



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

FOURTH SECTION

**CASE OF KURNAZ AND OTHERS v. TURKEY**

*(Application no. 36672/97)*

JUDGMENT

STRASBOURG

24 July 2007

**FINAL**

*24/10/2007*

*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 Kurnaz and Others v. Turkey,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMESEN,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 3 July 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 36672/97) 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 a Turkish national, Mr Mehmet Kurnaz on 10 May 1997.

2. By a letter of 24 June 1998, the Registry was informed of the death of Mr Mehmet Kurnaz on 22 December 1997. His parents, Mr Ömer Kurnaz and Mrs Ayşe Kurnaz, and his brothers and sister, Mr Mustafa Kurnaz, Mr Osman Kurnaz and Mrs Kamile Kurnaz Savlı declared their intention to pursue the application ("the applicants").

3. The applicants were represented by Mr Ç. Manav, Mr S. Özden, Mr Y. Erbay, lawyers practising in Antalya and Mrs Ş. Akkaya and Mr T. Akkaya, lawyers practising in İzmir. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

4. The applicants alleged that Mehmet Kurnaz had been subjected to ill-treatment while he was held in detention, that the authorities were responsible for his subsequent death and that he had been denied an effective domestic remedy. They alleged a violation of Articles 2, 3 and 13 of the Convention.

5. 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).

6. The application was allocated to the Fourth 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.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

8. By a decision of 7 December 2004 the Court declared the application admissible.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The application was initially introduced by Mehmet Kurnaz who was born in 1956 and was living in Antalya. Following his death on 22 December 1997, his parents, brothers and sister (hereinafter: “the applicants”) expressed their intention to pursue the application on 30 June 1998. The applicants were born in 1927, 1929, 1954, 1950 and 1958 respectively and live in Antalya.

#### A. Background

10. Mehmet Kurnaz was a member of the United Socialist Party (*Birleşik Sosyalist Partisi*) at the time of the events in question. The applicants claimed that he was in poor health as a result of the ill-treatment he had received during his previous periods of police custody.

11. Between 22 May and 19 June 1986 Mehmet Kurnaz was treated at the Faculty of Medicine of Ege University (hereinafter: “Ege Hospital”) for pain in his left leg. The doctors noted that he suffered from an obstruction of the popliteal artery in his left leg and that this could have resulted from an application of pressure to the leg.

12. On 12 February 1987 Mehmet Kurnaz was diagnosed as suffering from Buerger’s disease. On 16 February 1987 he was operated on (femorotibial posterior bypass) at Ege Hospital.

13. On 21 August 1995 Mehmet Kurnaz applied to the İzmir branch of the Human Rights Association of Turkey for treatment. The medical report issued in respect of Mehmet Kurnaz noted that he suffered from Leriche syndrome, chronic renal insufficiency and hypertensive heart disease. It was recommended that Mehmet Kurnaz immediately begin medical treatment, preferably while interned at a hospital, and that he remain in a stress-free and calm environment. In this same report it was also mentioned that Mehmet Kurnaz had stated that he had been subjected to various types of

ill-treatment during his six periods of detention in custody between the years 1973 and 1982. As regards Mehmet Kurnaz's medical history, it was noted that he suffered from popliteal artery thrombosis and as a result had undergone bypass operations in 1985 and 1986. In 1994 Mehmet Kurnaz was diagnosed as suffering from chronic renal insufficiency. His medical history also referred to the fact that he had smoked a packet of cigarettes a day over twenty years.

**B. The incident in Buca prison and the investigation instigated by the authorities into the circumstances surrounding the incident**

14. On 1 September 1995 Mehmet Kurnaz was remanded in custody. On the same day he was brought before the Antalya Forensic Medicine Institute for a medical examination. The doctor noted that there were no physical signs of ill-treatment on the applicant's body.

15. On 11 September 1995 he was transferred to Buca prison.

16. On 21 September 1995 Mehmet Kurnaz was wounded with a blow to his head during a prison riot and was hospitalised for treatment. The applicants claim that he was deliberately attacked by prison officers and gendarmes. The Government deny this.

17. On 21 September 1995, at around 16.25 p.m., Mehmet Kurnaz was admitted to İzmir Atatürk State Hospital. According to the provisional medical report issued the same day, he had sustained facial trauma, ecchimoses and oedema and in particular had a cut of 4 cm on his left frontal lobe and 5 cm on his left parietal lobe.

18. Mehmet Kurnaz remained in hospital until 25 October 1995. The applicants alleged that he had been chained to his bed during this time.

19. According to the investigation conducted by three public prosecutors at the İzmir prosecutor's office (hereinafter: "the prosecutors"), the events had unfolded as follows; detainees awaiting trial for alleged membership of an illegal armed organisation or accused of aiding and abetting that organisation, namely the DHKP/C (Turkish People's Liberation Party/Front) were held together in dormitory no. 6. They made a certain number of demands. When these demands were not met, they refused to be counted by prison officers. The detainees failed to comply despite warnings and as a result gendarmeries were enlisted to enter dormitory no. 6 by force. The detainees piled metal cupboards against the steel door and the gendarmes had to use welders to force their entry into the dormitory. Once inside, the gendarmes used tear and smoke gas and pressurised water to quell the detainees who broke windows and started a fire. The detainees attacked the gendarmes with metal door handles. During the intervention, fifteen gendarmes were injured in varying degrees by a sharp object. Forty detainees, including Mehmet Kurnaz, were injured in various ways and three detainees subsequently died.

20. On 12 October 1995 the prosecutors decided not to prosecute the prison officers due to a lack of evidence. They submitted, in particular, that it was established that only gendarmes had entered the dormitories and used force and that there was no evidence to show that prison officers had intervened in the riot or ill-treated the detainees. As regards the gendarmes, the prosecutors gave a decision of incompetence *ratione materiae* and transferred the investigation file to the İzmir Governor's Office.

21. On the same day, the prosecutors filed a joint bill of indictment against the detainees, including Mehmet Kurnaz, accusing them of rioting. The charges were brought under Article 304 of the Criminal Code. The indictment refers to a number of documents, which are not included in the case file, including photographs and statements of the detainees.

22. Meanwhile, on an unspecified date, criminal proceedings had commenced against the applicant before the İzmir State Security Court. He was accused of membership of an illegal organisation. In a hearing held on 25 October 1995 Mehmet Kurnaz was brought before the İzmir State Security Court with the help of gendarmes as he was unable to stand or to walk. The court ordered his release pending trial.

23. Upon his release, Mehmet Kurnaz was examined by a doctor who noted coloured lesions of various shapes and sizes and bruises on his body. The doctor also noted that Mehmet Kurnaz was unable to respond to questions and that his face was swollen. It is to be noted that these findings are typewritten and do not bear the signature of the doctor concerned.

24. On 10 November 1995 Mehmet Kurnaz's lawyers filed a petition with the court complaining about the extensive injuries sustained by him at Buca prison.

25. On 2 August 1996 the public prosecutor at the İzmir public prosecutor's office decided not to investigate Mehmet Kurnaz's allegations of ill-treatment on the ground that there was already a decision of non-prosecution against the prison officers in respect of the same event and that the case file against the gendarmes was before the İzmir Governor's Office. Mehmet Kurnaz's objection against this decision was dismissed by the İzmir Assize Court on 31 October 1996. He was notified of the dismissal on 14 November 1996.

### C. Subsequent events

26. According to the supervision notes (*Gözlem Kağıdı*) of Dr Aktekin at Akdeniz University Hospital (hereinafter: "Akdeniz hospital"), dated 22 January 1996, Mehmet Kurnaz complained of loss of feeling and numbness in his legs and that he had difficulty walking. She noted that Mehmet Kurnaz suffered from memory loss and that his CAT scan results revealed inflammation on his left temporal lobe. She considered these findings to be the result of the head injury received by Mehmet Kurnaz.

27. On 24 January 1996 the Antalya Assize Court, acting as proxy, requested the Forensic Medicine Institute to assess whether Mehmet Kurnaz could give a statement before the court. The Forensic Medicine Institute, relying on the medical reports issued in respect of the applicant at Akdeniz hospital, submitted that until the completion of his medical treatment, Mehmet Kurnaz's state of health would not allow him to give a statement.

28. Between 29 February and 7 March 1996 Mehmet Kurnaz was hospitalised at Akdeniz hospital for medical supervision of his chronic renal insufficiency and hypertension.

29. Between 16 April and 26 April 1996 Mehmet Kurnaz was hospitalised at Akdeniz hospital so that an AV fistula (vascular access for haemodialysis) could be performed on him in order to prepare him for haemodialysis treatment.

30. On 2 May 1996 Mehmet Kurnaz commenced haemodialysis treatment twice a week at Akdeniz hospital.

31. Between 6 June and 11 June 1996 Mehmet Kurnaz was hospitalised at Akdeniz hospital on the ground that he had an infection in his subclavian vein as a result of the AV fistula.

32. On 22 October 1996 İzmir State Security Court acquitted Mehmet Kurnaz of the charges against him.

33. According to the medical report of Akdeniz hospital, dated 4 February 1997, Mehmet Kurnaz had widespread hyperplastic arteriosclerosis, serious aorta iliac arteriosclerosis and obstruction as well as widespread atrophy and infarct in the brain. Therefore renal transplantation was not possible.

34. On 22 December 1997 Mehmet Kurnaz died of renal insufficiency.

35. The criminal proceedings against the prisoners were suspended pursuant to Law no. 4616 on Conditional Release, Deferral of Procedure and Punishments on 25 December 2000.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

36. A description of the relevant domestic law at the material time can be found in *Gömi and Others v. Turkey*, no. 35962/97, §§ 42-45, 21 December 2006.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

37. The applicants held the State responsible for Mehmet Kurnaz's death as they considered that his health had deteriorated significantly after the ill-treatment he had received in Buca prison. They invoked Article 2 of the Convention, which provides, insofar as relevant, as follows:

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

38. The Government disputed the applicants' arguments. Relying on the medical reports contained in the case file, the Government maintained that Mehmet Kurnaz had died - two years after the events complained of - from a condition unrelated to the injuries sustained during the prison riot.

39. The applicants maintained that Mehmet Kurnaz's death was the result of a complex process arising from the ill-treatment he had received in prison and the lengthy treatments he had to undergo upon his release. They insisted that there had been a deliberate attack on Mehmet Kurnaz's life by the prison authorities and that it was not possible for him to have participated in a riot which took place on the day of his arrival. They claimed that, following the authorities' attack on the detainees, Mehmet Kurnaz was left to die in prison. The applicants complained that, despite the fact that Mehmet Kurnaz had never been convicted, he had been consistently placed in detention on account of his criminal record which had been unlawfully compiled. They alleged that Mehmet Kurnaz had been ill-treated in custody, had been hit on the head by gendarmes with a metal handle and had been chained to the hospital bed during his treatment there. The applicants pointed out that, following his release, Mehmet Kurnaz had to be treated with haemodialysis until the end of his life. They submitted photographs of Mehmet Kurnaz allegedly taken after he was released from custody.

40. The Court reiterates the basic principles laid down in its judgments concerning Article 2 (see, in particular, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147, *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII, *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III, and *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI). It will examine the present case in the light of these principles.

41. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt” (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted

presumptions of fact (see, among many others, *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 100, 26 July 2005).

42. Moreover, the Court considers that it is only in exceptional circumstances that physical ill-treatment inflicted by State officials which does not result in death may disclose a violation of Article 2 of the Convention (see *İlhan v. Turkey* [GC], no. 22277/93, § 76, ECHR 2000-VII).

43. In the instant case, there is no dispute between the parties as to the cause of death of Mehmet Kurnaz. What is in dispute, however, is whether or not the national authorities can be held responsible for his death resulting from renal insufficiency on 22 December 1997.

44. The Court observes that on 21 September 1995 Mehmet Kurnaz received a blow to his head which resulted in a serious head injury (see paragraph 17). In the Court's opinion, there is no doubt that this injury contributed, in general, to the deterioration of Mehmet Kurnaz's health (see paragraphs 26-27). However, the Court notes that Mehmet Kurnaz was suffering from a number of conditions, including chronic renal insufficiency, prior to his incarceration in Buca prison (see paragraphs 12-14). There is no convincing evidence in the case file to lend support to the applicants' allegations that Mehmet Kurnaz's poor health at that time had resulted from the alleged ill-treatment he had received during his previous periods in detention. Nor is there any indication that Mehmet Kurnaz was denied adequate medical assistance during the time that he was in detention. In addition, the Court cannot ignore the fact that Mehmet Kurnaz died two years after the incident in Buca prison, following lengthy treatment.

45. In light of the above, the Court considers that there is an insufficient factual and evidentiary basis on which to conclude "beyond reasonable doubt" that the State was responsible for Mehmet Kurnaz's death from renal insufficiency on 22 December 1997.

46. There has, accordingly, been no violation of Article 2 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicants complained that the treatment to which Mehmet Kurnaz had been subjected while in detention amounted to torture and inhuman treatment, in violation of Article 3 of the Convention, which reads as follows:

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

48. The Government submitted that the incident at Buca prison was serious. They pointed out that the prisoners had piled up metal cupboards

behind the dormitory door and had broken windows, burned beds and used metal handles from the cupboards to attack the gendarmes and prison officers. The Government maintained that Mehmet Kurnaz had actively taken part in the riot which took place ten days after he had been transferred to the prison. They stated that he had received all the necessary medical treatment immediately after he was injured. The Government further submitted that an effective investigation had been conducted into the circumstances surrounding the incident in Buca prison.

49. The applicants maintained their allegations. They noted that no adequate investigation had been conducted into Mehmet Kurnaz's complaint of ill-treatment.

50. As the Court has stressed many times, Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 of the Convention even in the event of a public emergency threatening the life of the nation (see, among many other authorities, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93). To fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX). Moreover, allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrikulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002).

51. At the outset the Court observes that the documentary evidence submitted by the parties does not permit it to conclude beyond reasonable doubt that, prior to or after the incident at Buca prison on 21 September 1996, Mehmet Kurnaz was subjected to any kind of ill-treatment, the severity of which was above the Article 3 threshold. Nor is there any *prima facie* evidence to support the applicants' allegations that Mehmet Kurnaz was the deliberate target of an attack by prison officers and gendarmes during the riot.

52. The Court notes, in addition, that Article 3 does not prohibit the use of force in certain well-defined circumstances such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 30; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; *Hulki Güneş v. Turkey*, no. 28490/95, § 70, ECHR 2003-VII

(extracts); *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004; and *Günaydın v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005).

53. In the instant case the applicant sustained various injuries, in particular, serious blows to the head during the incident on 21 September 1995. The Government have not denied that the applicant's injuries as shown by the medical report of 21 September 1995 resulted from the use of force by the State authorities in the performance of their duties. They have, however, stressed the mitigating circumstances surrounding the incident.

54. The Court recognises the potential for violence in a prison setting. It accepts that disobedience on the part of inmates may well quickly degenerate into a riot, necessitating firm intervention by the security forces. The Court recalls that in its judgment of *Gömi and Others*, cited above, § 77, it did not find the force used by security forces against the applicants in order to quell prison riots, in the particular circumstances of that case, to be excessive. Security forces had used tear gas, pressurised water and truncheons against the applicants. However, in that case, the riots in question were sporadic, widespread and had included the taking of hostages by the prisoners (*Ibid*, §§ 13-18 and 22-23).

55. In the instant case, however, the Court notes that the incident was at all times confined to dormitory no. 6 and that it commenced with the detainees refusal to be counted by prison officers on the ground that some of their demands had not been met. There was thus some warning of impending difficulties and it may be noted that the escalation of violence occurred only after the gendarmes forcibly entered the dormitory. Therefore Mehmet Kurnaz was not injured in the course of a random and widespread insurrection which might have given rise to unexpected developments to which the gendarmes had been called upon to react without prior preparation (see, *mutatis mutandis*, *Rehbock*, cited above, § 72). In these circumstances, the Court considers that the burden rests on the Government to demonstrate with convincing arguments that the use of force, which resulted in the applicant's injuries, was not excessive (see, *mutatis mutandis*, *Matko v. Slovenia*, no. 43393/98, §104, 2 November 2006).

56. The Court observes that during the incident most of the detainees and gendarmes sustained injuries of varying degrees and subsequently three detainees died. However, the Government have not provided any information showing that the operation launched by the gendarmes was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of serious bodily harm to the detainees. For example there is no indication in the case file that serious attempts were made by the prison authorities to restore order in dormitory no. 6 prior to entering by force. In this connection, the Court reiterates that when prison authorities have recourse to 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 (see *Satık and Others v. Turkey*, no. 31866/96, § 58, 10 October 2000).

57. More decisively, in their observations, the Government merely stated that force had to be used against the detainees, including Mehmet Kurnaz, without providing any explanation or documentation which could shed light on the exact nature of the force inflicted on him. Taking into account the fact that the official documents contained in the case file do not mention that the gendarmes used truncheons or any other equipment which could inflict the injury sustained by the applicant during the intervention, the Court cannot rule out that Mehmet Kurnaz was hit on the head with a metal handle by gendarmes as claimed by the applicants (see paragraph 39 above).

58. Finally, the Court finds that the head injuries sustained by Mehmet Kurnaz, who was already in poor health, on 21 September 1995 at Buca prison, led to severe pain and suffering. In addition, they had lasting consequences for his health (see paragraph 26 above).

59. In light of the above, the Court concludes that the force used against the applicant on 21 September 1995 at Buca prison was excessive and that therefore the State is responsible, under Article 3 of the Convention, for the injuries sustained by him.

60. The Court recalls that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see *Assenov and Others v. Bulgaria*, cited above, pp. 3289-90, §§ 101-02, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

61. The Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by Mehmet Kurnaz on 21 September 1995 at Buca prison. An effective investigation was therefore required. The minimum standards as to effectiveness defined by the Court’s case-law include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

62. Turning to the present case, the Court notes that an investigation into the incident at Buca prison was initiated promptly by the public prosecutor’s office. This investigation led to a decision of non-prosecution concerning prison officers since the prosecutors found that only gendarmes had entered the dormitory and used force (see paragraph 20). However, the case file against the gendarmes was transferred to the İzmir Governor’s Office pursuant to the Law on the prosecution of civil servants. The case file does not reveal the outcome of this procedure. In any event, the Court reiterates its earlier finding in a number of cases that the investigation carried out by the administrative councils cannot be regarded as independent since they are

chaired by the governors, or their deputies, and composed of local representatives of the executive, who are hierarchically dependent on the governors (see, among other authorities, *Ibid*, § 60, *Talat Tepe v. Turkey*, no. 31247/96, § 84, 21 December 2004, and *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, § 80, *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III, *Yöyler v. Turkey*, no. 26973/95, § 93, 24 July 2003, and *Kurt v. Turkey* (dec.), no. 37038/97, 12 June 2003). The Court finds no reason to reach a different conclusion in the present case.

63. In the light of the above, the Court concludes that the domestic authorities failed to conduct an effective and independent investigation into the circumstances surrounding the injuries sustained by the applicant on 21 September 1995.

64. There has therefore been both a substantive and a procedural violation of Article 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

65. The applicants submitted that Mehmet Kurnaz did not have an effective domestic remedy in respect of his grievances. They relied on Article 13 of the Convention, which provides as follows:

“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.”

66. The Court considers that the complaint under this head should be examined in conjunction with Article 3 of the Convention alone.

67. In view of the submissions of the parties and of the grounds on which it has found a violation of Article 3 in relation to its procedural aspect (see paragraphs 62 above), the Court further considers that no separate issue arises under Article 13 of the Convention (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 120-123, ECHR 2005-..., and *Makaratzis v. Greece* [GC], no. 50385/99, § 86, ECHR 2004-XI).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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**

69. As regards pecuniary damage the first two applicants claimed, in total, 120,000 euros (EUR) for costs and expenses incurred during Mehmet Kurnaz’s upbringing and education. The applicants further claimed EUR 60,000 for the reimbursement of the medical expenses incurred by them. In support of the latter claims, the applicants submitted Mehmet Kurnaz’s medical reports, prescriptions and analysis as well as a few receipts. As for non-pecuniary damage the first two applicants claimed, in total, EUR 120,000 in respect of non-pecuniary damage. The other applicants claimed, in total, EUR 135,000 in respect of non-pecuniary damage. Finally, the applicants requested the publication of the Court’s judgment in a Turkish newspaper.

70. The Government contested these claims. In particular, they maintained that all of Mehmet Kurnaz’s medical expenses between 31 August 1995 and 25 October 1995 had been met by the State pursuant to the Regulation on the Administration of Prisons and Detention Centres and the Execution of Sentences.

71. As regards the pecuniary damage alleged to have been sustained by the applicants, in respect of certain claims the Court can discern no causal link between the violations found and the pecuniary damage requested. The Court further notes that in support of their remaining claims the applicants failed to produce any relevant documents. The Court accordingly dismisses the claim for pecuniary damage.

72. On the other hand, the Court notes that it has found a dual violation of Article 3 the Convention. Having regard to the circumstances of the present case, and deciding on an equitable basis, it awards the applicants, jointly, EUR 10,000 in respect of non-pecuniary damage.

73. Finally, the Court finds not appropriate to rule on the publication of the present judgment in a Turkish newspaper.

### **B. Costs and expenses**

74. The applicants claimed, in total, EUR 250,000 in respect of representation fees and costs and expenses.

75. The Government contested these claims

76. According to the Court’s case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable

as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 3,000.

### **C. Default interest**

77. 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 UNANIMOUSLY**

1. *Holds* that there has been no violation of Article 2 of the Convention;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the injuries sustained by the applicant on 21 September 1995 in Buca prison;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective and independent investigation into the circumstances surrounding the injuries sustained by the applicant on 21 September 1995 in Buca prison;
4. *Holds* that no separate issue arises under Article 13 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, 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 at the date of settlement:
    - (i) EUR 10,000 (ten thousand euros), jointly, in respect of non-pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI  
Deputy Registrar

Nicolas BRATZA  
President