



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

SECOND SECTION

CASE OF OKKALI v. TURKEY

(Application No. 52067/99)

JUDGMENT
[Extracts]

STRASBOURG

17 October 2006

FINAL

12/02/2007

In the case of Okkālī v. Turkey,

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

Jean-Paul Costa, *President*,

András Baka,

Ireneu Cabral Barreto,

Rıza Türmen,

Mindia Ugrekhelidze,

Antonella Mularoni,

Danutė Jočienė, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 26 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 52067/99) 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, Mr Halil İbrahim Okkalı (“the applicant”), and his parents, Mrs Ayşe Okkalı and Mr Mehmet Yaşar Okkalı, on 22 September 1999.

2. In a letter dated 17 March 2001, the applicant’s parents informed the Court of their withdrawal as applicants.

3. The applicant, who had been granted legal aid, was represented by Mr A. Cangı, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

4. The applicant complained in particular of the *de facto* impunity allegedly enjoyed by the police officers who had ill-treated him when he was 12 years old.

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.

6. On 15 May 2001, by a partial decision, the First Section dismissed the applicant’s complaints under Article 5 of the Convention and decided to communicate the remainder of the application (Articles 3 and 13 of the Convention) to the Government.

7. On 1 November 2001 and 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned first to the newly composed Third Section, then to the likewise newly composed Second Section (Rule 52 § 1).

8. Under the provisions of Article 29 § 3 of the Convention, on 1 March 2005 the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Halil İbrahim Okkalı (“Halil”), was born in 1983 and lives in İzmir. At the material time he was 12 years old and worked as an apprentice in a garage.

1. Halil’s arrest, questioning and hospitalisation

10. On 27 November 1995, at around 5.30 p.m., the applicant was taken to the Çınarlı police station in İzmir by his employer, İ.G., who accused him of stealing 15 million Turkish liras (TRL) –approximately 275 United States dollars (USD) – he had asked him to take to the bank. On returning to the garage he claimed that he had been robbed. According to the police report signed at 6 p.m., the employer filed a complaint against Halil.

11. At the police station the applicant was questioned by Superintendent İ.D. and Officer M.Y.

At 6.30 p.m. the police told the applicant’s father, Mr Mehmet Okkalı (“Mehmet”), what had happened and he went straight to the police station.

12. At 7 p.m. Halil’s father and employer reached an agreement. İ.G. withdrew his complaint, and Mehmet signed the following statement:

“... İ.G. has recovered his money and withdrawn his complaint. I am therefore taking my son from the police station. I have no demand or complaint to make concerning my son. I do not want him to have a medical check-up; my son was well treated at the police station and not ill-treated or tortured ... he was handed over to me in good shape and in good health ...”

13. However, once outside the police station, Mehmet saw his son stagger, totter and vomit twice. Back at home, when Halil was undressed, his parents and the neighbours present saw numerous injuries and bruises on his body. Halil then told his father that he had been beaten by his interrogators. Mehmet took Halil to Tepecik Hospital.

14. Officer İ.A., from the hospital’s police desk, sent him to the casualty department. In a provisional medical report the doctor who examined Halil made the following observations:

“The subject is conscious ... He has 10 x 10 cm bruises on his arms and legs and large bruises (30 x 17 cm) on both buttocks ...”

Halil was admitted to the paediatric ward.

2. Preliminary investigation into Halil's questioning

15. On 28 November 1995 Mehmet returned to the police station to complain about the ill-treatment inflicted on his son and find out who had questioned him. He was given the name of Superintendent İ.D.

16. On the same day Mehmet lodged a complaint against İ.D. and his subordinate officers with the public prosecutor of İzmir ("the prosecutor"). He asked for Halil to be examined by a specialist in forensic medicine.

17. On 30 November 1995 the prosecutor interviewed the applicant, who had been discharged from hospital the previous evening. He stated:

"... at the police station I was beaten by two policemen in the toilets; one was wearing glasses and the other had green eyes. One of them was a superintendent, at least that's what they told me – I wouldn't know the difference. I would recognise the officers who beat me ... Later on ... my father and my uncle sorted things out with my boss and came to fetch me from the police station. On the way home I was sick. Then, when we got home and they undressed me, they saw the truncheon marks and took me to Tepecik Hospital ..."

As his hand had been injured, Halil had to 'sign' the record of his interview with his fingerprint.

18. That same day, at the prosecutor's request, Halil was examined by a doctor from the Forensic Medicine Institute. In his preliminary report the doctor wrote:

"Halil İbrahim Okkalı has been examined. At this time his ... right forearm is immobilised in a plaster cast. He has bruising on the outside of his left arm which is a light violet colour in the middle and pale green round the edges, a pale green bruise on the left elbow, large bruises on both buttocks which are violet in the middle and pale green round the edges, and a pale green bruise on the lower back of the left thigh. It is noted that the subject was admitted to the paediatric ward at Tepecik Hospital, where he received emergency treatment ... for a fractured elbow. The final report will be drawn up on receipt of the hospital diagnosis and treatment report, the X-rays and the radiologist's report ..."

19. On 1 December 1995 the applicant was re-examined by another doctor from the Forensic Medicine Institute, who reviewed the findings in the previous reports and stated:

"Having noted the existence of yellowish bruises measuring 20 x 12 cm on the left buttock, 35 x 25 cm on the right buttock, 12 x 6 cm on the lower back of the left thigh and 8 x 7 cm on the left arm, and [also] a muscle tissue trauma on the left forearm (which has been bandaged with a splint), we conclude that as a result of these injuries, which are not life-threatening, the subject should take ten days off work ..."

20. On 6 December 1995 the prosecutor questioned Superintendent İ.D. Denying the accusations, the superintendent said:

"... I did not beat the complainant. Besides, hardly an hour went by between the time when his employer brought him in and the time when he was released ... I did not

inflict any torture on the complainant. [Yes,] I always wear glasses and it was me who talked to the boy ...”

21. Chief Superintendent A.K. was subsequently appointed reporting officer to assist the prosecutor in investigating the case. On 11 December 1995 İ.D. was brought before Halil, who recognised him. The reporting officer then interviewed Halil, who repeated what he had already said and added that İ.D. and M.Y. had hit him on the hands, “backside” and legs; when he collapsed under the blows, they apparently took him to a cell and threatened to “come back” unless he told them where he had hidden the money.

The reporting officer then questioned İ.D., who gave the following explanation:

“... at 7 p.m. the boy was handed over to his father. According to [the complainant], the boy felt unwell at 9 p.m. and was taken to hospital, where a report was drawn up. This event was broadcast on the television channel Kanal 6. Following that broadcast, I was suspended as of 8 December 1995. Contrary to what the boy and his father say, neither Officer M.Y. nor myself hit [the applicant] with truncheons on the hands, backside or legs. ... He arrived at the police station at 6 p.m. and I stayed with him until he left at 7 p.m. When the boy was brought to the police station his face was dirty ...; Officer M.Y. only took him to the toilets so he could wash his face ... The allegations are false ... we are wrongfully accused ...”

22. On the same day, 11 December 1995, the reporting officer also interviewed Halil’s employer, İ.G., and three officers from Çınarlı police station. İ.G. testified in favour of the accused, stating that on the day of the incident, from 6 to 7 p.m., he had sat with İ.D. and neither İ.D. nor M.Y. had touched Halil during that time. Two of the other police officers questioned said that there had been nothing wrong with the boy when he was handed over to his father, and the third said that he had seen no one ill-treat the boy.

23. On 28 December 1995 the prosecutor showed Halil photographs of the police officers on duty at Çınarlı police station. He identified İ.D. and M.Y.

24. On 4 January 1996 the prosecutor interviewed M.Y., who simply denied the accusations against him. The next day the reporting officer brought M.Y. before Halil, who recognised him. The reporting officer then questioned M.Y., who stated:

“... I was with Superintendent İ.D. at the time; the boy was contradicting himself, he had dust and mud on his face; his [employer] was with him. At the superintendent’s request I took the boy to the toilets to wash his face, then took him back to the main office. Around 7 o’clock we telephoned his father, who came to fetch him. ... Nobody hit the boy; if you ask me, his father ... or someone else angry about losing the 15 million liras probably gave him a good hiding ...”

25. On 8 January 1996 the reporting officer forwarded copies of the reports drawn up in the course of his investigations to the prosecutor; they were included in the prosecution’s case file no. 1995/50365.

26. On 30 January 1996, on receipt of the medical file that had been requested from Tepecik Hospital, the preliminary medical report of 30 November 1995 was finalised. The final report confirmed all the earlier medical findings. It also mentioned other visible marks on Halil's body: bruising on the upper and lower belly, a 4 x 6 cm bruise on the side of the left tibia, a bruise behind the left knee, wide bruises on the knees and the right tibia, and bruising on the left wrist, the right elbow, the back of the right hand, and in the groin area. The report indicated that Halil would probably take twenty-five days to recover.

3. Criminal proceedings against İ.D. and M.Y.

27. On 5 February 1996 the prosecutor indicted Superintendent İ.D. and Officer M.Y. before the second section of the İzmir Assize Court ("the Assize Court") for violation of Article 243 of the Criminal Code (the obtaining of a confession by a public official by means of torture).

28. Proceedings before the Assize Court commenced on 12 February 1996. All the parties attended the hearing on 20 March 1996. Their statements may be summarised as follows.

Superintendent İ.D.:

"... I never left my office at any time; I did not strike the victim at all or order a police officer to hit or maltreat him to make him tell the truth ...; I only asked Officer M.Y. to take him to the washbasin and help him wash his face ... My mistake was not to have had the boy examined by a doctor before handing him over to his father; if I had done that, there would be no case against me ...; the complainant [Halil] said that the money had been taken from him by force, so he might have sustained the injuries at that time ... [Halil] was handed over to his father at 7 p.m., but the medical report was obtained at 9 p.m.; I even thought that the parents might be those [really] responsible for [Halil's] condition, as, if ... he had shown any signs of the injuries described in the report, we would never have let him leave the police station [in such a state] ..."

Officer M.Y.:

"I maintain what I said before [to the reporting officer and the prosecutor] ...; I do not know why the complainant and the victim have made these accusations against us."

Mehmet, the complainant:

"... When I arrived at the police station they had already questioned İ.G. ... and my son. ... Then they brought my son ... who said to İ.G., 'There you are, did you get what you wanted?'; at the time I didn't realise what he meant ...; it didn't register until I got him home and saw the injuries ...; then they took my son to a cell; when I went to the toilet I saw him lying down in the cell and told him to sit up properly, but he said he couldn't ... My son spent three days in intensive care at Tepecik Hospital ...; they told me they had given him nine bottles of serum ..."

Halil, the victim:

"... at the police station that man (*pointing at Superintendent İ.D.*) said, 'Think carefully, you are going to tell me where the money is', then he ... took me into the

toilets and hit me on the hands with a truncheon. At one point I tripped and fell and the dustbin above me fell on my head. While I was down [İ.D. started hitting me]; he put his boot over my mouth to stop me screaming; then he went away saying, 'Think carefully; I'll be back'; but he didn't come back ... Then my father and uncle arrived; ... [my father] saw me in the cell and told me to sit up straight, but I couldn't, because I was sore all over ... The superintendent beat me to find out where the money was ...; M.Y. held me so I couldn't move, but he didn't hit me. ... Neither my employer nor my father or my family beat me for losing the money ..."

29. The applicant's lawyer applied, under Article 365 of the Code of Criminal Procedure, to join the criminal proceedings as a civil party and reserved his rights to compensation. He also filed a list of prosecution witnesses he wished to call. These included the neighbours who had been present when Halil returned from the police station and taken him to the hospital with his family. The court accepted these requests.

30. The trial court also heard evidence from İ.G., who confirmed Superintendent İ.D.'s version of the facts. In addition to what he had told the investigating authorities, the superintendent said that on the day of the incident his colleagues at the police station had called him at around 11 p.m. to tell him that Halil had been admitted to hospital. He had gone to the hospital with another superintendent and other police officers, where he had been insulted by Halil's friends and family, who allegedly even tried to attack him. He said he had not seen the applicant leave the police station with his father and had no idea what had possessed them to accuse the police when the matter had been settled between himself and Mehmet.

Mehmet gave evidence as follows:

"Just before or after the new year someone by the name of Baki, the minister's bodyguard ..., called me to fix an appointment; he turned up at the appointed place, together with Superintendent İ.D. ...; he explained that İ.D.'s wife was pregnant and that if we 'said the right things' in court, his sentence might not be executed for a year, until after the baby had been born. I refused, saying that if he [İ.D.] was so concerned about his unborn baby, how could I be expected not to worry about my own son?"

31. At the hearing on 27 May 1996, the trial court heard three police officers from Çınarlı police station and seven prosecution witnesses. The police officers said that when Mehmet had gone to the police station to pick Halil up he had been asked if he wanted to have the boy examined by a doctor, but he had not deemed it necessary, as his written statement confirmed.

Mehmet replied that there had been no such offer and that he had signed the statement without thinking, as he had been worried about his son's well-being.

32. Most of the prosecution witnesses confirmed the complainant's version of events and the applicant's uncle added:

"... I went to the police station with [Mehmet] ... Halil showed no visible traces of violence but he looked as if he had been [shaken up]; no one suggested that we might

have him examined by a doctor before we left the police station ... We left the station at around 8 p.m. ...; as my nephew was getting into the car, he started to vomit; I went back [to the police station] and spoke to the policeman at the door; he said we could take [Halil] to a doctor ... Even at the police station I had noticed small marks on [Halil's] hands, but I thought nothing of it; I knew 'mishaps' sometimes occurred at police stations, but I certainly didn't expect to see what we [found] when we got home ... The same evening Chief Superintendent O.K. called my brother-in-law to the police station and I went with him. Chief Superintendent O.K. called in İ.D. and said to him, 'Aren't you ashamed of yourself? Brutalising a little boy?'; İ.D. said, 'I have been in the police for ... years and I did my duty; what of it if I did hit him once or twice?'; then the chief superintendent said, 'Let's go to the hospital and see this little boy you say you hit once or twice'. So we went to the hospital together and they saw the victim; he was bleeding "top and bottom", he had a tube in him ..."

33. The defendants İ.D. and M.Y. denied all charges. At the hearing on 1 July 1996, their superior officer, O.K., told the court:

"... I heard about the incident at around 9 p.m., when the boy's family contacted me ...; I brought the parties face to face ..., but when the accused started to deny the accusations in front of [the family] ... I had to send them out of my office before something unpleasant happened; ... to investigate the matter, and at the family's request, I went to the hospital, but without the doctors' authorisation it was not possible for me to see the child, as he was in intensive care ... Back at the police station I questioned all the police officers on duty, who all maintained that they had seen nothing and knew nothing ... I went to see the victim once at his home. ... [Apart from that], the defendant İ.D. never went with me to the hospital. When I brought the parties together face to face, the only thing İ.D. said was that he had done his duty ..."

34. After the next hearing, on 30 October 1996, the Assize Court pronounced judgment. It began by announcing its conviction that

"... having regard to all the evidence, including the reports in the case file, the statements made by the victim and the reports concerning the complaint, the accused did beat the victim in the course of their duty in the manner described in the [medical] report, to make him say where he had hidden the money ..."

35. However, the Assize Court decided, by a majority, to reclassify the offence as "assault and ill-treatment", as defined in Article 245 of the Criminal Code, rather than the verdict requested by the prosecution. The court based its decision on the fact that Halil's employer had withdrawn his complaint; he was therefore not accused of any crime and so it could not have been the defendants' intention "to obtain a confession" within the meaning of Article 243, but rather simply "to find out what had happened to the money placed in his care".

36. The Assize Court decided to apply the minimum penalty and sentenced İ.D. and M.Y. to three months' imprisonment and a three-month suspension from duty. Taking into account the defendants' good behaviour during the trial and considering that they had confessed, albeit reluctantly, the Assize Court reduced the sentences to two months and two weeks, in conformity with Article 59 § 2 of the Criminal Code. Then, by virtue of sections 4(1) and 6(1) of Law no. 647, it commuted the prison sentences to

finer of TRL 750,000 (about USD 8), then ordered a stay of execution as the defendants had no criminal record and the judges were convinced that they would not reoffend.

37. The applicant's counsel appealed against the judgment on various points of law, including violation of Article 3 of the Convention.

38. By a decision of 5 November 1997, the Court of Cassation admitted the appeal and set aside the impugned judgment for misclassification of the offence, which the higher court considered amounted to extortion of a confession as defined in Article 243 of the Criminal Code. The case was accordingly referred back to the Assize Court.

In his written pleadings dated 25 February 1998, İ.D. submitted:

"I maintain my previous submissions to the Assize Court and declare that I did not commit the offence of which I am accused; I did not subject the complainant to any violence or ill-treatment. I accordingly ask the Court to acquit me. In the alternative, and without admitting to any guilt, I beg the Court to uphold its initial classification if it decides to convict me, as the facts that constitute the offence defined in Article 243 of the Criminal Code have not been established in the present case ..."

39. On 26 February 1998, after re-examining the case, the Assize Court complied with the decision of the higher court and convicted İ.D. and M.Y. of contravening Article 243 of the Criminal Code and, once again, sentenced them to the minimum penalties: one year's imprisonment, enforceable immediately, and three months' suspension from duty. These sentences were subsequently reduced to ten months' imprisonment and two and a half months' suspension from duty, under Article 59 § 2 of the Criminal Code. Then, for the reasons stated in the judgment of 30 October 1996, the sentences were suspended under section 6 of Law no. 647.

40. The applicant's lawyer again appealed to the Court of Cassation to set aside this judgment. Deploring that the defendants had been given the benefit of Article 59 § 2 of the Criminal Code and section 6 of Law no. 647, he submitted, in particular:

"As to the application of the minimum penalty: ... on 27 November 1995, under suspicion of theft and misappropriation, the victim ... was taken to the police station, where he was beaten with a truncheon and kicked ... by police officers in an attempt to extort a confession ... The victim was 12 years old when he was subjected to this torture. When a child that age is tortured he suffers not only physical pain but also irreversible psychological damage that can affect his whole future ... Defendant İ.D., who was a superintendent at the material time and is [now] a chief superintendent, was a public official acting as the officer in charge. It was his duty not only to abide by the law but also to make sure the men under his orders did so ... The sentences handed down ... against the defendants are manifestly contrary to the public interest which underlies Article 243 of the Criminal Code. They are likely to undermine society's confidence in the forces of law and order ...

As to the application of Article 59 § 2 of the Criminal Code: ... as mentioned above, the offence in issue here is generally considered to be one of the most serious. The [Court's] view that the defendants felt remorse is unsubstantiated. Throughout the trial they constantly denied the charges; they even went as far as to suggest that the victim

might have been beaten by [his parents]. It is inadmissible that someone who denies the charges should be considered to regret their misconduct ...

As to the suspension of the sentences: ... the enclosed newspaper article reveals that defendant İ.D. had previously been tried for assault on two people and abuse of office ... Even though he was acquitted for lack of evidence, it shows the defendant's propensity to commit such offences ...”

41. In a judgment of 24 March 1999, the Court of Cassation upheld the judgment of 26 February 1998, without replying to the above points of law. As the applicant's counsel was not notified of this judgment, he did not become aware of it until 6 September 1999.

4. The action for damages against the administration

42. On 10 September 1999 the applicant's lawyer claimed TRL 3 billion from the Ministry of the Interior in respect of non-pecuniary damage. When the Ministry refused to entertain the claim, the family lodged a claim for damages against the Ministry with the İzmir Administrative Court (“the court”) on 22 November 1999.

43. In a judgment of 11 April 2000, the court dismissed the claim as being time-barred under section 13 of Law no. 2577 (see paragraph 51 below). As the starting-point of the one-year limitation period provided for in that law, the court took the date on which the applicant had obtained the medical certificate, that is, 30 January 1996, explaining that the subsequent criminal conviction of the police officers responsible had no bearing on the calculation of the time-limit.

44. The applicant's lawyer appealed to the Supreme Administrative Court. In a judgment of 12 December 2001, the Supreme Administrative Court dismissed the appeal and upheld the judgment of 11 April 2000.

45. The lawyer then applied for rectification of the judgment, arguing, *inter alia*, that the way in which the limitation rule for actions against administrative acts had been interpreted and applied in this case was at variance both with administrative law and with international legislation on the prevention of ill-treatment, in so far as the treatment to which the applicant had been subjected amounted not to any ordinary administrative act but to torture. He submitted that the period during which his client was entitled to sue for damages had not started until the day he had been informed of the final conviction decision, namely, 6 September 1999, the date on which the criminal nature of the impugned act had been finally established.

46. In a final judgment of 7 March 2005, the Supreme Administrative Court confirmed the judgment of 12 December 2001 by a majority of three judges to two.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Criminal law

47. The relevant provisions of the Criminal Code are as follows.

Article 243 § 1

“Any public servant ... who inflicts torture or cruel, inhuman or degrading treatment on accused parties to make them confess their crimes shall be sentenced to up to five years’ imprisonment and temporarily or permanently barred from public service.”

Article 13 § 2

“Prison sentences:

Life imprisonment shall mean imprisonment until death. Unless explicitly provided otherwise [herein], other immediately enforceable prison sentences shall range from one to twenty-four years.”

Article 245

“Any law-enforcement officer ... who, in the course of duty ... and in circumstances other than those prescribed by law ..., ill-treats, injures or strikes a person or does them bodily harm shall be sentenced to between three months’ and three years’ imprisonment and temporarily barred from public service. ...”

Article 29 § 8

“The judge has full discretion to determine the principal sentence, which can vary between a minimum and a maximum, taking account of factors such as the circumstances in which the offence was committed, the means used to commit it, the importance and seriousness of the offence, the time and place at which it was committed, the various special features of the offence, the seriousness of the damage caused and the risk [incurred], the degree of [criminal] intent ..., the reasons and motives for the offence, the aim, the criminal record, the personal and social status of the perpetrator and his conduct following the act [committed]. Even if the minimum sentence is imposed, the reasons for that choice must be stated in the judgment.”

Article 59

“If the court considers that there are mitigating circumstances other than those prescribed by law ..., the death penalty shall be commuted to life imprisonment, and life imprisonment to thirty years.

Other penalties shall be reduced by a maximum of one-sixth.”

48. Sections 19 and 41 of Law no. 2253, establishing youth courts and regulating their jurisdiction and the procedure before them, cover the preliminary investigation of juvenile delinquency.

Section 41

“The term minor, for the purposes of this law, shall mean persons under 15 years of age at the time when the offence was committed.”

Section 19(1)

“The preliminary investigation of offences committed by minors shall be carried out by the public prosecutor in person or by a deputy appointed by him.”

Article 138 of the Code of Criminal Procedure as it stood at the material time stipulated that, from the time of their arrest, minors should have the assistance of an officially assigned counsel without having to ask for it.

49. Sections 4(1) and 6(1) of Law no. 647 on the execution of sentences read as follows:

Section 4(1)

“Short custodial sentences which do not have to be served immediately may, depending on the personality and situation of the defendant and the circumstances in which the offence was committed, be commuted by the court:

(1) to a heavy fine ... of 5,000 to 10,000 Turkish liras per day;”

Section 6(1)

“The court may decide to suspend the execution of a fine and/or a prison sentence of up to one year ... if it is convinced, taking into account the offender’s criminal record and potential to commit crime, that there is little risk of any further offence being committed, and provided that the offender has never been sentenced to anything other than a fine. The reasons for suspending the sentence must be stated in the decision.”

50. Regulation 8, paragraph 39, of the disciplinary regulations of the security forces stipulates:

“The following acts, actions and conduct shall be punished by expulsion from the public service:

...

39. Inflicting torture on any person ... on police premises;”

2. Administrative and civil remedies

51. Section 13 of Law no. 2577 states:

“Before initiating administrative proceedings, people whose rights have been violated as a result of administrative acts shall submit a claim for damages to the administrative authority concerned within one year of the date on which they received notification of the impugned act, in writing or otherwise, and, in any event, within five years of the impugned act. An administrative action may be brought if that claim is rejected, in whole or in part, by the administration. The time-limit for such administrative action shall be calculated from the day after notification of the claim’s rejection was received or, if the claimant has received no reply, from the expiry of the sixty-day period the administration has in which to reply.”

52. Under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages (Articles 41-46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal court on the issue of the defendant’s guilt (Article 53).

3. The notion of a “qualified confession” and judicial practice concerning the application of minimum sentences

53. In Turkish criminal-law practice a confession is said to be “*tevilli*” (“qualified”, a confession of a complex type) when the person confessing to the offence simultaneously invokes circumstances that may be considered to exonerate them or mitigate their guilt: examples are self-defence in a murder case, or something that cancels liability in a criminal case, such as having paid the price for the object one is accused of stealing. Such confessions are considered to be divisible, so the courts may distinguish between the part of the confession acknowledging the offence and the part explaining why it was committed, and choose to admit only the confession, not the reasons given.

At the Court’s request, the Government supplied the following information concerning the practical interpretation in criminal law of the legal definition of the *tevilli* confession, which they translate as “tacit” confession:

“... The court must decide in what circumstances the offence may be attributed to a person who clearly denies all the charges. In criminal law the trial court may base its judgment on the incriminating evidence and convict a defendant who denies everything if there is a body of consistent evidence pointing ‘beyond reasonable doubt’ to his guilt. When the court evaluates the evidence, if the defendant cannot prove that he was not at the place where the offence was committed on the material date and at the material time and, according to the evidence in the case file, the offence could not have been committed by anyone else, the court may [find] the defendant guilty.”

As to judicial practice in respect of the application of minimum sentences, the Government were unable to present examples, as requested by the Court, of judgments explaining why the criminal-court judge had imposed a sentence heavier than the minimum prescribed by law. They simply explained that the courts had a certain discretion when it came to

passing sentence between the upper and lower limits, the aim being to prevent repeat offences.

THE LAW

I. SCOPE OF THE CASE

54. The applicant complained of the impunity his torturers had allegedly enjoyed following a trial he claimed itself violated the essence of the right enshrined in Article 3 of the Convention. In connection with the same complaint, the applicant also relied on Article 13 of the Convention, while explaining that the main aim of the remedies he sought at the national level had not been to obtain damages but to establish the criminal and administrative responsibilities for what had happened. The Court considers that the complaint, as presented by the applicant, concerns the positive obligation under Article 3 of the Convention to protect people's physical and psychological integrity through the law (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 95, ECHR 2004-XII). Article 3 reads:

Article 3

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

55. The Government pleaded non-exhaustion of domestic remedies and submitted that a civil action for damages under the Code of Obligations would have given the applicant the possibility of obtaining redress for the detriment complained of before the civil courts, which were not, in principle, bound by the findings of the criminal court as to the defendants' guilt (see paragraph 52 above).

56. The applicant did not deny that, in theory, he could have filed a civil claim for damages, in addition to the administrative remedy he had attempted, which had been declared inadmissible because of the allegedly arbitrary interpretation by the administrative court of the relevant limitation period. He further maintained that the trauma he had suffered in police

custody and the knowledge that those responsible were still in service had discouraged him from filing a civil action. He emphasised that the possibility of claiming compensation for the acts of torture represented only a part, and by no means the most important part, of the measures needed to remedy the violation deriving from these acts.

57. The Court observes in the first place that the only remedies Article 35 of the Convention requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see, *mutatis mutandis*, *Manoussakis and Others v. Greece*, 26 September 1996, § 33, *Reports of Judgments and Decisions* 1996-IV).

58. It takes note of the applicant's argument concerning the importance and relevance of compensation for acts of torture. It accepts that argument and refers to its established case-law according to which the obligations of the State under Article 3 cannot be satisfied merely by awarding damages (see, *inter alia*, *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I, and *McKerr v. the United Kingdom*, no. 28883/95, § 121, ECHR 2001-III). For complaints about treatment suffered in police custody, criminal proceedings are the proper means of obtaining redress (see, for example, *Parlak and Others v. Turkey* (dec.), nos. 24942/94, 24943/94 and 25125/94, 9 January 2001).

59. In the present case the Court notes that a criminal action was brought and led to the conviction of two police officers for ill-treatment within the meaning of Article 243 of the Turkish Criminal Code (see paragraph 47 above). Indeed, it was subsequent to that conviction that the applicant filed an administrative claim for damages, which was rejected as time-barred. The Court must now, therefore, ascertain whether, in the particular circumstances of the case, the applicant should also have exhausted the civil action for damages the Government mention.

60. The Court observes that this question cannot be answered without first examining the allegation that the administrative court's interpretation of the limitation period was arbitrary (see paragraph 56 above), as an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

61. Having said that, the Court will focus on the real subject of the complaint (see paragraph 54 above), which concerns the positive obligation to protect people's physical and psychological integrity through the law and is not limited to ill-treatment as such.

The Court considers that the Government's preliminary objection of non-exhaustion is closely linked to the substance of the complaint and decides accordingly to join it to the merits.

B. Merits

1. The parties' submissions

62. The Government maintained that the criminal proceedings that led to the conviction of the police officers had fully met the requirements of the Convention: the material and medical evidence had been collected promptly and witnesses' statements taken without delay; the prosecuting authorities had charged two police officers although the complaint had been filed against only one; and the trial court had given the applicant's father leave to intervene actively in the proceedings as a civil party, accepted all his requests and heard the witnesses he had asked to be called. Furthermore, after re-examining the case in conformity with the appeal judgment, it had found that there had indeed been extortion of a confession under torture and imposed a heavier sentence on the police officers concerned.

63. On the matter of the impugned finding of the trial court as regards the "qualified confessions", the Government pointed out that this was a case of the application of a principle of criminal law: in spite of the police officers' persistent denial of the charges, the Assize Court had considered that in the absence of evidence to the contrary the content of the file was sufficient to establish that the bruises found on the applicant's person had been inflicted at the police station, which was why it had been able to find the defendants guilty.

The Government explained that the reason the judges had imposed the minimum sentence provided for under Article 243 of the Criminal Code was that they had used their discretion and considered that there was no risk of the police officers concerned committing another offence.

Finally, the Government pointed out that the officers had been temporarily suspended from their duties the day after the police investigation was opened. Considering that a criminal conviction far outweighed a disciplinary sanction, they considered that the Court should not attach too much importance to the lack of such a sanction.

In short, the Government considered that, as the applicant's case had led to the identification and punishment of those responsible, Turkey had discharged the positive obligations imposed by Article 3 of the Convention.

64. In support of his allegations that the police officers who had tortured him had, to all intents and purposes, gone unpunished, the applicant explained that it had been agreed that if they committed no offences within five years of their conviction, the sentences pronounced against them would never be enforced. He submitted, as a victim, that a severe disciplinary sanction would have given him much more satisfaction.

The applicant concluded that the derisory nature of the sentences handed down, the lack of any administrative sanction in spite of the disciplinary regulations of the service concerned, and the promotion awarded to one of

the defendants while the case was still pending were all factors which had made the protection intended to be provided by the general prohibition of ill-treatment illusory, and therefore constituted a violation of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

65. According to the Court's established case-law, when an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of agents of the State, it is the duty of the national authorities to carry out "an effective official investigation" capable of establishing the facts and identifying and punishing those responsible (see *Slimani v. France*, no. 57671/00, §§ 30 and 31, ECHR 2004-IX, and *Asenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). What is more, the procedural requirements of Article 3 go beyond the preliminary investigation stage when, as in this case, the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 3. This means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 96).

66. In this particular case the Court's task is thus to ascertain to what extent the courts, before reaching a conclusion, may be considered to have submitted the case before them to the scrupulous examination required by Article 3, in order to maintain the deterrent power of the judicial system and the important role it plays in upholding the prohibition of torture.

(b) Application in the instant case of the foregoing principles

67. The Court notes first of all that it is not disputed that the applicant suffered ill-treatment at the hands of the police. The applicant brought two actions, criminal proceedings with an intervening party, and an administrative action. The former led to the conviction of the defendants and the latter was declared inadmissible as time-barred.

68. The Court considers that rather than determining whether there was a preliminary investigation that fully met all the procedural requirements – which it seems there was – it should consider whether the judicial authorities, the custodians of the laws designed to protect people's physical and psychological integrity, actually showed determination to punish those responsible (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 115).

(i) *The lack of the additional protection to which the applicant should have been entitled as a minor*

69. The Court notes first of all that, in spite of the legal obligations incumbent on the authorities when young offenders are arrested (see paragraph 48 above), when arrested the applicant was neither assigned a lawyer nor questioned by the public prosecutor. Even though the applicant was at the police station for a relatively short period of time – about an hour and a half from his arrest as a suspect to his eventual release, free of all charges – that does not explain the failure to discharge the aforementioned legal obligations, particularly as there is no mention in the case file of any obligation to inform the parents immediately when a minor is arrested, before taking any police action.

70. The Court notes with regret that the domestic decisions and the Government's observations make no mention of the particular seriousness of the impugned acts, considering the victim's age, or of any domestic provisions relating to the protection of minors.

In the light of the Court's case-law according to which children, who are particularly vulnerable to various forms of violence, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, *inter alia*, *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI), the authorities could have been expected to lend a certain weight to the question of the applicant's vulnerability.

The Court observes, however, that not only was concern to provide extra protection to the minor in question sorely lacking throughout the proceedings, but the impunity which ensued was enough to shed doubt on the ability of the judicial machinery set in motion in this case to produce a sufficiently deterrent effect to protect anybody at all, minor or otherwise, from breaches of the absolute prohibition enshrined in Article 3.

(ii) *The interpretation and application of domestic law, which resulted in the de facto impunity of the police officers responsible*

71. With regard to the disciplinary aspect of the case, the Government maintained that the police officers concerned had been suspended from duty during the criminal trial, but submitted no document attesting to their suspension. Even assuming that they were suspended, it remains the fact that no disciplinary proceedings were ever taken against the officers or disciplinary penalties imposed on them, although the sentences pronounced against them comprised not only imprisonment but also disciplinary measures of suspension from duty. According to the applicant, one of the officers concerned was even promoted; the Government's observations are silent on this subject. The Court does not wish to draw any decisive conclusion from this silence, but nevertheless considers it noteworthy.

72. Furthermore, the trial court judges viewed the police officers' behaviour during the trial and their "qualified confessions" (*tevilli ikrar*) as mitigating circumstances. However, the Court observes that there is no evidence in the file that the defendants acknowledged their guilt, even implicitly. It notes, for example, that in his written pleadings of 25 February 1998 Superintendent İ.D. clearly states that he definitely did not commit the offence concerned or inflict any other violence on the applicant. What is more, the Government were unable to explain why the notion of "qualified confession" had been applied as it had in the impugned judgment. In fact, the way in which it was applied does not seem to correspond at all to the definition of this notion found in Turkish legal theory. Having noted this apparent discrepancy, the Court will dwell no further on the question of the definition of this mitigating circumstance.

73. As to the severity of the sentences pronounced, it can only be said that, in sentencing the police officers to the minimum penalties, the courts overlooked a number of factors – such as the particular nature of the offence and the gravity of the damage done – which they should have taken into account under Turkish law.

74. Finally, the Court notes the strange claim of the courts that the police officers concerned should be considered to have shown "remorse", which element was used to explain the suspension of sentence they were granted. The Court sees no sign of such remorse in the case file.

75. In view of the above, the Court considers that the impugned court decision suggests that the judges exercised their discretion more in order to minimise the consequences of an extremely serious unlawful act than to show that such acts could in no way be tolerated (see paragraph 65 above).

76. The Court reaffirms that, when an agent of the State is accused of crimes that violate Article 3, the criminal proceedings and sentencing must not be time-barred and the granting of an amnesty or pardon should not be permissible (see, *mutatis mutandis*, *Abdülşamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; compare *Dujardin and Others v. France*, no. 16734/90, Commission decision of 2 September 1991, Decisions and Reports 72, p. 236).

The way in which domestic law was applied in this case (see paragraphs 71-74 above) undeniably falls into the category of the "measures" which are unacceptable according to the Court's case-law, as its effect was to render a conviction ineffective.

77. However, the possibility exists that a higher or the highest tribunal may, in some circumstances, make reparation for an initial violation of one of the Convention's provisions (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86, and, *mutatis mutandis*, *De Haan v. the Netherlands*, 26 August 1997, § 54, Reports 1997-IV). In the present case, however, the Court of Cassation failed to do so and therefore did not remedy the above-mentioned defects.

78. Consequently, the Court finds that, far from being rigorous, the criminal-law system as applied in this case was not sufficiently dissuasive to prevent effectively illegal acts of the type complained of by the applicant. In the particular circumstances of the case, the Court thus arrives at the conclusion that the outcome of the disputed criminal proceedings did not afford appropriate redress for the infringement of the principle enshrined in Article 3. It agrees that no civil action could have remedied the situation described above. The Court accordingly dismisses the Government's preliminary objection and finds that there has been a violation of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 40,000 euros (EUR) for himself, plus EUR 10,000 for each of his parents, Ayşe Okkalı and Mehmet Yaşar Okkalı.

81. The Government considered these amounts excessive.

82. The Court observes first that in his letter of 17 March 2001 the applicant's lawyer informed it of the parents' withdrawal from the case (see paragraph 2 above). They cannot, therefore, be considered parties to the case or, as a result, claim any just satisfaction under Article 41 of the Convention.

As for the applicant, the Court considers that the criminal conviction of the police officers was no doubt some satisfaction in itself. However, it cannot be considered sufficient to repair the non-pecuniary damage suffered by the applicant, who was a child at the material time. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection and *dismisses* it;

2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable on the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

...

Done in French, and notified in writing on 17 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Jean-Paul Costa
President