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

FIRST SECTION

CASE OF DİKME v. TURKEY

(Application no. 20869/92)

JUDGMENT

STRASBOURG

11 July 2000

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Dikme v. Turkey,

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

Mrs E. PALM, *President*,
Mr L. FERRARI BRAVO,
Mr C. BÎRSAN,
Mrs W. THOMASSEN,
Mr B. ZUPANČIČ,
Mr R. MARUSTE, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 February and 20 June 2000,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")[1], by the European Commission of Human Rights ("the Commission") on 11 September 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 20869/92) against the Republic of Turkey lodged with the Commission under former Article 25 of the Convention by two Turkish nationals, Mr Metin Dikme ("the first applicant") and his mother, Mrs Emine Dikme ("the second applicant"), on 22 October 1992.

Relying on Article 3 and Article 5 § 3 of the Convention, the first applicant complained that he had been held in police custody for an excessive length of time and had been subjected to ill-treatment during that time. Under Article 5 § 2 he alleged that he had not been duly informed at the time of his arrest of the offences of which he was suspected. He also submitted that the fact that he had been unable to confer with his lawyer while in custody had amounted to a violation of Article 6 § 3 (c). Lastly, he alleged that he had been the victim of a violation of Article 2 on two counts: firstly, the offence of which he was accused carried the death penalty; and secondly, the ill-treatment he had suffered had been so severe that he could have died from the injuries he received. The second applicant complained that the prison authorities' refusal to allow her to visit her son had amounted

1. *Note by the Registry*. Protocol No. 11 came into force on 1 November 1998.

to a breach of her right to respect for her family life within the meaning of Article 8.

3. On 29 November 1993 the Commission decided to give notice of the application to the Turkish Government ("the Government"), inviting them to submit written observations on its admissibility and merits.

On 17 October 1994 the Commission, noting that despite reminders the Government had neither submitted any written observations nor raised any preliminary objections, declared admissible the applicants' complaints under Article 3, Article 5 §§ 2 and 3, Article 6 § 3 (c) and Article 8 of the Convention and declared the remainder of the application inadmissible.

On 3 March 1998 the Commission decided of its own motion, having regard to the possibility of applying former Article 29 of the Convention, to invite the parties to submit observations on whether the complaints under Article 5 §§ 2 and 3 had been lodged within the six-month time-limit. On 2 December 1998, in the absence of the necessary two-thirds majority of its members, it decided that the provision was not applicable.

In its report of 4 June 1999 (former Article 31 of the Convention)[1], the Commission expressed the unanimous opinion that there had been a violation of Article 3 and Article 5 § 3 and of Article 6 § 1 taken together with Article 6 § 3 (c), but not of Article 5 § 2, in respect of the first applicant. It also expressed the unanimous opinion that there been no violation of Article 8 in respect of the second applicant.

4. On 20 September 1999 a panel of the Grand Chamber decided that the case should be examined by one of the Sections of the Court (Rule 100 § 1 of the Rules of Court). The President of the Court assigned the case to the First Section. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. After consulting the representatives of the Government and the applicants, the Chamber decided to hold a public hearing (Rule 59 § 2).

6. On 12 November 1999 the Registry received the applicants' memorial. On 13 December 1999, within the time allowed, as extended by the President of the Section, the Government filed their memorial. An addendum to the applicants' memorial setting out details of their claims under Article 41 of the Convention was received at the Registry on 24 January 2000.

7. On 10 February 2000, pursuant to a decision by the Court, the Registry submitted questions to the parties concerning the facts of the case and requested them to give their replies at the hearing.

8. On 25 February 2000 the President granted the applicants legal aid (Rule 91).

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1. *Note by the Registry*. The report is obtainable from the Registry.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 February 2000.

There appeared before the Court:

(a) *for the Government*
Mrs D. AKÇAY, Doctor of Law, *Co-Agent*,
Mr Y. ÖZDEMIR,
Mr F. POLAT,
Ms M. GÜLŞEN, *Advisers*;

(b) *for the applicants*
Mr T. HÖHNE, of the Vienna Bar, *Counsel*.

The Court heard addresses by Mr Höhne and Mrs Akçay.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants, Mr Metin Dikme and his mother, Mrs Emine Dikme, were born in 1969 and 1933 respectively. The first applicant is currently held in Istanbul Prison. His mother lives in Vienna.

A. Mr Dikme's arrest and detention in police custody and pending trial

11. The circumstances in which the first applicant was arrested, taken into police custody and detained pending trial, as set out by him in a letter dated 24 June 1992, may be summarised as follows.

12. At 7.30 a.m. on 10 February 1992 three police officers stopped and questioned the first applicant and his female companion Y.O. in the Levent district of Istanbul. Both were in possession of false identity papers. They were immediately arrested and, after a wait of several hours at the local police station, were taken to the anti-terrorist branch of the Levent police headquarters in Istanbul ("the branch").

They were taken into custody in separate parts of the building. On arrival, the first applicant was blindfolded and a group of police officers who said they were members of the "anti-*Dev-Sol*[1]" squad began punching

1. "*Dev-Sol*" (Revolutionary Left) is the name commonly used to refer to the extreme left-wing armed movement "*Türkiye Halk Kurtuluş Partisi/Cephesi-Devrimci Sol*".

and kicking him, threatening to kill him if he did not reveal his true identity. He was then led to a ground-floor room where he was stripped, had his hands tied together behind his back and was suspended by his arms, a method known as "Palestinian hanging". For several hours the police officers beat him repeatedly while he was in this position and administered electric shocks through electrodes attached to his feet and genitals.

13. At about 7 p.m. Mr Dikme was carried to another room and made to lie on the floor with his hands still tied behind his back. A man who said he was a member of the secret service told him: "You belong to *Devrimci Sol*, and if you don't give us the information we need, you'll be leaving here feet first!" The police officers then started to beat him, aiming some of their blows at his genitals. That lasted until 2 a.m., at which point he was taken to a 2-sq. m. cell, where he had to sleep naked on the floor.

14. At about 8 a.m. the next morning he was taken back to the ground floor, tied up and laid on the ground. He suffered a further beating and electric shocks were administered to his feet, the area behind his ears and his tongue. By the time the torturers went to lunch, he had already fainted twice. An hour later he was again subjected to "Palestinian hanging" and given electric shocks while having cold water poured over him. He was then left lying on the concrete, naked and blindfolded.

That evening he was taken back upstairs, where the secret-service agent dragged him by the hair and twice banged his head against the wall. He was then dressed and taken to a forest, where somebody pointed a revolver at his head and urged him to say his "last prayer" before firing a blank shot. Immediately after this mock execution, he was escorted back to the branch. There he was again blindfolded and stripped and then placed in a bath of ice-cold water. The next day the police officers continued to ill-treat him.

15. The ill-treatment ended on Mr Dikme's fifth day in custody. However, he continued to be questioned while blindfolded, and was subjected to a barrage of abuse.

16. Mr Dikme had no assistance from a lawyer at any time while he was in police custody; he spent sixteen hours a day in his cell and was not allowed to have any visitors or to read any books or newspapers. The only person he saw after entering the premises of the branch was his companion Y.O., although he was not able to speak to her.

In that connection, he produced to the Court a letter from Y.O. containing the following passages:

> "Metin Dikme and I were arrested on 10 February 1992. ... As soon as we arrived at the first branch they blindfolded us and separated us. Before I was taken to a cell, I saw that they had started to beat him. During the sixteen days I spent in the branch, I only saw Metin when he was on his way to or from interrogation sessions, and sometimes when he was being taken to the toilet. On each occasion he was blindfolded. Just once, I could see bruises on his eyes. However, when they

questioned me they were always insulting Metin and telling me how they had tortured him ..."

17. On 25 February 1992 the branch requested the public prosecutor at the Istanbul National Security Court ("the public prosecutor", "the National Security Court") to refer the first applicant and Y.O. to the Sultanahmet office of the Institute of Forensic Medicine. The public prosecutor consented and on 26 February 1992 – the sixteenth day of their detention in police custody – they were examined by a forensic medical expert, who allegedly told the first applicant: "You're fighting fit; there's nothing wrong with you."

The medical report, drawn up that same day, stated that no traces of blows or physical force had been found on Y.O.'s body; only "old grazes covered by a scab were observed on [the first applicant's] left elbow".

18. Later that day the first applicant and Y.O. were interviewed by the public prosecutor and brought before a judge of the National Security Court. They retracted the statements which they had made to the police and said that they had been signed "under torture"; they denied the accusations against them. Y.O. made the following statement: "I am lodging a complaint against the police officers who tortured me and who ... called themselves the *Dev-Sol* Squad."

The judge ordered them to be detained pending trial, as he found that there was "substantial evidence" of their membership of *Dev-Sol* and of their involvement in acts of violence carried out by that organisation.

The following comment, signed by Metin Dikme, appeared at the bottom of the order: "I do not wish to inform anybody that I am being held in detention."

19. After being transferred to Istanbul Prison, the first applicant was examined by the prison doctor, without a lawyer being present.

In his "preliminary" report, dated 28 February 1992, the doctor noted the presence of a series of marks on the first applicant's body. These findings were subsequently reiterated and confirmed in the final report of 4 March 1992, drawn up by the Eyüp office of the Institute of Forensic Medicine following a further examination of the first applicant by a forensic medical expert from that office:

"With reference to report no. 55 of 28 February 1992, signed by the prison doctor and drawn up in respect of Metin Dikme ... and further to an examination of the latter, the following findings were recorded:

[Observed] a scab 0.5 cm in diameter in the left axillary region; a 7 cm by 7 cm erosion on the left elbow, which had formed a scab; two parallel circular lesions, which had partly formed a scab, 4 cm apart on the left wrist; skin erosions on the proximal phalanges of the thumb, index finger and middle finger and a 1.5 cm skin abrasion on the inner side of the distal phalanx of the middle finger of the left hand; a scab on the right elbow; two 0.5 cm scabs on the right outer forearm; a skin lesion on the right wrist; scabs measuring 1 cm on the distal phalanx of the third finger, 0.5 cm

on the proximal phalanges of the middle, third and little fingers, 3 cm by 1 cm and 3 cm by 2 cm behind the patella, 10 cm by 1 cm in the region of the right thigh, 0.5 cm by 0.5 cm on the upper part of the right medial malleolus, and 0.5 cm by 0.5 cm on the lateral malleolus; a bruise on which a scab had formed on the fifth toe of the right foot and a 0.5 cm by 0.5 cm scab on the big toe; a 2 cm by 2 cm skin erosion on the upper part of the right foot; and a 2 cm by 2 cm scab on the medial malleolus and a 1 cm by 1 cm scab on the lateral malleolus.

There are also signs of abrasions which have partly formed scabs and partly healed over, as well as of yellowish and brownish bruises (whose dimensions were recorded in the preliminary report) now returning to a normal colour on the fingers of both hands, on both wrists, on the elbows, arms and ankles, on the upper parts of the toes of both feet, and on the right thigh and patella."

The forensic medical expert concluded by stating that the above-mentioned sequelae were not life-threatening and prescribing a five-day period of convalescence.

20. On 11 June 1992, the date of the religious festival marking the last day of Ramadan, Mrs Dikme sought to visit the first applicant, but was refused permission by the prison managers.

21. On 18 June 1992 the first applicant signed an authority for a lawyer to act on his behalf, although he did not see the lawyer in person (see paragraph 28 below).

B. The impugned criminal proceedings

1. The prosecution of Mr Dikme

22. In an indictment issued on 7 September 1992 the public prosecutor charged the first applicant and Y.O. with carrying out a series of attacks between 1990 and 1992, the victims of which had included a public prosecutor, a retired general and six police officers, and with involvement in a number of acts of violence committed on behalf of the illegal armed organisation *Dev-Sol*. He sought the death penalty for the first applicant and Y.O., under Article 146 § 1 of the Criminal Code.

23. On 23 October 1992 the trial began at the National Security Court. The first applicant filed pleadings in which he denied the charges against him and categorically repudiated the content of the records of statements taken by the police while he was in custody, alleging that the statements had been obtained by torture. He accordingly made formal complaints against the officers responsible for him during his time in police custody, and relied on the medical report of 4 March 1992 (see paragraph 19 above and paragraph 29 below).

The first applicant submitted, *inter alia*, that he and Y.O. had had to use false identity papers for fear of police reprisals on account of the criminal record of his sister, who had been killed during a clash with the police in

Ankara, and that they had passed themselves off as a married couple simply in order to be able to rent a flat more easily. He consequently pleaded not guilty and applied for release on bail.

24. On 8 January and 8 October 1993 the public prosecutor preferred two further indictments, charging the first applicant with carrying out other acts of violence, likewise between 1990 and 1992, including murder, armed assaults and robberies, bomb attacks and assault and battery.

25. After holding forty-four hearings and hearing evidence from some seventy witnesses, the National Security Court delivered its judgment on 26 June 1998. It held that "in the light of the evidence, the accused's guilt [was] established" in relation to some of the offences, which he had committed on behalf of *Dev-Sol* with the aim of undermining the constitutional order, and sentenced him to death, having regard to the intensity, quantity and seriousness of the offences and to his failure to show any remorse during the trial.

26. The first applicant's counsel and Principal State Counsel at the Court of Cassation appealed on points of law against the National Security Court's judgment on 29 September and 12 November 1998 respectively. In his appeal counsel for the first applicant did no more than complain that the sentence was "unjust and severe", while Principal State Counsel submitted that the impugned judgment could not be regarded as having been supported by sufficient grounds, since it did not contain details, where they were needed, of the evidence on which the conviction had been based and the National Security Court's assessment of that evidence.

27. In a judgment of 22 March 1999, delivered on 7 April 1999, the Court of Cassation set aside the judgment of 26 June 1998 on the ground that it was "contrary to Article 141 of the Constitution and Articles 32 and 260 of the Code of Criminal Procedure to deliver a judgment without applying the rule that judgments must be reasoned in such a way as to enable the Court of Cassation to carry out its review, and without referring in the operative provisions to the substantiated evidence in respect of each of the charges and the assessment made of it ...".

The Court of Cassation consequently remitted the case to the National Security Court, where it is still pending.

2. The proceedings brought against the police officers accused of ill-treatment

28. After putting forward their defence at the hearing of 23 October 1992 in the National Security Court (see paragraph 23 above), the first applicant and Y.O. had lodged two separate written complaints against their alleged torturers. On 27 November 1992, in the light of that and, it would seem, on the instructions of a ministerial authority, the public prosecutor decided to contact the relevant authorities in order to ascertain whether the first applicant had had access to a lawyer while in police custody and/or

been subjected to ill-treatment after being taken into custody at Istanbul Prison.

In a letter dated 30 November the head of the branch replied that "no interview with a lawyer [had taken] place, since throughout Metin Dikme's time in police custody, no lawyer [had] submitted ... a request to that effect".

On 1 December 1992 the governor of Istanbul Prison stated: "Metin Dikme ... was not subjected to ill-treatment during his detention and has never lodged a complaint to that effect with our management. There is no risk of his being subjected to ill-treatment while he is held in our prison. Our files also indicate that he had never conferred with a lawyer."

29. On 8 December 1992 the President of the National Security Court forwarded the complaints filed on 23 October 1992 to the public prosecutor for action.

30. In an order of 10 December 1992 the public prosecutor ruled that he had no jurisdiction *ratione materiae* and sent the case to the Istanbul prefecture, pursuant to section 15(3) of the Prevention of Terrorism Act (Law no. 3713 – see paragraph 36 below).

31. On 9 July 1993 the Administrative Council of the province of Istanbul decided that there was no case to answer in respect of the criminal complaint lodged by the first applicant and Y.O. That decision was served on the first applicant on 6 August 1993.

32. The Court does not have any other information regarding those proceedings.

II. RELEVANT DOMESTIC LAW

A. Rules on detention in police custody

33. At the material time section 16 of Law no. 2845 on procedure in the national security courts provided that any person arrested in connection with an offence within the exclusive jurisdiction of those courts had to be brought before a judge within forty-eight hours at the latest or, if the offence was a joint one committed outside the region under emergency rule, within fifteen days, not including the time needed to convey the detainee to the judge.

34. Before questioning an arrested person, police officers must inform him of the offence of which he is suspected and ask whether he wishes to say anything in reply. With regard to legal assistance, Article 144 of the Code of Criminal Procedure ("CCP") provides, in the version applicable in the instant case, that an accused may confer or correspond with a legal adviser only after being detained pending trial, and the judge may decide that certain items in the file which are considered sensitive will not be

disclosed to the accused until criminal proceedings have been instituted. In addition, the accused's legal adviser may not inspect documents in the file until the public prosecutor's office has preferred the indictment (Article 143).

B. Prosecution in respect of acts of ill-treatment

35. Under the Turkish Criminal Code it is an offence for a government employee to subject a person to torture or ill-treatment (Article 243 in relation to torture and Article 245 in relation to ill-treatment). The authorities' obligations in respect of conducting a preliminary investigation where acts or omissions that may constitute such an offence are brought to their attention are governed by Articles 151 to 153 CCP. Offences may be reported not only to public prosecutors' offices or the security forces but also to local administrative authorities. Complaints may be made in writing or orally. If they are made orally, the authority must make a record of them (Article 151).

Under Article 235 of the Criminal Code, any government employee who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the performance of his duties is liable to imprisonment. A public prosecutor who is informed by whatever means of a situation that gives rise to the suspicion that an offence has been committed is under a duty to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 CCP).

36. If the suspected offender is a civil servant and the offence was committed in the performance of his duties, the preliminary investigation of the case is governed by the Prosecution of Civil Servants Act 1914, which restricts the public prosecutor's jurisdiction *ratione personae* at that stage of the proceedings. In such cases it is for the relevant local administrative council (for the district or the province, depending on the suspect's status) to conduct the preliminary investigation and, consequently, to decide whether to prosecute. Once a decision to prosecute has been taken, it is for the public prosecutor to investigate the case.

An appeal to the Supreme Administrative Court lies against decisions of local administrative councils. If a decision not to prosecute is taken, the case is automatically referred to that court.

With regard to accusations against members of the police force and intelligence services engaged in combating terrorism, section 15(3) of Law no. 3713 – which was in force at the material time – was a *lex specialis* under which preliminary investigations were subject to the same rule on jurisdiction, but only in respect of offences other than homicide. Subsequently, in a judgment of 31 March 1992 published in the Official Gazette on 27 January 1993, the Constitutional Court annulled that provision with effect from 27 July 1993.

37. Under Article 102 of the Criminal Code taken together with Articles 243 and 245 cited earlier, there is a five-year time-limit for prosecuting offences of ill-treatment and torture committed by civil servants.

C. Probative value of evidence gathered during the preliminary investigation

38. From the principles established by the Turkish courts when applying the criminal law it is clear that the questioning of a suspect is a means of enabling him to defend himself that should work to his advantage and not a measure designed to obtain evidence against him. While statements made during questioning may be taken into consideration by the judge in his assessment of the facts of a case, they must nonetheless be made voluntarily, and statements obtained through the use of pressure or force are not admissible in evidence. By Article 247 CCP, as interpreted by the Court of Cassation, any confessions made to the police or the public prosecutor's office must be repeated before the judge if the record of the questioning containing them is to be admissible as evidence for the prosecution. If the confessions are not repeated, the records in question are not allowed to be read out as evidence in court and consequently cannot be relied on to support a conviction. Nevertheless, even a confession repeated in court cannot on its own be regarded as a decisive piece of evidence but must be supported by additional evidence.

THE LAW

I. SCOPE OF THE CASE

39. In his memorial, and subsequently at the hearing, counsel for the applicants, while sharing the Commission's view that there had been a breach of Article 3, Article 5 § 3 and Article 6 §§ 1 and 3 (c) of the Convention, urged the Court to find that Article 5 § 2 had also been infringed in respect of the first applicant and Article 8 in respect of the second applicant.

40. The Government, both in their memorial and at the hearing, requested the Court to find that the application should have been declared inadmissible for failure to exhaust domestic remedies and failure to comply with the six-month rule. In the alternative, they submitted with regard to the merits that the facts of the case had not given rise to a breach of any of the provisions relied on by the applicants.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The Government's submissions

41. The Government contested the admissibility of the application on two grounds.

1. Failure to exhaust domestic remedies

42. Their first objection – divided into four limbs – was that domestic remedies had not been exhausted.

Firstly, neither applicant had at any stage of the proceedings in the domestic courts referred – even in substance – to the provisions of the Convention and/or the rights which they were now relying on before the Court. Accordingly, the Court could not deal with the instant case if it followed the line taken in its Ahmet Sadık v. Greece judgment of 15 November 1996 (*Reports of Judgments and Decisions* 1996-V).

Secondly, the application was premature with regard to the complaint under Article 3 of the Convention, as it had been lodged before the completion of the proceedings instituted in Turkey against the policemen responsible for the first applicant during his time in police custody (see paragraphs 2, 28 and 31 above).

Thirdly, the complaints under Article 6 §§ 1 and 3 (c) were also premature, as the first applicant's trial was still pending before the National Security Court (see paragraph 27 above).

Fourthly, following the annulment of section 15(3) of Law no. 3713 (see paragraph 36 above), Mr Dikme had had the option of lodging a fresh complaint with the public prosecutor concerning his allegations of ill-treatment.

2. Failure to comply with the six-month rule

43. The Government further submitted that the events underlying the complaints under Article 3, Article 5 § 3 and Article 6 § 3 (c) of the Convention had all occurred on or about 26 February 1992 – the last day of Mr Dikme's detention in police custody – and that the six-month time-limit should be calculated from that date. In that connection, they pointed out that in a letter dated 3 March 1998 the Commission, conscious of the problems arising in relation to the six-month rule (having already discussed the matter at the admissibility stage – see paragraph 3 above), had invited the parties to submit observations on whether the complaints under Article 5 of the Convention had been lodged out of time. However, in its report the Commission had ignored that aspect of the case and the relevant arguments which the Government had submitted to it on 31 March 1998. Pointing out

that, as established in the Court's case-law, the six-month rule in Article 35 contributed to legal certainty, the Government argued that the Commission's approach should not prevent the Court from applying that provision of its own motion and declaring the application inadmissible. Their objection was divided into three limbs.

With regard to the applicants' complaints under Article 3 of the Convention, the Government observed that neither the public prosecutor nor the National Security Court judge had taken any action on the allegations of ill-treatment which Mr Dikme had referred to them on 26 February 1992 (see paragraph 18 above). Mr Dikme should accordingly have inferred that any attempt to pursue the allegations would be bound to fail, and should have lodged the complaint with the Commission by 26 August 1992 at the latest.

The Government also maintained that the complaint under Article 5 § 3 of the Convention was out of time. The six-month period had begun on 26 February 1992, as Mr Dikme's detention in police custody had been lawful and no remedy could have been effective in challenging it.

The same applied to the complaint concerning the fact that the first applicant had not had access to a lawyer during his detention in police custody, since at the material time the Code of Criminal Procedure had not afforded such a right to persons accused of offences within the jurisdiction of the national security courts.

B. The Court's assessment

44. The Court notes at the outset that it has jurisdiction to take cognisance of preliminary pleas of this kind if and in so far as the respondent State has already raised them before the Commission to the extent that their nature and the circumstances permitted; if that condition is not satisfied, the Government are estopped from raising the matter before the Court (see, among many other authorities, the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 29-31, §§ 47-55, and the Ciulla v. Italy judgment of 22 February 1989, Series A no. 148, p. 14, § 28). In the instant case that condition is clearly not satisfied in respect of any of the Government's pleas of inadmissibility under Article 35 of the Convention (see paragraphs 42 and 43 above).

The Court observes that the Government were twice granted an extension of the time allowed for submitting observations on the application's admissibility. However, they had not commented on the matter by the time the Commission adopted its admissibility decision on 17 October 1994.

45. Admittedly, the reason prompting an objection to admissibility sometimes comes to light after the decision accepting the application: for example, a reversal of domestic case-law may disclose the existence of a hitherto unknown remedy or an applicant may formulate a new complaint

whose admissibility the Government have not yet had the opportunity of contesting (see, among other authorities, the Artico v. Italy judgment of 13 May 1980, Series A no. 37, pp. 13-14, § 27). Similarly, the concern to observe the principles of adversarial procedure and equality of arms may make it necessary to permit the Government to raise an objection out of time, for example where the Commission examines of its own motion a preliminary issue that was not raised before it by the respondent State (see *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 25, ECHR 1999-VIII).

However, since the instant case does not fall within that category, the Government are estopped from raising the objections in question.

46. The Government nevertheless maintained the contrary and referred to their written observations of 31 March 1998 to the Commission. Although the Commission's report barely mentions the point, the Government appear to have included in their observations two arguments corresponding to the second limbs of the objections set out above: firstly, that the allegations of a breach of Article 3 had been made prematurely (see paragraph 42 above); and secondly, that the complaint under Article 5 § 3 had been lodged out of time (see paragraph 43 above). In point of fact, the Commission had of its own motion invited the Government to submit observations on whether the complaints under Article 5 §§ 2 and 3 of the Convention had been lodged within the six months allowed, with an eye (it would seem) to the possibility of applying former Article 29 of the Convention, which, as amended by Protocol No. 8[1], empowered the Commission – in exceptional cases and following a decision by a two-thirds majority of its members – to overturn a decision declaring an application admissible. However, in the absence of the necessary majority, the Commission did not in the end apply the provision (see paragraph 3 above).

47. Nevertheless, the Court notes that the structure of the protection machinery established by Sections III and IV of the former text of the Convention was designed to ensure that the course of proceedings before the Commission and the former Court was logical and orderly; the function of sifting which former Articles 26 and 27 assigned to the Commission was the first of its tasks (see, *mutatis mutandis*, the Artico judgment cited above, ibid.).

By the terms of Article 5 of Protocol No. 11, the procedure to be followed for applications – such as the present one – in respect of which the Commission adopted a report (under former Article 31 of the Convention) after 1 November 1998, the date on which Protocol No. 11 came into force, is governed by the provisions applicable before that date.

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1. *Note by the Registry*. Protocol No. 8 came into force on 1 January 1990. The provisions it amended or added have been superseded by Protocol No. 11.

The Court's decision must therefore take account of the purpose of former Article 29, and in particular its requirement of a qualified majority vote: "The stringency of this condition, which marks a departure from the principle of decision by a majority ..., demonstrates that the spirit of the Convention requires that respondent States should normally raise their preliminary objections at the stage of the initial examination of admissibility, failing which they will be estopped." (ibid.)

48. That being so, notwithstanding the fact that the Commission was able to contemplate applying former Article 29, the Court considers that the Government – who waited until 31 March 1998 before arguing that domestic remedies had not been exhausted in respect of the allegations of ill-treatment and that the complaint concerning the excessive length of detention in police custody had not been lodged within the six-month time-limit (see paragraph 46 above) – cannot be regarded as having recovered, by applying to the Court, the advantage of a simple majority decision which they lost at the admissibility stage. To hold otherwise in cases brought before the Court under Article 5 § 4 of Protocol No. 11 would be incompatible with the structure of the Convention and with the proper administration of justice.

49. The Court consequently dismisses the Government's preliminary objections.

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

50. The first applicant complained of a violation of paragraphs 2 and 3 of Article 5 of the Convention, the relevant parts of which provide:

> "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."

A. Article 5 § 2 of the Convention

51. In his memorial to the Court the first applicant maintained that, contrary to Article 5 § 2 of the Convention, he had not been informed of the reasons for his arrest or of the charges against him. At the hearing his counsel further submitted that the comments made to Mr Dikme by the branch police officers, who had first tortured him for several hours after his arrest, and by a member of the secret service (see paragraphs 12 and 13 above) had been intended purely as a form of intimidation and had in no way been designed to inform him of the reasons and/or charges that had prompted his arrest.

52. The Commission, whose view the Government shared, considered that the facts of the case had not given rise to a breach of the provision in question.

53. The relevant principles governing the interpretation and application of Article 5 § 2 in comparable cases were set out in the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990 (Series A no. 182, p. 19, § 40):

> "Paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 ... Whilst this information must be conveyed 'promptly' (in French: '*dans le plus court délai*'), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features."

In that case the Court found, in the light of the facts, that the applicants had been informed during their interrogation (a few hours after their arrest) of the reasons why they had been arrested. It consequently held that the requirements of Article 5 § 2 were satisfied (ibid., pp. 19-20, §§ 41-43).

54. In the instant case the Court notes that the reason for the first applicant's arrest was that he produced false papers during an identity check by the police. It considers that, having regard to the criminal and intentional nature of that act, the first applicant cannot maintain that he did not understand why he was arrested and taken to the local police station at 7.30 a.m. on 10 February 1992 (see paragraph 12 above).

The same applies to the reasons why the first applicant had to wait at the police station and was taken into police custody at the branch, where he was allegedly interrogated by officers intent on making him disclose his true identity (see paragraph 12 above).

55. For the rest, the first applicant stated that he had been interrogated throughout his sixteen days in police custody. He alleged that the officers who had started the interrogation were members of the "anti-*Dev-Sol*" squad

(see paragraph 12 above) and that after the first interrogation session, at about 7 p.m., a member of the secret service had threatened him, saying: "You belong to *Devrimci Sol*, and if you don't give us the information we need, you'll be leaving here feet first!" (see paragraph 13 above).

56. In the Court's opinion, that statement gave a fairly precise indication of the suspicions concerning the first applicant. Accordingly, and having regard to the illegal nature of the organisation in question and to the reasons he may have had for concealing his identity and fearing the police (his sister had been killed in a clash with the police – see paragraph 23 above), the Court considers that Mr Dikme should or could already have realised at that stage that he was suspected of being involved in prohibited activities such as those of *Dev-Sol*. Although he did not give any details of the subject matter of his subsequent interrogations or the times at which they took place, the Court is satisfied – having read the indictments preferred by the public prosecutor (see paragraphs 22 and 24 above) – that Mr Dikme was questioned about his alleged membership of Dev-Sol and his suspected role in specific criminal acts attributed to that organisation. In any event, the intensity and frequency of the interrogations also suggest that at the very first session, which lasted until or slightly beyond 7 p.m., Mr Dikme could have gained some idea of what he was suspected of (see, *mutatis mutandis*, *Kerr v. the United Kingdom* (dec.), no. 40451/98, 7 December 1999, unreported). The constraints of time imposed by the notion of promptness in Article 5 § 2 (see, *mutatis mutandis*, the Fox, Campbell and Hartley judgment cited above, pp. 19-20, § 42) were therefore complied with, especially as the first applicant to some extent contributed to the prolongation of the period in question by concealing his identity.

57. In conclusion, there has not been a breach of Article 5 § 2 of the Convention in the particular circumstances of the case.

B. Article 5 § 3 of the Convention

1. Submissions to the Court

58. The first applicant, whose opinion was endorsed by the Commission, maintained that he had not been brought "promptly" before a judge or other officer authorised by law to exercise judicial power, in breach of Article 5 § 3 of the Convention.

59. The Government, while relying essentially on the argument that the complaint had been lodged out of time, replied that Mr Dikme's arrest and detention had been justified by the serious nature of the offences of which he was suspected. They explained that the measures had been taken as part of an investigation conducted by the Istanbul police into the terrorist organisation *Devrimci Sol* and had complied with the law in force at the time, under which detention in police custody could be extended to fifteen

days if the offence concerned was a joint one. The offence of which Mr Dikme was suspected, namely "membership of an illegal terrorist organisation", fell within that category.

The Government referred to the particular problems encountered in taking action against terrorist networks, a task they said was extremely difficult because a lengthy and thorough police investigation, entailing interviews with a large number of witnesses and confrontations of several suspects, was necessary in order to gather and assess the evidence with a view to establishing the facts and to identify those responsible.

The Government also drew attention to the fact that the investigation conducted by the domestic authorities had largely focused on the links between various presumed members of *Dev-Sol*. Confirmation of the suspicions of links between those persons and the various acts of violence carried out by that terrorist organisation had therefore been contingent on the evidence obtained from the suspects themselves. In the Government's submission, that had justified prolonging Mr Dikme's detention in police custody.

Lastly, the Government informed the Court that the allowed periods of detention in police custody in Turkey had been reduced and thus made "reasonable" following the entry into force of Law no. 4229 of 12 March 1997.

2. The Court's assessment

60. It was not disputed that Mr Dikme's detention in police custody began with his arrest at 7.30 a.m. on 10 February 1992 and ended on 26 February 1992, when he appeared before the National Security Court judge (see paragraphs 12 and 18 above).

61. In this connection, the Court observes that the Government firstly maintained that the impugned measure had been lawful. However, the mere fact that a period of detention in police custody complies with domestic law cannot exempt the authorities from the requirement to bring the accused "promptly" before a judge, in accordance with Article 5 § 3.

62. The Court also takes note of the information supplied by the Government regarding legislative amendments designed to bring Turkish law into line with the requirements of Article 5 § 3 of the Convention. However, it would point out that its task is simply to assess the particular facts of the case before it. The only fact for it to consider in this context is that the detention in issue lasted for sixteen days (see paragraph 60 above), during which time Mr Dikme was deprived of all contact with the outside world and had no access to a judge or other judicial officer.

63. The Court refers in this connection to the Brogan and Others v. the United Kingdom case, in which it held that a period of detention in police custody amounting to four days and six hours without judicial supervision fell outside the strict constraints permitted by Article 5 § 3, even though it

was designed to protect the community as a whole from terrorism (see the judgment of 29 November 1988, Series A no. 145-B, pp. 33-34, § 62).

In order to justify the disputed period of detention in police custody, the Government emphasised the particular demands of police investigations into terrorist offences and relied on specific aspects of the proceedings against the first applicant (see paragraph 59 above). The Court does not find those arguments persuasive, for the following reasons.

64. The Court has accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see the following judgments: Brogan and Others cited above, p. 33, § 61; Murray v. the United Kingdom, 28 October 1994, Series A no. 300-A, p. 27, § 58; Aksoy v. Turkey, 18 December 1996, *Reports* 1996-VI, p. 2282, § 78; Sakık and Others v. Turkey, 26 November 1997, *Reports* 1997-VII, pp. 2623-24, § 44; and Demir and Others v. Turkey, 23 September 1998, *Reports* 1998-VI, p. 2653, § 41). That does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence (see, among other authorities, the Demir and Others judgment cited above, ibid.).

65. Similarly, the fact that a police or judicial investigation has yet to be completed on account of the difficulties associated with terrorism and the number of suspects involved cannot absolve the authorities from their obligation under Article 5 § 3. That provision is designed precisely to apply while investigations are in progress and, where necessary, it is for the authorities to develop forms of judicial control that are appropriate to the circumstances but compatible with the Convention (see, *mutatis mutandis*, the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports* 1996-V, pp. 1866-67 and 1869, §§ 131 and 144, and the Demir and Others judgment cited above, ibid.).

66. Nor can the Court accept the Government's argument that a lengthy period of detention in police custody was necessary in the instant case because the authorities had to gather evidence from the suspects themselves, including the first applicant, in order to complete their investigation in respect of *Dev-Sol*.

The Court will go no further than to stress the importance of Article 5 in the Convention system: it enshrines a fundamental human right, namely the protection of the individual against arbitrary interferences by the State with his right to liberty. Judicial control of interferences by the executive is an essential feature of the guarantee embodied in Article 5 § 3, which is intended to minimise the risk of arbitrariness and to secure the rule of law, "one of the fundamental principles of a democratic society ..., which is expressly referred to in the Preamble to the Convention" (see, for example,

the Sakık and Others judgment cited above, pp. 2623-24, § 44). Furthermore, only prompt judicial intervention can lead to the detection and prevention of serious forms of ill-treatment – such as those alleged by Mr Dikme (see paragraph 69 below) – to which detainees are in danger of being subjected, particularly as a means of extracting confessions from them (see, *mutatis mutandis*, the Aksoy judgment cited above, p. 2282, § 76).

67. In short, the Court finds that the period of detention in issue failed to satisfy the requirement of promptness laid down by Article 5 § 3 of the Convention and that there has consequently been a breach of that provision.

IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

68. The first applicant complained of a twofold violation of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Allegation of ill-treatment at the hands of the police

1. Submissions to the Court

69. The first applicant alleged that the police officers had subjected him to various forms of physical and psychological ill-treatment amounting to torture, particularly during his first five days in custody (see paragraphs 12-15 above). He had been punched and kicked on numerous occasions and had been constantly threatened and abused. He had twice been subjected to "Palestinian hanging" and on three occasions had been given electric shocks – some of which had been administered to his genitals – while having cold water poured over him. He had always been blindfolded while the violence was being inflicted on him. Furthermore, at the end of some of the sessions his torturers had left him lying naked on the concrete floor. On his fifth day in custody, by which time he had endured a mock execution in a forest, the physical assaults had become much less intense, but he had still been subjected to abuse throughout the subsequent interrogations.

At the hearing counsel for the applicants relied, in particular, on the report by the prison doctor who had examined Mr Dikme. While admitting that he could not specify which of the report's findings related to what the first applicant alleged were the after-effects of "Palestinian hanging" and/or the electric shocks (see paragraph 7 above), he argued that the findings – which, moreover, had been confirmed by the Eyüp office of the Institute of Forensic Medicine ("the office") – should nevertheless be sufficient to lend credibility to his client's allegations.

70. In its report the Commission, referring to the medical reports of 28 February and 4 March 1992, noted in particular that the Government had not disputed the existence of the marks found on Mr Dikme's body, and consequently took it as established that the marks had been a result of the treatment he had suffered while in police custody.

71. The Government argued in their memorial to the Court that if Mr Dikme had been ill-treated in all the ways he alleged, the forensic medical expert who had examined him on 26 February 1992 would have found marks on his body corresponding to the severity of the alleged treatment. Yet the expert had only recorded the presence of "a few old scratches" (see paragraph 17 above). In the Government's opinion, while the office's report had indeed mentioned the presence of "several lesions and bruises", it had been drawn up on 4 March 1992, seven days after the first applicant had been transferred to Istanbul Prison. The Court should accordingly infer that the marks observed were linked to incidents which in all likelihood had occurred while Mr Dikme was in prison and which therefore could not be attributed to the officers responsible for him during his time in police custody.

72. At the hearing, however, the Government made a series of submissions that departed considerably from the above reasoning. The medical report of 4 March 1992, they said, had in fact merely confirmed the "old grazes" mentioned in the first report of 26 February, since all "the lesions and grazes [were] described [in the report of 4 March] as having healed over". They also argued that, in contrast to the situation in *Selmouni v. France* ([GC], no. 25803/94, § 24, ECHR 1999-V), Mr Dikme's allegations were too inconsistent and imprecise for a causal link to be established with the medical findings on which his submissions relied. On that point the Government maintained that, contrary to the view taken by the Commission, their failure to submit written observations on the merits of the complaint could not be interpreted as meaning that they accepted the truth of the first applicant's allegations. In the first place, a prolonged period of "Palestinian hanging", such as that to which Mr Dikme had allegedly been subjected, would normally give rise to functional disorders of the motor system, yet the file contained no evidence of any such symptoms. The Government also found it suspicious that Mr Dikme had not alleged that he was suffering from any kind of psychological disorder, whereas victims of acts of violence comparable to those alleged in the instant case suffered such disorders, sometimes for a long time after the events.

2. The Court's assessment

(a) The alleged acts

73. The Court reiterates that it is not bound by the findings set out in the report by the Commission, which, under the Convention system in force

prior to 1 November 1998, was primarily responsible for establishing and verifying the facts (former Articles 28 § 1 and 31). The Court is free to make its own assessment of the facts in the light of all the material before it (see *Selmouni* cited above, § 86). More specifically, allegations of ill-treatment must be supported by appropriate evidence. To establish the facts, the Court adopts the standard of proof "beyond reasonable doubt"; such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (see, as the most recent authority, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

74. According to the first applicant, the ill-treatment to which he had been subjected while being interrogated had been designed to cause both physical injury (he had been punched and kicked repeatedly, had had his head banged against the wall, had suffered blows to his genitals, had been suspended by his arms for long periods with his hands tied behind his back in the "Palestinian" manner, had had electric shocks administered to his feet, his tongue, his genitals and the area behind his ears while having water poured over his body to heighten the effect of the shocks, and had been placed in baths of ice-cold water) and mental suffering (he had been constantly subjected to threats and abuse, had been stripped naked several times and had undergone a mock execution). He alleged that he had always been blindfolded and sometimes handcuffed while the violence was inflicted on him. He had also been forced to sleep on the concrete floor on two occasions.

75. The Court notes at the outset that the Government, who did no more than state that the allegations in Mr Dikme's statements were not borne out by the medical reports, did not deny before it that the impugned incidents had taken place, with the exception of the "Palestinian hanging" to which Mr Dikme said he had been subjected (see paragraph 72 above).

76. As regards the physical torture which Mr Dikme maintained that he had suffered, the Court notes that the applicants produced real evidence in the form of the medical reports of 26 and 28 February and 4 March 1992 (see paragraphs 17 and 19 above). The last-mentioned of those documents, which served as a final report confirming the second report, recorded the presence of some twenty-five traces of skin lesions, erosions, abrasions and bruises on the first applicant's lower and upper limbs.

77. The Court accepts the Commission's finding that the marks found on the first applicant's body were caused by the treatment to which he was subjected while in police custody (see paragraph 70 above). Furthermore, at the hearing the Government did not maintain their initial submission that the marks mentioned in the medical report of 4 March 1992 could have resulted from injuries sustained by Mr Dikme during his first seven days in Istanbul Prison (see paragraphs 71 and 72 above).

78. The Court reiterates that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is

incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni* cited above, § 87).

79. It observes in the instant case that the Government did not at any time deny the assaults complained of by the first applicant. It also considers that his explanations are sufficiently precise and are corroborated both by the medical findings finalised in the report of 4 March 1992 and by the statements made by Y.O. (see paragraph 16 above). In the light of the material before it, the Court therefore considers that it can be taken as established that while he was in police custody, Mr Dikme at the very least suffered a large number of blows and other similar forms of torture, some of which might not automatically have left a visible trace on his body and/or might have produced marks which faded while he was still in custody, such as the bruises which Y.O. said that she had seen on Mr Dikme's eyes.

80. With regard to the other acts of violence allegedly committed on the first applicant, particularly those likely to cause mental suffering (see paragraphs 69 and 74 above), the Court acknowledges that, depending on the circumstances, such assaults may fall within the scope of Article 3 of the Convention even though they may not necessarily leave medically certifiable physical or psychological scars.

81. In this connection, the Court considers that Y.O.'s statement (see paragraph 16 above) – whose sincerity there is no reason to doubt – provides an adequate basis, in terms of the required standard of proof (see paragraph 73 above), for concluding that the police officers blindfolded Mr Dikme during the interrogations, if not throughout his detention in police custody.

82. The Court further notes that the first applicant was held in police custody for sixteen days and denied any access to a lawyer, doctor, relative or friend, and also any opportunity to be brought before a court until the investigating authorities so decided. The Court observes of its own motion that throughout that time, Mr Dikme was left entirely vulnerable, not only to interferences with his right to liberty (see paragraphs 66 and 67 above) but also to the reprehensible conduct of his custodians and the police officers responsible for questioning him, and, even more seriously, to acts of physical torture such as those found to have been committed (see paragraph 79 above).

83. Having regard to the findings set out in paragraphs 81 and 82 above, the Court does not consider it necessary to assess whether the other allegations of psychological violence are true, particularly in view of the difficulty of proving such treatment.

84. To sum up, the Court finds that, for the purposes of this complaint, the facts examined in paragraphs 79, 81 and 82 above may be taken as established.

85. It nevertheless considers that, in the absence of even the slenderest evidence and/or any practical explanation in support of the allegation, it has not been proved that the first applicant was subjected to "Palestinian hanging" and/or given electric shocks.

Indeed, even though he was invited to do so (see paragraph 7 above), the first applicant did not give any indication at the hearing of which findings in the medical reports were consistent with the possible after-effects of repeated electric shocks or with the usual effects of prolonged "Palestinian hanging" (see paragraphs 69 and 74 above).

(b) Seriousness of the established facts

86. The first applicant made no submissions on this matter.

87. The Commission noted that a large number of serious lesions and bruises had been found on the first applicant's body and regarded them as proof that considerable suffering had been inflicted on Mr Dikme. In its opinion, the violence which Mr Dikme had suffered could only have been inflicted deliberately, with a view to obtaining information or confessions. It concluded that such treatment had to be regarded as amounting to torture in view of the coercive and punitive environment in which it took place.

88. The Government's memorial to the Court contained a number of submissions relating in substance to the seriousness and scale of the impugned acts, and hence to their possible characterisation under Article 3. For example, the Government disputed the extent of the marks found on the first applicant's body, pointing out that the forensic medical expert who had examined him on 26 February 1992 had stated that there were only "old grazes" and that the medical report of 4 March 1992 had merely "confirmed the old grazes" (see paragraph 72 above).

At the hearing the Government expressly argued that the medical reports on which the first applicant relied did not certify any form of ill-treatment that could be classified as torture within the meaning of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had come into force on 26 June 1987.

89. As the Court has held on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni* cited above, § 95).

90. The Court reiterates 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 (ibid., § 99). In this connection, the requirements of an investigation and the undeniable difficulties inherent in the fight against terrorist crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see, *mutatis mutandis*, the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, p. 26, § 38). It should also be borne in mind that the prohibition of torture and inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct and – where detainees are concerned – the nature of the alleged offence (see, *mutatis mutandis*, *Labita* cited above, § 119).

91. Having regard to the facts which it regards as established (see paragraph 84 above), the Court considers that the blows inflicted on Mr Dikme were such as to cause both physical and mental pain or suffering, which could not but have been exacerbated by his total isolation and the additional factor that he was blindfolded. Mr Dikme was therefore treated in a way that was likely to arouse in him feelings of fear, anxiety and vulnerability likely to humiliate and debase him and break his resistance and will.

92. The Court accordingly considers that the violence inflicted on the first applicant was both inhuman and degrading.

In this connection, it points out that in *Selmouni*, in accordance with the principle that the Convention was a "living instrument which must be interpreted in the light of present-day conditions", it said that certain acts which had previously been classified as "inhuman and degrading treatment" as opposed to "torture" might be classified differently in future (see *Selmouni* cited above, § 101):

> " ... the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."

It therefore remains to be determined whether the treatment meted out to Mr Dikme can, as he submitted, be classified as torture.

93. The Court must first give due weight to the distinction embodied in Article 3 between the notion of torture and that of inhuman or degrading treatment. It appears that the distinction was drawn in the Convention in order to attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (ibid., § 96).

94. A similar distinction is made in Article 1 of the United Nations Convention, to which the Government referred:

> "1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or

> for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...”

As the Court has previously found, the criterion of “severity” referred to in the Article cited above is, in the nature of things, relative, like the “minimum severity” required for the application of Article 3 (ibid., § 100); 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 victim's sex, age and state of health (see, among other authorities, *Labita* cited above, § 120).

95. In the instant case the first applicant undeniably lived in a permanent state of physical pain and anxiety owing to his uncertainty about his fate and to the blows repeatedly inflicted on him during the lengthy interrogation sessions to which he was subjected throughout his time in police custody.

The Court considers that such treatment was intentionally meted out to the first applicant by agents of the State in the performance of their duties, with the aim of extracting a confession or information about the offences of which he was suspected.

96. In those circumstances the Court finds that the violence inflicted on the first applicant, taken as a whole and having regard to its purpose and duration, was particularly serious and cruel and was capable of causing “severe” pain and suffering. It therefore amounted to torture within the meaning of Article 3 of the Convention.

97. There has consequently been a violation of Article 3 on that account.

B. The investigations conducted by the national authorities

98. At the hearing counsel for the applicants stressed that, from a procedural viewpoint, Mr Dikme had not been granted effective protection by the law, as no judicial authority had applied itself to conducting a sufficiently detailed investigation into his allegations of ill-treatment.

99. The Commission appears not to have considered it necessary to examine this aspect of the case.

100. The Government submitted, *inter alia*, that allegations of ill-treatment such as those made to the national authorities in the instant case could not be regarded as a “complaint worthy of the name”. The allegations had been too vague and inconsistent for the Administrative Council of the province of Istanbul to see any reason why a “different position” might be adopted “from that of the investigation that was carried out” (see paragraph 31 above).

101. The Court has previously held that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the

Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance (see paragraph 89 above), be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Labita* cited above, § 131, and the Assenov and Others v. Bulgaria judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102).

In this connection, the Court also reiterates what it stated most recently in its judgment of 27 June 2000 in the *İlhan v. Turkey* case: " ... the requirement under Article 13 of the Convention that a person with an arguable claim of a violation of Article 3 be provided with an effective remedy will generally provide both redress to the applicant and the necessary procedural safeguards against abuses by State officials. ... Whether it is appropriate or necessary to find a procedural breach of Article 3 will therefore depend on the circumstances of the particular case" ([GC], no. 22277/93, § 92, ECHR 2000-VII).

In the light of the foregoing, and having regard to the circumstances of the instant case, in particular the fact that the first applicant did not rely on Article 13 of the Convention in his application, the Court considers that the complaint in issue should be examined under Article 3.

102. In the instant case an investigation was carried out after the first applicant lodged a formal complaint (see paragraphs 28-31 above). The Court's task, therefore, is purely to assess whether the investigation was conducted diligently – in other words, whether it was "effective".

103. In this connection, the Court notes that the investigation into the acts complained of by the first applicant began on 27 November 1992. On 8 December the public prosecutor dealing with the case was informed that Mr Dikme had lodged a formal complaint; two days later the public prosecutor declined jurisdiction and referred the matter to the Administrative Council of the province of Istanbul, which on 9 July 1993 decided that there was no case to answer.

The Court does not have any further information. It is regrettable that the Government were unable to produce the relevant documents from the file on the complaint as requested (see paragraphs 7 and 32 above) or to explain what steps the Turkish administrative and judicial authorities had taken following the decision of 9 July 1993 that there was no case to answer.

In any event, the Court observes that, more than eight years after the incident in issue (see paragraph 37 above), the investigation does not appear to have produced any tangible results and that to date the members of the

branch who were responsible for Mr Dikme during his time in police custody and consequently for the ill-treatment confirmed by medical certificates whose contents were known to the authorities have still not been identified.

104. In these circumstances the Court has no choice but to conclude that there was no thorough and effective investigation into the first applicant's arguable allegation that he had been ill-treated while in police custody. Consequently, it finds that there has also been a violation of Article 3 of the Convention on that account.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

105. Relying essentially on the Commission's findings, the first applicant alleged, lastly, that he had not been granted a fair trial by the Istanbul National Security Court, on the ground that he had been denied access to a lawyer throughout his time in police custody. In his opinion, that amounted to a breach of Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which provide:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ..."

106. The Commission, referring in particular to the Artico judgment cited above and the Marckx v. Belgium judgment of 13 June 1979 (Series A no. 31), pointed out that the existence of a violation of Article 6 § 3 (c) was conceivable even if the accused had not suffered any actual damage. It consequently expressed the opinion that the fact of having denied the first applicant the assistance of a lawyer during his time in police custody had amounted to a breach of his right to a fair trial. In support of that conclusion, it pointed, in particular, to the fact that confessions had been extracted from Mr Dikme under torture.

107. The Government disputed the Commission's conclusions and, relying on the principles set forth in the John Murray v. the United Kingdom case (judgment of 8 February 1996, *Reports* 1996-I), firmly maintained that the complaint should have been deemed premature and dismissed at the admissibility stage.

108. The Court has already had occasion to deal with cases in which the applicants complained – like Mr Dikme – that they had been denied access

to a legal adviser during initial police questioning. In this connection, it reiterates its finding in the Imbrioscia v. Switzerland judgment of 24 November 1993 (Series A no. 275, p. 13, § 36) and the John Murray judgment cited above (p. 54, § 62) that Article 6 applies even at the stage of a preliminary investigation by the police and that paragraph 3 is one element, amongst others, of the concept of a fair trial in criminal proceedings as set forth in paragraph 1 and may, for example, be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions.

109. As the Court also pointed out in those judgments, the manner in which Article 6 § 3 (c) is applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case; in order to determine whether the aim of Article 6 – a fair trial – has been achieved, regard must be had to the entirety of the proceedings conducted in the case (ibid., pp. 13-14, § 38, and pp. 54-55, § 63, respectively).

110. It therefore remains to be determined whether the fact that the first applicant was unable to confer with his lawyer while in police custody was likely to seriously prejudice the fairness of the impugned proceedings looked at in their entirety.

111. The Court observes, firstly, that Turkish legislation does not appear to attach to confessions obtained during questioning but denied in court any consequences that are decisive for the prospects of the defence in any subsequent criminal proceedings (see paragraph 38 above, and the John Murray judgment cited above, pp. 54-55, § 63). Even more importantly, it notes that in the instant case, on appeals on points of law by Principal State Counsel and the first applicant, the Court of Cassation in a judgment of 22 March 1999 set aside the first applicant's conviction of 26 June 1998 (see paragraph 27 above). It is clear from that judgment that the trial judges' failure to refer in their operative provisions to the substantiated evidence in respect of each of the offences with which Mr Dikme was charged and the assessment made of it prompted the Court of Cassation to question both whether the facts established by the judges were relevant and whether the judges' findings were adequately supported by those facts.

The case was remitted to the National Security Court, where it is still pending (see paragraph 27 above). The Court is consequently not in a position to make an overall examination of the proceedings against Mr Dikme and considers that it cannot speculate either on what the National Security Court will decide or on what the outcome of a second appeal on points of law might be (since that remedy would still be available to the first applicant if he were to consider that his trial had ultimately infringed the rights on which he relied before the Court).

112. In these circumstances the Court finds that there has not been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

113. As she had done before the Commission, the second applicant, Mrs Dikme, alleged that she had been a victim of a violation of her right to respect for her "family life" within the meaning of Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

She explained that on 11 June 1992, the last day of Ramadan (see paragraph 20 above), she had gone to Istanbul Prison to see her son but had been refused permission, no consideration being given to the fact that he was about to be tried for an offence carrying the death penalty.

114. The Commission, whose view the Government shared, considered that there had not been a violation of Article 8, as the second applicant had not submitted sufficient grounds for her complaint.

115. The Court considers that it may regard the steps taken by the second applicant to visit her son as coming within the scope of Article 8; no argument was raised to the contrary.

116. As to whether the prison authorities' refusal amounted to an "interference" within the meaning of Article 8, the Court notes, as the Commission did, that Mrs Dikme, living as she does in Vienna, only attempted to visit her son once, in all likelihood taking advantage of a trip to Turkey at the time of Ramadan. Since she has not provided any further information regarding her complaint, the Court does not know why the prison authorities did not allow her to see her son. It further notes that she did not at any time complain to the authorities about their refusal. That being so, she can scarcely complain of the prison authorities' failure to reconsider their decision. Nor can she reproach them with not taking account of the extreme anguish which the risk of her son's being sentenced to death might have caused her, since she visited the prison on 11 June 1992 (see paragraph 20 above), whereas the first indictment, in which the death penalty was sought, was not issued until 7 September 1992 (see paragraph 22 above).

117. The Court reiterates that when assessing the obligations imposed on Contracting States by Article 8 in relation to prison visits, regard must be

had to the ordinary and reasonable requirements of imprisonment and to the resultant degree of discretion which the national authorities must be allowed in regulating a prisoner's contact with his family (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 29, § 74; see also the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 38, § 98, and, *mutatis mutandis*, the Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, pp. 21-22, § 45, and the Schönenberger and Durmaz v. Switzerland judgment of 20 June 1988, Series A no.137, p. 13, § 25).

118. However, even supposing that the act complained of by the second applicant were to be regarded as an "interference", there is nothing to suggest that the respondent State in any way overstepped its margin of appreciation in the matter.

119. In short, there has been no violation of Article 8 of the Convention in respect of the second applicant.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicants did not allege any pecuniary damage. However, Mr Dikme claimed compensation in the amount of 75,000 euros (EUR) for non-pecuniary damage suffered while in police custody, in particular the acts of violence carried out during that time.

122. The Government argued that his claim was wholly unfounded, no causal link having been established "beyond reasonable doubt" between the allegations of torture and the medical reports in the case file.

123. The Court refers to the facts established with regard to the ill-treatment of Mr Dikme while in police custody (see paragraphs 79, 81 and 82 above). In view of the extremely serious nature of the violations of the Convention which it has found (see paragraphs 67, 97 and 104 above), the Court considers that the first applicant sustained non-pecuniary damage which the findings of violations in this judgment cannot suffice to make good. Having regard to its previous findings, the Court, making its assessment on an equitable basis, awards him 200,000 French francs (FRF), to be converted into Turkish liras at the rate applicable on the date of settlement.

B. Costs and expenses

124. The applicants also claimed reimbursement of their legal costs and expenses, which they estimated at EUR 10,000, broken down as follows:

(a) their lawyer's fees, including the costs incurred in preparing the application and the memorials filed with the Commission and the Court: EUR 7,000;

(b) sundry administrative expenses: EUR 2,000;

(c) their lawyer's travel expenses: EUR 1,000.

125. The Government contended that the sums claimed were exorbitant and bore no relation to the socio-economic conditions obtaining in Turkey; moreover, no documentary evidence of the claims had been supplied. They considered that if a sum were to be awarded under this head, it would in any event have to be calculated in proportion to the number of complaints in respect of which the Court had found a violation.

126. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

In this connection, it observes that although the applicants had been informed of the requirements of Rule 60 § 2 of the Rules of Court, they did not furnish any vouchers or bills relating to their costs and expenses or their lawyer's fees. The Court also notes that the applicants were granted legal aid before the Court and to that end were awarded the sum of FRF 9,652 by the Council of Europe on 13 April 2000. In view of the foregoing, the Court cannot allow the claim (see, as the most recent authority, *Labita* cited above, § 210).

Nevertheless, in preparing the case the applicants must have incurred certain costs not covered by the award from the Council of Europe. Accordingly, making its assessment on an equitable basis as required by Article 41, the Court considers it reasonable to make an award of FRF 10,000 under this head.

C. Default interest

127. The Court considers it appropriate that default interest should be payable at the rate of 2.74% per annum, as the awards are to be made in French francs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been no violation of Article 5 § 2 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of both the ill-treatment to which the first applicant was subjected while in police custody and the fact that there was no effective official investigation into the matter;

5. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention;

6. *Holds* that there has been no violation of Article 8 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the first applicant, Metin Dikme, within three months, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) FRF 200,000 (two hundred thousand French francs) in respect of non-pecuniary damage;
      (ii) FRF 10,000 (ten thousand French francs) in respect of costs and expenses in addition to the amount paid by the Council of Europe by way of legal aid;
   (b) that simple interest at an annual rate of 2.74 % shall be payable from the expiry of the above-mentioned three months until settlement;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 11 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President