



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

FIRST SECTION

CASE OF SATIK AND OTHERS v. TURKEY

(Application no. 31866/96)

JUDGMENT

STRASBOURG

10 October 2000

FINAL

10/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Satık and Others v. Turkey,

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

MRS E. PALM, *President*,

MRS W. THOMASSEN,

MR GAUKUR JÖRUNDSSON,

MR J. CASADEVALL,

MR T. PANȚIRU,

MR R. MARUSTE, *judges*,

MR F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 31 August 1999 and 19 September 2000,

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

PROCEDURE

1. The case originated in an application (no. 31866/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Turkish nationals, Mr Kadir Satık, Mr Murat Satık, Mr Ali Haydar Özdemir, Ms Songül Diribaş, Mr Fesih Yılmaz, Ms Saime Sefer, Mr Yaşar Yağcı, Mr Terzan Adıbelli, Mr Mehmet Ermiş, and Mr Abdülkadir Eraslan ("the applicants"), on 26 July 1995.

2. The applicants were represented by Mr Tuncer Fırat, a lawyer practising in İzmir (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged that they were severely beaten by prison staff and gendarmes following their refusal to submit to a search procedure before being taken to court. They relied on Articles 2 and 3 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case

(Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 31 August 1999 the Chamber declared the application admissible.

7. The applicants alone filed observations on the merits (Rule 59 § 1). By letter dated 7 August 2000 the Government submitted supplementary information of a factual nature. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The facts as submitted by the parties may be summarised as follows.

1. The facts as presented by the applicants

9. On 20 July 1995 the ten applicants, along with twelve other prisoners, were taken from their cells to an area of Buca Prison in order to be brought before the İzmir State Security Court for trial.

10. While the applicants together with the other prisoners were waiting to be collected, prison officials tried to search them including their shoes. They objected to the search, stating that it was an arbitrary act and that they would refuse to be taken to court if the prison administration insisted on carrying out the search.

11. In view of the applicants' resistance, the prison administration enlisted the help of gendarmes who were waiting outside the prison to accompany the prisoners to court.

12. Approximately fifty gendarmes and thirty prison warders and prison administrators subsequently attacked the applicants and other prisoners with truncheons and wooden planks.

13. As a consequence, one of the ribs of the applicant, Terzan Adıbelli, was broken and the liver of the applicant, Yaşar Avcı, was damaged. The other applicants sustained injuries to their bodies.

2. The facts as presented by the Government

14. The Government dispute the applicants' version of the incident. With reference to the investigation carried out by the public prosecutor (see paragraphs 19 *et seq.* below), they maintain that more than twenty prisoners refused to be searched before being taken to court. They linked themselves

together and proceeded towards the prison exit. When they were descending the staircase, still linked, they fell on top of one and another. They hit the wall and the handrail. Four prison warders were also injured in the crush.

15. The same day the applicants, after having waited for some time, were taken to the State Security Court in İzmir in prison vehicles.

3. The applicants' complaints to the authorities

16. At the hearing before the İzmir State Security Court, the applicants' representatives made complaints against the persons responsible for the assault. The representatives stated that the applicants had been beaten before being taken to court and requested the court to examine and take note of their injuries and to investigate the incident.

17. The court noted the applicants' condition and decided to postpone the proceedings on the grounds that it was impossible to hold a hearing in such circumstances. In its decision, the court ordered that the applicants be examined by a doctor with a view to determining whether they had been assaulted as alleged. The court also ordered that the medical findings together with the minutes of the hearing be sent to the Office of the İzmir Public Prosecutor with a view to the opening of an investigation. A letter to that effect was sent the same day to the public prosecutor.

18. Also on 20 July 1995 the father of one of the applicants, Abdulkadir Eraslan, lodged a complaint about the incident with the Office of the Public Prosecutor in İzmir. On the same day the public prosecutor wrote to the public prosecutor at Buca Prison requesting him to take a statement from Abdulkadir Eraslan and to have him medically examined if he complained about being tortured. The statement and any medical report drawn up were to be sent to him.

4. The investigation of the İzmir public prosecutor

19. The İzmir public prosecutor went to the prison on 20 July 1995 to take statements from several of the victims. On the same day the prison doctor examined all the detainees. Those whose injuries were found to be serious were taken to hospital. Since two of the applicants (Mehmet Ermiş and Terzan Adıbelli) had to be taken to hospital, their statements could only be taken by the public prosecutor on 14 August 1995.

(a) the applicants' statements to the İzmir public prosecutor

20. On 20 July 1995 statements were taken from the victims, including eight of the ten applicants: Kadir Satık, Murat Satık, Ali Haydar Özdemir, Songül Diribaş, Saime Sefer, Yaşar Yağcı, Fesih Yılmaz and Abdülkadir Eraslan. The statements of the two other applicants,

Mehmet Ermiş, and Terzan Adıbelli, were taken on 14 August 1995, after their discharge from hospital (see paragraph 19 above and paragraph 23 below).

21. The applicants were consistent in their statements that they had been taken from their cells and assembled in front of the prison door. They were ordered by the prison administrators and the warders to take off their shoes. According to the applicants, this was the first occasion on which such an order had ever been given. The applicants refused to comply and stated that a search could be carried out on them using metal detectors. The prison administrators then admitted the gendarmes who were outside the prison and they, together with the prison warders, began to hit them.

22. In their statements to the public prosecutor some of the applicants gave the names of the warders involved while others gave their ranks. Some applicants also stated that they could identify those responsible for the assault.

23. On 25 July 1995 a second statement was taken from Abdülkadir Eraslan. He told the public prosecutor that on the day of the incident he and other prisoners had protested about being subjected to inhuman treatment. He stated that a number of warders and gendarmes then hit the protestors with batons and wooden sticks. The beatings continued until they had reached the exit gate.

24. On 14 August 1995 four remaining victims including the applicants Mehmet Ermiş and Terzan Adıbelli gave statements to the public prosecutor. These statements were consistent with the statements given by the other applicants.

(b) the statements of the prison staff to the İzmir public prosecutor

25. On 20 July 1995 three prison officials were questioned by the İzmir public prosecutor. They were all consistent in stating that the prisoners had been repeatedly warned by their superiors that they had to submit to a search procedure. The prisoners objected and refused to be taken to court. The gendarmes then tried to lead them by the arms down the stairs of the prison. However, the prisoners formed a chain and this created a crush on the stairs. Some of the prisoners had to jump to safety while others fell. They injured themselves when they hit the walls, the stairs, and the iron railings. Several warders were also injured.

(c) the medical reports on the applicants

26. In the presence of the public prosecutor who arrived at Buca Prison at 6.00 p.m. on 20 July 1995, 18 of the prisoners (including 8 of the 10 applicants: Kadir Satık, Murat Satık, Ali Haydar Özdemir, Songül Diribaş, Fesih Yılmaz, Saime Sefer, Yaşar Yağcı, and Abdulkadir Eraslan) were

medically examined by a forensic doctor (*adli tabip*) at 8.30 p.m. The reports indicated that they all had been hit on the head and/or other parts of the body. While the injuries were described in detail, no explanation was given for their cause. The applicants Terzan Adıbelli and Mehmet Ermiş were sent to hospital for medical examinations.

27. On 21 July 1995 the Buca prison administration sent four more applicants for a medical examination. Fesih Yılmaz was sent to the İzmir Dental Hospital, Kadir Satık, Murat Satık and Ali Haydar Özdemir were sent to the İzmir State Hospital. The hospital discharge report for Terzan Adıbelli (date illegible) indicated that he suffered “general body trauma as a result of battery” (*darp*).

28. On 9 October 1995 a forensic doctor from the İzmir State Hospital went to the Buca Prison to examine Terzan Adıbelli, Murat Satık and Yaşar Avcı. He reported that Terzan Adıbelli and Yaşar Avcı had been hospitalised between 20 and 25 July 1995 and Murat Satık between 20 and 28 July 1995. He noted that a final medical report would be drafted later.

29. On 18 August 1995 a doctor from the Forensic Medicine Institute examined, *inter alia*, Mehmet Ermiş and reported in detail to the Office of the Public Prosecutor that that applicant had wide-spread bruising to his body and face (*şişlik, ekimoz*). The report noted that the injuries were not life threatening and that he would recover within 20 days.

30. On 17 November 1995 a physicist from the Forensic Medicine Institution reported that Terzan Adıbelli and Yaşar Avcı who had been re-examined on 9 October 1995 had suffered from “general body trauma as a result of battery”. Terzan Adıbelli had not been able to do any prison work for 15 days and Yaşar Avcı for 10 days. The report stated that they would recover.

5. *The criminal proceedings*

31. The public prosecutor decided on 9 April 1996 not to prosecute the Director of Buca Prison and his staff for alleged ill-treatment of the prisoners. Two of the prisoners’ lawyers challenged this decision but their challenge was rejected on 25 June 1996 by the President of the Karşıyaka Assize Court.

32. An investigation was opened against the gendarmes at Buca Prison. However the Office of the İzmir Public Prosecutor took the view that it had no jurisdiction to pursue this investigation since the incident arose out of the exercise by the gendarmes of their administrative duties. The investigation file was accordingly transferred on 11 April 1996 to the Administrative Council of İzmir. The Government informed the Court that the case file subsequently went astray after it was sent to the Divisional Gendarme Command at Buca Prison. On 7 April 2000 the Ministry of the Interior appointed an inspector to clarify this matter. Permission has been given to

take proceedings against three gendarme officers in connection with the missing case file, pursuant to the provisions of the Law no. 4483 governing the prosecution of civil servants (see paragraph 37 below). On 1 May 2000 the İzmir Administrative Council decided that no investigation should be opened against the gendarme officers responsible for transferring the applicants from Buca Prison to the İzmir State Security Court on 20 July 1995.

33. On 29 July 1997, following a request for information on the incident, the İzmir Public Prosecutor wrote to the Ministry of Justice. He informed the Ministry that the incident arose out of the refusal of prisoners at Buca Prison to submit to a search. The prisoners objected to being taken to court and they bunched together while descending the stairs leading to the main gate. Some of them fell injuring themselves. Some members of the prison staff were also hurt.

II. RELEVANT DOMESTIC LAW

A. Criminal Procedure

34. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 of the Code of Criminal Procedure – “CCP”). The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

35. Insofar as a criminal complaint has been lodged, a complainant may file an appeal against the decision of the public prosecutor not to institute criminal proceedings. This appeal must be lodged within fifteen days after notification of this decision to the complainant (Article 165 CCP).

36. If the suspected offender is a civil servant and if the offence was committed during the performance of his duties, the preliminary investigation of the case was governed at the time of the events giving rise to the instant application by the Law of 1914 on the prosecution of civil servants, which restricted the public prosecutor’s jurisdiction *ratione personae* at that stage of the proceedings. In such cases it was for the relevant local administrative council (for the district or 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 was for the public prosecutor to investigate the case. An appeal to the Supreme Administrative Court lay against a decision of the Council. If a decision not to prosecute was taken, the case was automatically referred to that court.

37. A new law was adopted on 2 December 1999 repealing the provisions of the Law of 1914. The new law - Law no. 4483 - determines the authorities which are empowered to give permission for a state employee or public servant to be prosecuted for an offence committed when exercising official duties and regulates the procedure to be followed. According to Article 3 of Law no. 4483, the power to grant permission to prosecute is now vested in the highest administrative authority in the area where the state employee is working. A decision granting or refusing permission to prosecute must be taken by the relevant authority within thirty days of being seized by the public prosecutor. Before referring the file to the authority the public prosecutor can only collect such evidence which, because of its nature, might be lost, altered or destroyed. The authority initiates an investigation or appoints senior civil servants to investigate on its behalf. According to Article 9 the local administrative courts and the Council of State have jurisdiction to hear appeals against the decisions reached by the authority. An appeal must be lodged within ten days of the authority's decision.

B. Administrative liability

38. Article 125 §§ 1 and 7 of the Turkish Constitution provides as follows:

“All acts of decisions of the administration are subject to judicial review...

...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

39. This provision is not subject to any restriction even in a state of emergency or war. the second paragraph does not require proof of the existence of any fault on the part of the administration, whose responsibility is of an absolute, objective nature, based on a concept of collective liability and referred to as the theory of “social risk”. Thus the administration may indemnify people who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

C. Civil liability

40. Pursuant to Article 41 of the Civil Code, anyone who suffers damage as result of an illegal act or tortious act may bring a civil action seeking reparation for pecuniary damage (Articles 41-46) and non-pecuniary damage. The civil courts are not bound by either the findings or the verdict of the criminal court of the issue of the defendant's guilt (Article 53).

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicants complained that they were subjected to treatment prohibited under Article 3 of the Convention, which provides:

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

A. The Government's preliminary objection

42. In their submissions at the admissibility stage of the proceedings the Government drew attention to the measures which the authorities have taken to investigate the applicants' allegations. They referred in this connection to the two investigations initiated by the public prosecutor, the first in response to the decision of the İzmir State Security Court of 20 July 1995, the second following the lodging of complaints by the applicants, their families and their lawyers with the public prosecutor.

43. The Government stated that on 9 April 1996 the public prosecutor took a decision not to proceed with the prosecution. A challenge to this decision was rejected on 25 June 1996 by the President of the Karşıyaka Assize Court. As regards the gendarmes involved in the incident at Buca Prison, the Government informed the Court by letter dated 7 August 2000 that for reasons of jurisdiction the investigation file had to be transferred to the İzmir Administrative Council. However, the case file subsequently disappeared after it had been transmitted to the Divisional Gendarme Command of Buca Prison with the result that the administrative investigation could not be carried out. On 7 April 2000 the Ministry of the Interior appointed an inspector to clarify the situation. Following the inspector's investigation, a decision was taken on 1 May 2000 by the İzmir Administrative Council not to bring proceedings against the gendarmes responsible for the transfer of the applicants to court on 10 July 1995. It was

further decided to open an investigation against three gendarme officials in connection with the disappearance of the above-mentioned case file pursuant to the provisions of Law no. 4483 governing the prosecution of civil servants. According to the Government, authorisation has been given to bring charges against the officials and a dossier on the missing case file will be submitted to the Regional Administrative Court “as soon as the necessary notifications have been made”.

44. The Government stressed that the authorities have shown a special interest in the investigation of the applicants’ complaints. They observed in this connection that the Minister of Justice requested the İzmir Public Prosecutor to inform him about the state of the proceedings.

45. The applicants in reply accepted that the public prosecutor conducted an investigation in response to the complaints which they had lodged. However, the decision was taken to discontinue the proceedings against the prison staff and the appeal against that decision taken by two of their fellow prisoners was to no avail. They point out that the decision of the Karşıyaka Assize Court of 25 June 1996 was only served on them on 23 June 1997 when they went to the public prosecutor’s office.

46. As to the proceedings against the gendarme and police officers, the applicants maintained that they have not been informed of the outcome of the investigation.

47. The Court observes that in its admissibility decision adopted on 31 August 1999 it noted that the issue of whether the investigation referred to by the Government can be said to be an effective remedy in respect of the applicants’ complaints can only be answered on the basis of a careful examination of the merits of their complaints under Article 3 of the Convention. For that reason it decided to join the Government’s preliminary objection to the merits of the applicants’ complaint under Article 3.

The Court confirms this approach.

B. Merits of the complaints

48. In the applicants’ submission they were arbitrarily beaten by gendarmes and prison warders at Buca Prison and it was only by chance that none of them died as a result of the assault. The extent of the injuries which they sustained was apparent from the medical reports which had been drawn up.

49. The applicants stated that the prison administration was under no legal obligation to use force to secure their attendance at court. In their submission the use of force is only ordained by a court where force is deemed necessary. Even if a prisoner refuses to attend court the court has a discretion as to whether that prisoner should be forcibly brought before it. The applicants referred to domestic precedents in this connection. They stated that they had been brought before the İzmir State Security Court on

13 June 1995. The court fixed the next hearing for 20 July 1995 but did not order that they be forcibly made to attend that hearing.

50. The Government maintained that the conduct of a search procedure on prison inmates was a normal part of prison life and was carried out in the interests of security. A decision to search the applicants' shoes cannot be construed as an arbitrary and degrading procedure, as alleged by the applicants. In the Government's view there were grounds for considering that the applicants, all facing trial on charges of terrorism, had intentionally planned to refuse the search with a view to provoking an incident. The applicants were obliged under Article 14 of the Code of Criminal Procedure to attend court and it was not open to them to threaten the prison administration with a boycott of their presence at the court on specious grounds.

51. The Government referred to the findings of the investigation into the incident to dispute the credibility of the applicants' account. They maintained that the applicants deliberately chose the moment when all the prisoners were assembled to resist being searched and taken to court. They knew that the prison administration would react to their refusal. However, neither the gendarmes nor the prison warders had any opportunity to intervene in view of the fact that the prisoners started to fall down the staircase since they had bunched themselves together.

52. Moreover, the Government pointed to several inconsistencies in the applicants' allegations. The first applicant, Mr Satık, together with four other applicants, had complained to the public prosecutor that their statements had not been taken since they were in hospital. In response to their request to be heard, the public prosecutor ordered the prison administration to bring Mr Satık to his office. However he refused to attend. Furthermore, Mr Satık and several other applicants claiming to have been seriously injured and close to death refused on three occasions to attend a hospital for a further medical examination.

53. The Court recalls that 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 and inhuman or degrading treatment or punishment and irrespective of the victim's conduct. 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 v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93; the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79).

54. The Court further recalls that where an individual is taken into police custody in good health but is found to be injured at the time of his 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 (see the above-mentioned Selmouni judgment, § 87).

In the Court's opinion, the same principle extends to detainees in a prison having regard to the fact that they are deprived of their liberty and remain subject to the control and responsibility of the prison administration. 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 Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, §§ 52 and 53).

55. The Court observes, in addition, that allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, the Klaas v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, § 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 161 *in fine*).

56. In the instant case, the applicants complain that they were subjected to a severe and unjustified beating by State agents. In the Government's submission, the applicants sustained their injuries as a result of a fall which they had provoked by their own protest action.

57. The Court observes that the Government's explanation sits ill with the nature of the applicants' injuries as recorded in the medical reports following medical examinations carried out on them on the day of the incident. The medical reports indicated that the applicants and other prisoners examined had been "hit on the head and/or other parts of the body" (see paragraph 26 above). One of the applicants was later found to have suffered from "general body trauma as a result of battery" (see paragraph 27 above). The Court must also have regard to the fact that the applicants, when questioned by the public prosecutor, were unequivocal in their account that they had been assaulted by gendarmes and prison staff (see paragraphs 21 to 24 above). The Government have not submitted any elements which would serve to rebut a presumption that the applicants were deliberately beaten as alleged when engaged in a protest action. In particular, it has not been suggested by the Government that the intervention of the gendarme officers was considered necessary to quell a riot or a planned attack on the internal security of Buca Prison.

58. The Court cannot ignore the potential for violence in a prison setting, nor the threat that disobedience on the part of inmates may well degenerate into bloodshed requiring the prison authorities to enlist the help of the

security forces. However, it considers that when prison authorities have recourse to such outside help to deal with an incident within the confines of the prison there should exist some form of independent monitoring of the action taken in order to ensure accountability for the force used including the issue of its proportionality.

59. In the instant case, the public prosecutor was obliged to reconstruct the events at issue on the basis of the statements taken from the applicants and other prisoners and of his interviews with three prison officials (see paragraph 25 above). It would appear that the statements which he took from the latter officials were sufficient to persuade him of the credibility of the official account of what transpired on the day in question. This is further illustrated by his reply of 29 July 1997 to the Minister of Justice's inquiry as to what occurred at Buca Prison (see paragraph 33 above). In the Court's opinion this statement was entirely inconsistent with the duties and functions of a public prosecutor at a time when an investigation was being conducted into the involvement of gendarme officers in the incident.

60. The Court also observes that on 1 May 2000 the İzmir Administrative Council decided not to authorise the opening of a criminal investigation into the gendarmes' behaviour at Buca Prison at the time of the incident. This decision was reached more than four years after the case file was transferred to the Council. During that time the case file disappeared after it was sent to gendarme officials at Buca Prison. The authorities' failure to secure the integrity of important case documents must be considered a most serious defect in the investigative process. Indeed, the absence of the case file must cast doubt on the merits of the decision finally reached by the İzmir Administrative Council on 1 May 2000.

It is to be further observed that in its *Kılıç v. Turkey* judgment of 28 March 2000 (no. 22492/93 to be published in ECHR 2000, § 72) the Court had occasion to note that administrative councils were made up of civil servants, under the orders of the Governor, who was himself responsible for the security forces whose conduct was in issue in that case. Furthermore, the investigations which they instigated were often carried out by gendarmes linked hierarchically to the units concerned in the incident. In the Court's opinion, the decision to entrust the İzmir Administrative Council with the investigation into the responsibility of the gendarmes for the injuries caused to the applicants at Buca Prison must call into question the possibility of making any independent determination on what happened at the material time.

61. In the absence of a plausible explanation on the part of the authorities, the Court is led to find that the applicants were beaten and injured by State agents as alleged. The treatment to which they were subjected amounts to a violation of Article 3 of the Convention.

62. Having regard to the serious shortcomings in the investigation into the incident, the Court finds that the Government's preliminary objection

cannot be sustained. The inadequacy of that investigation is in itself inconsistent with the duty devolving on the authorities of a respondent State under Article 3 of the Convention to initiate an investigation into an arguable claim that an individual has been seriously ill-treated at the hands of its agents, which investigation should be capable of leading to the identification and punishment of those responsible (see the above-mentioned Assenov judgment, p. 3290, § 102).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicants asserted that they were assaulted by State agents whose intention was to kill them. They invoked Article 2 of the Convention, which stipulates:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

64. The Government did not make any submissions on the applicants’ allegations.

65. The Court considers that, having regard to its finding on the applicants’ complaint under Article 3 of the Convention, it is unnecessary to examine their complaint under Article 2.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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. Damages

67. The applicants Yaşar Yağcı, Kadir Satık, Mehmet Ermiş, Ali Haydar Özdemir and Abdülkadir Eraslan claimed the sum of GBP 30,000 by way of compensation for non-pecuniary damage sustained. The applicants Songül Diribaş, Saime Sefer and Fesih Yılmaz claimed GBP 20,000. The applicant Murat Satık claimed GBP 50,000 whereas Terzan Adıbelli claimed GBP 35,000.

68. The Government requested the Court to dismiss the applicants' claims since they were exaggerated and unsubstantiated.

69. The Court, deciding on an equitable basis, awards each of the applicants the sum of GBP 5,000.

B. Costs and expenses

70. The applicants claimed GBP 20,000 in respect of costs and expenses incurred in the Convention proceedings. They maintain that they had to pay TRL 250,000,000 for translation costs and submitted an invoice to that effect.

71. The Government maintained that the applicants had not substantiated their claims under this head and on that account the claims should be rejected.

72. The Court, deciding on an equitable basis, awards the applicants a global sum of GBP 5,000 under this head.

C. Default interest

73. 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 7,5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's preliminary objection based on non-exhaustion of domestic remedies;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that it is unnecessary to consider separately the applicants' complaint under Article 2 of the Convention;

4. *Holds*

(a) that the respondent State is to pay each of the applicants the sum of 5,000 (five thousand) pounds sterling in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;

(b) that the respondent State is to pay the applicants an overall sum of 5,000 (five thousand) pounds sterling in respect of costs and expenses, together with any value-added tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement;

(c) that the above sums shall be paid within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention;

(d) that simple interest at an annual rate of 7,5% shall be payable from the expiry of the above-mentioned three months until settlement.

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

Done in English, and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President