



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

THIRD SECTION

CASE OF DEVRİM TURAN v. TURKEY

(Application no. 879/02)

JUDGMENT

STRASBOURG

2 March 2006

FINAL

02/06/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Devrim Turan v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŖ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 879/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms Devrim Turan (“the applicant”), on 25 October 2001.

2. The applicant was represented by Mr S. Kozağaçlı, a lawyer practising in Ankara. In the instant case, the Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 27 January 2005 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaint concerning Article 3 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1979 and is currently detained in the Ankara Prison

5. On 23 May 1999 at about 3 p.m. the applicant, who was working for a newspaper called *Kurtuluş*, was taken into police custody in the district of Almus in the province of Tokat by police officers on suspicion of membership of an illegal organisation, namely the DHKP/C (Revolutionary People’s Liberation Party-Front). At about 5 p.m. she was taken to the Almus State Hospital, where a medical report was issued. In the report, the

presence of a 0.5 x 1 cm. abrasion under the right eye was noted. It was stated that this abrasion had probably been caused as a result of an irritation. The medical report further indicated that there were no signs of ill-treatment on her body.

6. On the same day, the applicant was transferred to the province of Tokat to be interrogated by the Anti-Terrorism Branch of the Tokat Security Directorate. Before being taken to the Security Directorate Building, at about 7.45 p.m. the applicant was sent to the Tokat State Hospital for a medical examination. The medical report indicated the presence of a hyperaemia under the right eye and an abrasion on the right side of the nose. Thereafter at about 8.10 p.m. the applicant was taken to the Tokat Maternal Hospital for a gynaecological examination with a request to establish her virginity status. As she did not give her consent, the applicant did not undergo a gynaecological examination. At 9 p.m. the applicant was taken once again to the Tokat State Hospital, this time for a rectal examination. As the applicant refused to be examined, no rectal examination was performed.

7. On 30 May 1999 before being released from custody, the applicant was taken to the Tokat Maternal Hospital for a gynaecological and rectal examination. As she did not give her consent, the doctors did not perform the examinations. Subsequently, she was taken to the Tokat State Hospital, where she was examined by a doctor. According to the doctor's report, no signs of ill-treatment were observed on the applicant's body.

8. On 30 May 1999 the applicant was brought before the Tokat public prosecutor. Before the public prosecutor, she denied the allegations against her and maintained that her police statement, dated 29 May 1999, had been taken under duress. She stated that she had been hosed with cold water, subjected to electric shocks and Palestinian hanging.

9. The same day the applicant was further brought before the investigating judge at the Tokat Magistrate's Court where she repeated her statement taken by the prosecutor. The investigating judge decided to place her in detention on remand on account of the evidence in the file and the nature of the offences against her.

10. On 31 May 1999 the Tokat public prosecutor declined jurisdiction and transferred the case to the public prosecutor at the Ankara State Security Court.

11. In an indictment dated 15 June 1999, the Ankara State Security Court Public Prosecutor initiated criminal proceedings against the applicant and accused her of being a member of an illegal organisation.

12. On 12 August 1999 the applicant sent a letter to the court and retracted her statement made to the police, alleging that it was taken under duress. In this letter, she explained in detail the various forms of ill-treatments she had been allegedly subjected to in custody. In particular, she maintained that during her police custody she had been stripped naked,

threatened with rape, beaten, hosed with cold water, subjected to electric shocks and hung from her arms.

13. On 11 July 2000 the Ankara State Security Court found that the applicant had been continuously working for the said illegal organisation. It therefore found the applicant guilty as charged under Article 168 of the Criminal Code and sentenced her to twelve years six months' imprisonment.

14. On 4 April 2001 the applicant submitted her appeal petition to the Court of Cassation. While challenging the decision of the first-instance court, she particularly referred to her ill-treatment under custody. She also stated that she had been taken to the hospital on two occasions during her police custody to undergo a gynaecological examination. She alleged that this treatment constituted degrading treatment.

15. On 25 April 2001 the Court of Cassation, upholding the Ankara State Security Court's reasoning and assessment of evidence, rejected the applicant's appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Gynaecological examinations

16. The applicant complained that she had been taken to the hospital two times for a gynaecological examination, which in her view constituted degrading treatment under Article 3 of the Convention, which reads:

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

17. The Government argued in the first place that the applicant did not have the victim status to bring this complaint before the Court, as the doctors had not performed any gynaecological examination. They further stated that the purpose of the authorities in taking the applicant to the hospital for a gynaecological examination was to avoid any false accusation of sexual harassment by police officers. In this connection, they maintained that on the day of her arrest the applicant had bitten the hand of one of the officers and then went on a hunger strike to protest against her arrest. She also threatened the officers that she would cause big trouble for them.

18. The Court recalls that, to fall within the scope of Article 3 of the Convention, the alleged treatment must attain a minimum level of severity (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

19. In the present case, the Court observes that the applicant was taken to the Tokat Maternity Hospital on the first and last days of her arrest for a gynaecological examination. However, as the applicant did not give her consent, the doctors did not perform any gynaecological examination. There is no dispute on this issue between the parties.

20. The Court notes that being taken to the hospital for a gynaecological examination might have caused distress to the applicant. However, as recognised in the Court's case-law (see, *mutatis mutandis*, *Y.F. v. Turkey*, no. 24209/94, § 43, ECHR 2003-IX), medical examination of detainees by a forensic doctor can prove to be a significant safeguard against false accusations of sexual molestation or ill-treatment. Furthermore, it is clear that when the applicant refused to undergo a gynaecological examination, no force was used against her and the doctors refrained from performing the said examination.

21. In view of the above, the Court considers that the sole fact that the applicant was taken to the hospital for a gynaecological examination on the first and last days of her arrest does not attain the minimum level of severity which amounts to degrading treatment within the meaning of Article 3 of the Convention.

22. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Treatment under police custody

23. The applicant further maintained under Article 3 that she was subjected to various forms of ill-treatment during her custody. In this connection, she alleged that she had been stripped naked, threatened with rape, beaten, hosed with cold water, subjected to electric shocks and hung by her arms.

1. Admissibility

24. The Government asserted that the applicant could not be considered as having exhausted the domestic remedies since she has never filed a formal complaint with the public prosecutor with a view to opening a criminal investigation into her allegations of ill-treatment.

25. The applicant did not make any comments on this point.

26. The Court observes that the applicant has repeatedly brought the substance of her ill-treatment complaint to the attention of the domestic authorities. In this context, the Court observes that on 30 May 1999, before the public prosecutor, the applicant stated that her police statement had been taken under duress. She also stated that she had been hosed with cold water, subjected to electric shocks and Palestinian hanging. Subsequently, on the same day before the investigating judge at the Tokat Magistrate's Court, she

repeated her statement taken by the prosecutor. On 12 August 1999 the applicant sent a letter to the Ankara State Security Court and retracted her statement made to the police, alleging that it was taken under duress. In this letter, she explained in detail the various forms of ill-treatment she had been allegedly subjected to in custody. In particular, she maintained that during her police custody she had been stripped naked, threatened with rape, beaten, hosed with cold water, subjected to electric shocks and hung from her arms. Finally, the applicant repeated her allegations of ill-treatment in her appeal petition dated 4 April 2001.

27. The Court recalls that, pursuant to Article 153 of the Code of Criminal Procedure, 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.

28. Accordingly, in the Court's opinion, the applicant's attempts should have been sufficient to alert the authorities to investigate her complaint and she can therefore be considered to have done all that could be expected of her to exhaust the national channels of redress in this respect (*Örnek and Eren v. Turkey* (dec.), no. 41306/98, 9 January 2003; and *Mahmut Yaşar v. Turkey* (dec.), no. 46412/99, 31 March 2005).

29. Consequently, the Court dismisses this part of the Government's objection.

30. The Government also maintained under Article 35 of the Convention that the application should be rejected for non-compliance with the six months time-limit. In their view, the applicant should have brought her allegation of ill-treatment to the Court within six months from the last day of her police custody.

31. The applicant did not make any comments on this issue.

32. The Court reiterates that where no domestic remedy is available, the six months' time-limit contained in Article 35 § 1 of the Convention in principle runs from the date of the act complained of in the application.

33. However, special considerations could apply in exceptional cases where applicants first avail themselves of a domestic remedy and only at a later stage become aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (*Ülkü Ekinci v. Turkey* (dec.), no. 27602/95, 8 June 1999; and *Gülistan Kaya and Others v. Turkey* (dec.), no. 4451/02, 4 October 2005).

34. In the present case, it appears that the applicant submitted her allegations of ill-treatment during the proceedings before the Ankara State Security Court and the Court of Cassation respectively. The final domestic decision against the applicant was delivered on 25 April 2001 and the applicant lodged her application with the Court on 25 October 2001. In

these circumstances, the Court accepts that the application has been brought within the six-month time-limit. As a result, it rejects this part of the Government's objections.

35. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Allegation concerning ill-treatment under custody

36. The applicant maintained that she had been subjected to ill-treatment during her police custody. In this respect, she maintained that she had been beaten, stripped naked, threatened with rape, hosed with cold water, and hung from her arms. She also stated that electric shocks had been administered on her body.

37. The Government denied these allegations. They submitted that the applicant failed to substantiate her allegations or introduce any evidence in support of her claims that she had been subjected to treatment contrary to Article 3. The Government further stated that the applicant had been examined by a doctor on two occasions; at the beginning and at the end of her police custody and the forensic reports indicated no traces of ill-treatment on her body.

38. While reiterating that Article 3 enshrines one of the most fundamental values of democratic societies, the Court recalls that in assessing evidence in a claim of violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt" (*Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ireland v. the United Kingdom*, cited above, § 161).

39. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

40. In the instant case, the ill-treatment complained of by the applicant consisted of being stripped naked, threatened with rape, beaten, hosed with cold water, subjected to electric shocks and hung by her arms. Nonetheless, a number of elements in the case raise doubts as to whether the applicant

suffered treatment prohibited by Article 3 when she was detained in police custody.

41. The Court observes in the first place that on the day of her arrest at about 5 p.m. the applicant was taken to the Almus State Hospital for a medical examination, where a report was issued. According to this report, the presence of a 0,5x1 cm. abrasion under the right eye, caused as a result of irritation, was noted. Thereafter when the applicant was transferred to the province of Tokat, at about 7.45 p.m. she was taken to the Tokat State Hospital for another examination. The doctor, who examined the applicant, observed that the applicant had a hyperaemia under her right eye and an abrasion on the right side of her nose. Both reports indicated that there were no signs of ill-treatment on her body. In view of the above, the Court concludes that although the presence of lesions on the applicant's face were noted in the medical reports dated 23 May 1999, these reports were drafted on the first day of the applicant's arrest, whereas the applicant's ill-treatment allegations concern the treatment she had been subjected to during the time she spent under police custody. Furthermore, it should be noted that the applicant was further taken to the hospital on 30 May 1999, namely on the last day of her arrest and the medical report prepared at the Tokat State Hospital revealed no traces of ill-treatment on her body (see paragraphs 5-7 above). The Court notes that the applicant has adduced no material which could call into question the findings in that later report and add probative weight to her allegations.

42. In conclusion, since the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to ill-treatment, the Court does not find it proven that there has been a violation of the substantive aspect of Article 3 of the Convention (*Talat Tepe v. Turkey*, no. 31247/96, § 54, 21 December 2004).

(b) Adequacy of the investigation

43. The applicant alleged that the domestic authorities had not carried out an effective investigation into her complaints of ill-treatment. This was disputed by the Government.

44. The Court observes that the essence of the applicant's complaint is that the respondent State failed to conduct a thorough investigation into allegations of ill-treatment. The Court also refers to *İlhan v. Turkey* ([GC], no. 22277/93, §§ 92-93, ECHR 2000-VII), where it held that whether it is appropriate or necessary to find a procedural breach of Article 3 will depend on the circumstances of the particular case.

45. In the light of the foregoing, the Court considers it appropriate to examine these complaints under Article 13 of the Convention, it being understood that, since the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a Government (see *Bati and*

Others v. Turkey, nos. 33097/96 and 57834/00, § 127, ECHR 2004-...); *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2287, § 98; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3291, § 107; and *Büyükdag v. Turkey*, no. 28340/95, § 60, 21 December 2000).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complained that there were no effective remedies in domestic law in respect of her allegations of ill-treatment in breach of Article 13 of the Convention, which reads:

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

47. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (see *Aksoy*, cited above, § 98).

48. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that the applicant had been ill-treated as alleged by police officers. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 3 from being an “arguable” one for the purposes of Article 13 (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998 VI, p. 2442, § 112).

49. The Court notes that the applicant repeatedly submitted her ill-treatment allegations before the national authorities. In this respect, the Court refers to the applicant’s statements taken by the public prosecutor and the investigating judge respectively on 30 May 1999. In her statements, she clearly submitted that she had been hosed with cold water, subjected to electric shocks and Palestinian hanging during her police custody. On 12 August 1999 the applicant sent a letter to the trial court and retracted her statement made to the police, alleging that it was taken under duress. In this letter, she explained in detail the various forms of ill-treatments she had been allegedly subjected to in custody. In particular, she maintained that during her police custody she had been stripped naked, threatened with rape, beaten, hosed with cold water, subjected to electric shocks and hung from her arms. Finally, in her appeal petition submitted to the Court of Cassation on 4 April 2001, the applicant particularly referred to her ill-treatment in custody (see paragraphs 8, 9, 12 and 14 above). As a result, it is clear that

the authorities were aware of the applicant's allegations of ill-treatment in police custody. However no investigation was initiated into these allegations.

50. In the light of the foregoing, the Court considers that the authorities have failed to fulfil their obligation to provide the applicant with an effective remedy concerning her allegations of ill-treatment.

51. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government submitted that this claim was excessive and unacceptable.

55. The Court accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration in the circumstances of the case, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 1,500 for non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed EUR 1,000 for the costs and expenses.

57. The Government contested the applicant's claim under this head.

58. Having regard to the information in its possession and its established case-law, the Court considers it reasonable to award the full sum claimed in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* by a majority the complaint concerning the applicant's allegations of ill-treatment in custody admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been no violation of Article 3 of the Convention as regards the applicant's allegations of ill-treatment under custody;
3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand and five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into New Turkish liras at the rate applicable at the date of settlement
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr J. Hedigan joined by Mr David Thór Björgvinsson is annexed to this judgment.

V.B.
B.M.Z.

PARTLY DISSENTING OPINION OF JUDGE HEDIGAN
JOINED BY JUDGE DAVID THÓR BJÖRGVINSSON

1. I agree with the judgment of the majority of the Court in relation to the finding of no violation of Article 3 of the Convention as regards the applicant's allegation of ill-treatment whilst in custody. I agree further that there was a violation of Article 13 of the Convention in that the authorities failed to fulfil their obligation to provide the applicant with an effective remedy concerning her allegations of ill-treatment.

2. I regret that I cannot however agree with the judgment insofar as it declares inadmissible as manifestly ill-founded that part of the applicant's case in which she complained under Article 3 of twice being taken to the Tokat Maternity Hospital for a gynaecological examination. I note that the Court on the 27th January 2005 decided under Article 29 § 3 of the Convention to examine the merits of the application at the same time as its admissibility.

3. The applicant complained that she had been taken to the hospital twice for a gynaecological examination, which in her view constituted degrading treatment under Article 3 of the Convention, which reads:

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

Admissibility

4. As is noted in the judgment, the Government argued in the first place that the applicant did not have the victim status to bring this complaint before the Court, as the doctors had not performed any gynaecological examination.

The applicant did not comment on this point.

The word “victim”, in the context of Article 34, denotes the person directly affected by the act or omission which is in issue. In the present case, the applicant's complaint concerns the distress she allegedly suffered as a result of the fact that she had been taken to the hospital for gynaecological and rectal examinations on the first and last days of her police custody. In my opinion, whether or not the authorities conducted these medical examinations has no effect on the applicant's victim status. The essence of her complaint is that she was twice taken by the authorities in whose custody she was to the Tokat Maternity Hospital for a gynaecological and

rectal examination with a request to establish her virginity status. There is no dispute on the facts in this regard. I therefore consider that the applicant is a victim of the impugned acts and I would consequently dismiss this part of the Government's objection.

In view of the above, I find that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As is not inadmissible on any other grounds, it must therefore be declared admissible.

Merits

5. The applicant maintained that she had been subjected to inhuman and degrading treatment in breach of Article 3. The Government stated that the purpose of the authorities in taking the applicant to the hospital for a gynaecological examination was to avoid any false accusations of sexual harassment by police officers. In this connection, they maintained that on the day of her arrest the applicant had bitten the hand of one of the officers and then went on a hunger strike to protest against her arrest. They also maintained that she had threatened the officers stating that she would cause big trouble for them.

6. As the Court has repeatedly held, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

7. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67, 68 and 74, ECHR 2001-III; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

8. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with respect

for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

9. Turning to the facts of the present case: on 23 May 1999 the applicant was taken into police custody on suspicion of membership of an illegal organisation. The same day, after being examined at the Tokat State Hospital for signs of ill-treatment, the applicant was sent to the Tokat Maternity Hospital at about 8.10 p.m. for a gynaecological examination with a request to establish her virginity status. As the applicant did not give her consent, the doctor refrained from performing the examination. Thereafter, at 9 p.m., she was taken back to the Tokat State Hospital, this time for a rectal examination. The applicant refused to be examined, and no rectal examination was performed. It is clear from the documents in the case file that the police officers repeated the same procedure on the last day of the applicant's custody on 30 May 1999.

10. I note the Government's contention that the aim of the police, when taking the applicant to the hospital for gynaecological and rectal examinations, was to prevent any false accusations of sexual molestation. However, as stated above, the authorities are under an obligation to respect the human dignity of the persons who are under police custody, and they should refrain from taking any measure which could subject them to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see paragraph 26 above).

11. I note that these reasons submitted by the Government to justify its action in this regard are more narrow than those advanced by them in *Y.F. v. Turkey* (no. 24209/94, ECHR 2003-IX) which also involved the taking by the police authorities of a female detainee to a hospital for a gynaecological examination. In paragraph 38 of that judgment the Government argued, as in this case, that the purpose of the gynaecological examination of female detainees was to avoid false accusations of sexual violence being directed against the security forces. However they further drew attention to what they referred to as the recommendations set out in the report of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Turkey between 27th February and 3rd March 1999 (CPT/INF (2000) 17). They claimed that in its report thereon the CPT emphasized that forensic medical examination of detainees by a doctor was a significant safeguard against sexual violence. They sought to connect this to the practice of sending female detainees for gynaecological examination in order to protect the police against false allegations of sexual assault. I can find in that report no reference to any recommendations such as that contended for by the

Government in *Y.F. v. Turkey*. The only similar reference I could find was at paragraph 19. The report deals there with the medical examination of persons in custody. It welcomes the provision that detainees should be medically examined at the beginning and end of police custody. This reference in the CPT report appears under the heading of “Action to combat torture and ill-treatment”. Nowhere in this report have I found any recommendation made concerning the gynaecological examination of female detainees. In this case however, the Government have relied only upon the narrow ground that such examinations were for the purpose of avoiding false accusations of sexual harassment against the police.

12. In paragraph 20 of the judgment herein, the majority relies upon the judgment in *Y.F. v. Turkey* at paragraph 43 as authority for the proposition that such examination is recognized in the case-law of the Court as a significant safeguard against false accusations of sexual molestation or ill-treatment. It further relies upon the fact that the applicant herein, following her refusal of consent, was not in fact examined. In reliance on these two things, it finds that the practice of taking female detainees for gynaecological examination does not amount to degrading treatment contrary to Article 3. I disagree with this conclusion.

13. In *Y.F. v. Turkey*, the Court actually found a violation of Article 3 but upon the ground that the examination was not done in accordance with law. The reference in paragraph 43 to the Court’s acceptance of the Government’s submission that the medical examination of detainees by a forensic doctor can prove to be a significant safeguard against false accusations of sexual molestation or ill-treatment must therefore be regarded as *obiter dictum*. Even were it not to be so regarded, the acceptance of this principle is very far removed from acceptance that female detainees may as a matter of course be sent for such examination as occurred here or in *Y.F. v. Turkey*. It is undoubtedly the case that such examination may have the effect of helping to prevent or answer false allegations or even sexual assault or molestation. It is nonetheless important to reflect upon the vulnerability of any female detainee in such a situation. In custody, brought to a hospital, it is easy to imagine how even the strongest person’s will might be overborne and consent formally given to that which is entirely repugnant to her. This is in fact what happened in *Y.F. v. Turkey* (see paragraph 34) where the Court held that a person in such a vulnerable situation could not have been expected to resist submitting to such an examination. That the authorities should have such power over a vulnerable detainee cannot be consistent with acceptable standards on the treatment of prisoners nor with the European Convention on Human Rights. Such examination may also result in the revelation of a woman’s sexual history or, at the very least, information about her sexual status which is a matter of the most intimate nature. This indeed was the stated intention of the authorities in this case. Such information in the hands of detaining

authorities seems entirely inappropriate. In this regard, I note that the CPT report cited above at paragraph 19 expresses serious misgivings that under the legal provisions they studied, a copy of the medical report following medical examination would be kept at the detention centre.

14. For these reasons I take the view that nothing in either the case-law of this Court nor anything in the CPT reports supports the proposition that female detainees may be, as a matter of course, sent by the detaining authorities for gynaecological examination for the purposes contended for by the Government.

15. It may well be that a useful purpose could be served by such examination but only where there are procedural safeguards in place to ensure that any consent given is given in circumstances that are demonstrably free of any coercion, intimidation or fear and where the results of such examination remain confidential to the detainee and the medical doctor involved. No such safeguards exist here. Indeed the manner in which the applicant was brought to the hospital and confronted with such an examination was for all practical purposes the same as in *Y.F. v. Turkey*. The fact that the applicant herein did in fact have the strength of character to refuse an examination does not in my view lend this procedure any legitimacy whatever.

16. For these reasons, I am of the view that there has been a violation of Article 3 in that the applicant with regard to being taken for such examination was subjected to treatment that was degrading because it was such as to arouse feelings of fear, anguish and inferiority capable of humiliating and debasing her (*Labita v. Italy*).

17. Had a complaint been made under Article 8 of the Convention, I would have considered the actions of the authorities disproportionate to the aim sought and would have found a violation of that provision.