case, could not have made up for the initial inactivity. In the absence of the evidence of the public prosecutors involved in the case (see paragraph 23 above), and on the basis of the available material, the Commission formed the view that the investigation into the applicant's allegations of torture was so inadequate as to amount to a denial of an effective remedy.

66. The Court recalls that the nature of the right safeguarded under Article 3 of the Convention has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, p. 2287, § 98).

67. The Court notes that, on his release from custody, Mr Tekin complained of ill-treatment to Mr Altun, the public prosecutor. The latter, however, failed to take any action in respect of this complaint. It was not until some ten months later, following the Commission's communication of the application to the Government, that an investigation was commenced into the applicant's allegations. Moreover, even once the investigation had been opened, a further four months elapsed before a statement was taken from officer Altun, and it would appear that no attempt was made to question Commander Çitil before the decision was taken on 4 May 1994 that there was insufficient evidence to merit a prosecution against either of the officers accused by Mr Tekin of ill-treating him (see paragraphs 16–18 above). Subsequently, a full year later, a decision of non-jurisdiction was issued and the investigation was transferred to the Derik District Administrative Council, at the request of which, on 14 July 1995, a statement was finally taken from Commander Çitil (see paragraphs 20–21 above).

68. The Court does not consider that the above investigation can properly be described as thorough and effective such as to meet the requirements of Article 13.

It notes the applicant's request that it examine the operation of remedies generally within the state of emergency area, but it does not consider that the evidence established by the Commission enables it to reach any conclusion in this connection.

69. In conclusion, there has been a violation of Article 13.

VII. ALLEGED VIOLATIONS OF ARTICLES 14 AND 18 OF THE CONVENTION

70. The applicant submitted that because of his Kurdish origin the various alleged violations of his Convention rights were discriminatory, in breach of Article 14, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

He also claimed that his experiences represented an authorised practice by the State in breach of Article 18 of the Convention, which provides:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

71. The Government did not address these allegations beyond denying their factual basis.

72. The Commission examined the applicant’s allegations in the light of the evidence submitted to it, but considered them unsubstantiated.

73. The Court, relying on the facts as found by the Commission, does not have before it any evidence substantiating the alleged breaches of the above provisions.

It follows that there has been no violation of Articles 14 and 18 of the Convention.

VIII. APPLICATION OF ARTICLE 50 OF THE CONVENTION

74. The applicant claimed just satisfaction under Article 50 of the Convention, which provides:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

75. The applicant claimed compensation in respect of non-pecuniary damage of 25,000 pounds sterling (GBP) and aggravated damages of GBP 25,000.

76. The Government stated that, in the event that the Court found that there had been a violation of the Convention, this finding would be sufficient satisfaction for the applicant.

77. The Court considers that an award should be made in respect of non-pecuniary damage bearing in mind its findings of violations of Articles 3 and 13 of the Convention. Having regard to the high rate of inflation in Turkey, it expresses the award in pounds sterling, to be converted into Turkish liras at the rate applicable on the date of settlement (see the above-mentioned Selçuk and Asker judgment, p. 917, § 115). It awards the applicant GBP 10,000.

78. The Court rejects the claim for “aggravated damages” (see the above-mentioned Selçuk and Asker judgment, p. 918, § 119).

B. Costs and expenses

79. The applicant claimed a total of GBP 19,770.11 in respect of the legal costs and expenses incurred in the proceedings before the Commission and the Court. This sum took into account the legal aid received by him from the Council of Europe.

80. The Government submitted that only those costs and expenses which were fully documented should be awarded and that the sum of GBP 1,200 which the applicant claimed in respect of “administrative support” should not be payable by the State.

81. The Court, deciding on an equitable basis, awards GBP 15,000 in respect of legal costs and expenses, together with any value-added tax which may be payable.

C. Default interest

82. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 2 of the Convention;
2. *Holds* by six votes to three that there has been a violation of Article 3 of the Convention;
3. *Holds* by eight votes to one that it is not necessary to consider the applicant’s complaints under Articles 5 § 1 and 6 § 1 of the Convention;
4. *Holds* unanimously that there has been no violation of Article 10 of the Convention;

5. *Holds* by seven votes to two that there has been a violation of Article 13 of the Convention;
6. *Holds* unanimously that there has been no violation of Articles 14 or 18 of the Convention;
7. *Holds* by eight votes to one that the respondent State is to pay the applicant, within three months:
 - (a) in respect of non-pecuniary damage, 10,000 (ten thousand) pounds sterling to be converted into Turkish liras at the rate applicable on the date of settlement;
 - (b) in respect of costs and expenses, 15,000 (fifteen thousand) pounds sterling together with any value-added tax which may be payable; and
 - (c) that simple interest at an annual rate of 8% shall be payable on the above sums from the expiry of the above-mentioned three months until settlement;
8. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 June 1998.

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 and declaration are annexed to this judgment:

- (a) dissenting opinion of Mr Gölcüklü;
- (b) dissenting opinion of Mr De Meyer;
- (c) declaration by Mr Toumanov.

Initialled: R. B.
Initialled: H. P.

DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

To my great regret, I am unable to share the majority's opinion in this case for the following reasons.

The Court held that it was bound by the Commission's opinion both as regards the findings and establishment of the facts and as regards the evaluation and interpretation of those facts. In my opinion, the Commission has not established anything; it reached a conclusion on the basis only of the statements of the applicant and his father, with no account being taken of the inconsistencies and contradictions in them. On the contrary, the Commission sought, with too great a zeal, to explain those inconsistencies and fill gaps in the applicant's statements. For example: why didn't the applicant take the trouble to have himself examined by a doctor after his release? The answer is given by the Commission: "the applicant was at that time in such a state of shock that he did not do what would have seemed reasonable in the circumstances" (see paragraphs 188–89 of the Commission's report); the Commission expressed the view in paragraph 190 of its report that the piece of wet cloth around the applicant's neck that was handed over to the public prosecutor was, among other items of evidence, the "crucial one" proving that the applicant had actually been subjected to ill-treatment. The father's testimony, which was not obtained until about two years after the alleged events, is described in the same way. In short, as far as the Commission was concerned everything said by the applicant and his father appears to be truth itself; the Government had told only lies and were unconvincing in their explanations.

I can only express surprise at the Court's decision simply to adopt the Commission's findings (see, on this subject, paragraphs 9–11, 23, 24, and 40–42 of the judgment and paragraphs 42–47, 76, 77, 79–88 and 97–119 of the Commission's report).

I therefore conclude that the facts of the case have not been proved beyond all possible doubt in coming to a finding of a violation of Article 3.

While the above considerations spare me the necessity of expressing my view on the other issues in the case, I would like to add that I find the sum awarded to the applicant for costs and expenses to be most excessive, as three lawyers, two of them British, were unnecessary in proceedings modelled on others in which the Court had already given a decision and in which the same lawyers had acted.

DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

Did the applicant really suffer the ill-treatment he alleged?

Like the Commission, the Court found that he had, on the sole basis of the statements of the applicant¹ and his father².

These statements were even less capable of sufficing in the instant case as the applicant had not even taken the trouble to have himself examined by a doctor after his release³, which is difficult to understand on the part of a journalist inclined to be militant⁴.

It is true that the denials of the two gendarmes implicated by the applicant⁵ and the hearsay evidence of the three village guards questioned by the Commission⁶ are scarcely convincing⁷, but that is not enough to show “beyond all reasonable doubt” that the applicant’s allegations were true.

It nevertheless remained the case that the applicant’s complaint to Mr Altun, the public prosecutor⁸, did not result in an inquiry being held⁹.

It is unacceptable that the public prosecutor did not himself seek a medical report on the applicant’s condition on release and merely recorded the complaint without taking any further action¹⁰.

In my opinion, the applicant’s “case” was not appropriately “heard” within the meaning of Article 6 of the Convention.

1. See paragraphs 9–11, 23, 24 and 40–42 of the judgment and paragraphs 42–47, 76, 77, 79–88 and 97–119 of the Commission’s report.

2. See paragraphs 23, 24, 36 and 40–42 of the judgment and paragraphs 120–29 of the Commission’s report. The father’s statements were not obtained until about two years after the alleged events. They are somewhat confused and essentially did no more than reproduce what had been said by the applicant.

3. See paragraphs 13, 36 and 41 of the judgment. It will be recalled that in the Ribitsch case the applicant had a medical examination both on the day of his release and the next day (see the judgment of 4 December 1995, Series A no. 336, p. 9, § 13).

4. See paragraph 7 of the judgment and paragraph 86 of the Commission’s report. He could not have been unaware that the wet cloth he had handed over to Mr Altun, the public prosecutor, (see paragraphs 77 and 78 of the Commission’s report and paragraph 11 of the judgment) was of less evidential value than a medical certificate would have been.

5. See paragraphs 89–92 and 130–48 of the Commission’s report.

6. See paragraphs 149–58 of the Commission’s report.

7. See paragraphs 36 and 40 of the judgment.

8. See paragraphs 76–78 of the Commission’s report.

9. See paragraphs 11, 12 and 67 of the judgment.

10. See paragraph 51 of the Commission’s report.

On the other hand, it does not appear to me to be possible in the present case to find a violation of Article 13¹. The investigations opened in Turkey concerning Mr Altun² and the officers Altin and Çitil³ tend to indicate that a remedy existed. If those investigations have not (or not yet) produced a conviction, it is undoubtedly because of lack of sufficient evidence.

The respondent State has committed a grave breach of the obligations incumbent on it under Article 28 of the Convention in that none of the three public prosecutors invited by the Commission to cooperate in the Commission's investigation attended to give evidence⁴.

The Court should have held of its own motion that that provision had been infringed⁵.

1. See paragraphs 66–69 of the judgment.

2. See paragraph 12 of the judgment.

3. See paragraphs 15–22 of the judgment.

4. See paragraphs 23 and 41 of the judgment and paragraphs 93–95 and 171 of the Commission's report.

5. Of course, the failure of the three “key witnesses” to appear cannot be used to make up for the fact that the evidence on which the Commission and the Court relied in accepting the truth of the applicant's allegations was insufficient (see paragraphs 41 and 42 of the judgment).

DECLARATION BY JUDGE TOUMANOV

I voted for no violation of Article 3 of the Convention.