



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

SECOND SECTION

CASE OF OSMAN KARADEMİR v. TURKEY

(Application no. 30009/03)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

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 Osman Karademir v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 30009/03) 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 Osman Karademir (“the applicant”), on 17 July 2003.

2. The applicant was represented by Mr Y. Can, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that he had been subjected to ill-treatment during his detention in police custody and that the authorities had failed to conduct an effective investigation into his allegations. He also complained that he had been denied a fair hearing by the Üsküdar Criminal Court, which tried and convicted him. He alleged a violation of Articles 3, 6 and 13 of the Convention.

4. On 10 May 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the alleged ill-treatment inflicted on the applicant. 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Istanbul.

6. On 25 May 2002 the applicant was taken into custody by police officers from the Çinili Police Station on suspicion of theft. Following a quarrel between the chief police officer and the applicant at the Çinili Police Station, the chief officer ordered his transfer to the Üsküdar Law and Order Department.

7. Prior to his transfer to the custody of the Law and Order Department, the applicant was taken to the Haydarpaşa Numune Hospital for a medical examination. According to the medical report dated 25 May 2002, there were no signs of ill-treatment on his body.

8. At the Üsküdar Law and Order Department, the applicant was allegedly insulted and threatened by the chief police officer, Remzi Akıncı, who later ordered other officers to torture him. The applicant was kept in a cell until the evening. After several hours he was handcuffed, blindfolded and taken to a cellar, where he was stripped naked and given electric shocks. Due to the pain caused by the shocks, the applicant hit his head on the floor and fainted.

9. On 26 May 2002 the applicant was taken back to the Çinili Police Station.

10. On 26 May 2002 the police officers brought the applicant back to Haydarpaşa Numune Hospital for a second medical examination. First the police officers went into the doctor's room, and then the applicant was called in. Although the applicant claimed that he had described the type of ill-treatment to which he had been subjected to in police custody, the doctor did not note any of his complaints and concluded in his report that there were no signs of ill-treatment on his body. Later, the applicant was brought before an investigating judge who ordered his release.

11. On the same day the applicant lodged a complaint with the District Governor's office in Üsküdar against the five police officers who had allegedly ill-treated him. He also lodged petitions with the offices of the Üsküdar District Governor, the Istanbul Governor and the Minister for Internal Affairs, describing in detail the treatment to which he had been subjected during his detention in police custody.

12. Upon the request of the District Governor, on 29 May 2002 the applicant was first examined by a doctor at the Üsküdar Clinic and then taken to the Haydarpaşa Numune Hospital for a further examination. Both medical reports noted that there was pain and sensitivity in the inguinal area, urinary problems and hyperaemia on the penis. In the light of these medical findings, a doctor at the Üsküdar branch of the Forensic Medicine

Institute drafted a third report, concluding that the applicant was unfit to work for three days.

13. On 4 June 2002 the applicant lodged a complaint with the Üsküdar Chief Public Prosecutor's Office against the police officers at the Üsküdar Law and Order Department who had inflicted ill-treatment on him.

14. On 5 June 2002 the applicant was questioned by the Disciplinary Bureau of the Üsküdar police headquarters following his complaint lodged with the Üsküdar District Governor's office.

15. On 6 June 2002 two police officers, one of whom was acting as investigator, questioned Dr İbrahim Öner from the Haydarpaşa Hospital in relation to his examination of the applicant on 26 May 2002. He stated the following:

"On 26 May 2002 police officers brought Osman Karademir to the Emergency Surgical Unit. He was taken into the examination room alone. The police officers on duty waited outside. He was stripped naked and his examination was carried out in the light of his allegations. No external lesions were identified following the examination. A report was drafted and the person in question was handed over to the police officers. I have just learned now that Osman Karademir, who was ill-treated by officers and complained about it, obtained another report three days after my report and that that report indicated the presence of bilateral inguinal pain, sensitivity and hyperaemia on the scrotum and penis. When I examined the patient I did not make such findings. The person in question was completely healthy. If I had found any sign of physical violence, I would have indicated it in my report."

16. In a preliminary investigation report dated 17 June 2002, a police superintendent, acting as investigator, concluded that there was no need to bring charges against the police officers Remzi Akıncı, Muafak Çetin, Dünder Özel, Hakan Taş and Mesut Kök. Having heard the accused, the applicant and some witnesses, the investigator considered that the applicant's allegations were unsubstantiated in view of the Haydarpaşa Numune Hospital's report dated 26 May 2002 which stated that there were no lesions on the body of the applicant. He also found that the police officer Muafak Çetin had been on duty somewhere else and the police officer Dünder Özel on leave on the day of the alleged events.

17. On 19 June 2002 the Üsküdar District Governor decided that charges should not be brought against the police officers. The decision noted that the police officers whom the applicant had accused had not been present in the police station on the day of the alleged incident. The applicant applied to the Istanbul District Administrative Court for the annulment of the District Governor's decision. His request was dismissed.

18. On 29 August 2002 the Provincial Police Discipline Committee attached to the Istanbul Governor's office, composed of three police officers, the Governor, his deputy and a civil servant, decided that no punishment should be imposed on the police officers Mesut Kök, Muafak Çetin, Dünder Özel and Remzi Akıncı who had allegedly inflicted ill-treatment on the applicant and insulted him during his detention. The

disciplinary committee found that Muafak Çetin had been on duty at a meeting organised by a labour organisation and that Dündar Özel had been on leave on the date of the alleged events. Furthermore, considering that the medical reports did not indicate the presence of any signs of lesions on the body of the applicant, the disciplinary committee concluded that the applicant's allegations were unsubstantiated.

19. On 25 December 2002 the Üsküdar Chief Public Prosecutor took statements from the police officers who had allegedly inflicted ill-treatment on the applicant. The police officers all denied the allegations.

20. On 6 January 2003 the Üsküdar Chief Public Prosecutor took statements from the applicant in relation to his allegations of ill-treatment. The applicant explained that on 25 May 2002 he had first been taken to the Çinili Police Station and then to the Haydarpaşa Numune Hospital. At the hospital he said that he did not have any bruises because he had not been beaten up at the police station. However, he had then been transferred to the Üsküdar Law and Order Department where he had been blindfolded, handcuffed and subjected to various forms of ill-treatment in the course of his interrogation. In particular, he claimed the following:

“...All the officers at the Law and Order Department already knew me... In the afternoon Chief Superintendent Officer Remzi Akıncı arrived. He ordered the police officers to place me in custody... Then they took me out of custody. Ali Hakan Taş and another police officer, with the first name Adem, blindfolded me with a piece of cloth. They took me to a room. They questioned me while I was blindfolded. They slapped me only once in that room. I could not identify who slapped me since I was blindfolded. They removed my blindfold in that room. Remzi Akıncı was also there. He ordered them to take me to the custody room again. One hour later they took me out of the custody room again and the same police officers blindfolded me again. They handcuffed me. The police officer Hakan was on my right and Adem was on my left. We went along a corridor and down some stairs. I entered through an aluminium door. Two or three persons were punching and kicking me. I told them that I had not stolen anything and asked them to release me. They stripped me completely naked. The police officer named Hakan had told me earlier that he was sorry for me but that the orders had come from somewhere else. Hakan called on somebody as “*Başkomiserim* (my chief police superintendent) ...” I could not see anyone because I was blindfolded. They put a cable on my chest and stuck it down with tape. They connected another cable to my toes and sexual organ. They gave me electric shocks using something like a telephone. I fainted. When I opened my eyes I was outside the building. The police officers Hakan and Adem removed my blindfold. A police officer called Mesut was also there. Hakan dressed me... Then they put me in a car... They handed me over to the police officers at the Çinili Police Station who took me to Haydarpaşa Numune Hospital in the morning. When I entered the doctor's office the civilian team of the Law and Order Department was already there. The doctor who examined me was a general surgeon. He asked me if I had a problem. I told him that I had been beaten up and given electric shocks. I took off my clothes. He concluded that I did not have any problem and sent me to the Çinili Police Station. The police officers then took me to the public prosecutor on duty.

The public prosecutor on duty read some papers and called me in. He asked me whether I [had stolen] the [kombi heater]. I told him that I had been tortured but he did not listen to me... He noted my allegations of torture. Then he released me...

I am coughing up blood as a result of the torture. I have also become impotent. A liquid is still coming out of my sexual organ. I have been unable to pursue my business activities as a result of the problems caused by the torture. I am unable to pay my electricity and water bills..."

21. On 4 April 2003 the Üsküdar Chief Public Prosecutor took new statements from the applicant. The applicant stated that he did not have any medical report apart from the one issued by Haydarpaşa Numune Hospital on 29 May 2002. He claimed that he could not undergo an examination at the Cerrahpaşa Medical Faculty's Urology Department because he could not afford the fees and that he had informed the President of the Forensic Institute accordingly.

22. On 8 July 2003 the Üsküdar Public Prosecutor took further statements from the applicant regarding his inability to undergo a medical examination at the Cerrahpaşa Medical Faculty Hospital.

23. On 31 October 2003 the Üsküdar Criminal Court acquitted the applicant of the charges of theft, holding that his guilt had not been proven beyond doubt.

24. On 3 October 2003 the Üsküdar Chief Public Prosecutor took statements from Abdullah Danacı, a police officer at the Üsküdar Law and Order Department, who claimed that he had no information about the applicant's allegations.

25. On 14 November 2003 the Üsküdar Chief Public Prosecutor filed an indictment with the Üsküdar Assize Court charging four police officers from the Üsküdar Law and Order Department, including Remzi Akıncı, under Article 243 § 1 of the Turkish Criminal Code, with inflicting ill-treatment on the applicant. The Chief Public Prosecutor considered that the decision of the Üsküdar District Governor of 19 June 2002 had to be disregarded, since the alleged ill-treatment had taken place during the police officers' exercise of their judicial functions. He also decided that, due to the lack of evidence, no prosecution should be brought against two other police officers or against Remzi Akıncı in respect of the allegation of threatening to kill the applicant. This latter decision was upheld by the Kadıköy Assize Court on 19 February 2004.

26. On 13 December 2004 a committee of experts at the Forensic Institute examined the applicant and concluded as follows:

"Taking into account the report of the Cerrahpaşa Medical Faculty's Urology Department, which stated that no erection malfunction could be identified following physical examination, psychiatric consultation and sex hormone, penile arthritis Doppler US and NPT tests, it is to be concluded unanimously that there was no medical finding of sexual impotence."

27. The applicant filed an objection against the decision of the Üsküdar Chief Public Prosecutor not to prosecute.

28. On 19 February 2004 the Kadıköy Assize Court dismissed the applicant's objection.

29. On 13 April 2005 the Üsküdar Assize Court acquitted the accused police officers on the basis of lack of sufficient evidence and the principle *in dubio pro reo*. In acquitting the police officers, the court relied on the medical reports dated 25 and 26 May 2002 issued by Haydarpaşa Numune Hospital and the Forensic Institute's medical report dated 13 December 2004.

30. On 11 May 2005 the applicant appealed against the judgment of the Üsküdar Assize Court.

31. On 25 February 2006 the Chief Public Prosecutor at the Court of Cassation submitted his written observations. He asked the Court of Cassation to quash the judgment of the Üsküdar Assize Court, arguing that it had erred in relying on the Forensic Institute's medical report dated 13 December 2004 which stated that the applicant did not suffer from sexual impotence. He noted that the first-instance court should have inquired into the cause of the marks identified on the body of the applicant in the Üsküdar Forensic Institute's medical report dated 29 May 2002. In his opinion, the court should have considered whether the marks were the result of the alleged ill-treatment inflicted upon the applicant.

32. On 17 October 2006 the Court of Cassation upheld the decision of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. A description of the relevant domestic law at the material time can be found in *Bati and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004).

THE LAW

I. ADMISSIBILITY

34. The Government contended that the applicant had failed to exhaust domestic remedies since the application was lodged before the end of the criminal proceedings and that he had failed to avail himself of the civil and administrative-law remedies.

35. The applicant claimed that he had exhausted all available domestic remedies and that they had proved to be ineffective.

36. As to the Government's objections regarding the failure to exhaust remedies under criminal law, the Court reiterates that the last stage of domestic remedies may be reached shortly after the lodging of the application, but before the Court is called upon to pronounce on admissibility (see, for example, *Sağat, Bayram and Berk v. Turkey* (dec.), no. 8036/02, 6 March 2007, and *Yıldırım v. Turkey* (dec.), no. 0074/98, 30 March 2006). It notes that the criminal proceedings concerning the applicant's allegations of ill-treatment ended on 17 October 2006, which is before the Court delivered its decision on admissibility. The Court therefore dismisses the Government's objection under this head.

37. As regards the second part of the Government's objections, the Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Karayığit v. Turkey* (dec.), no. 63181/00, 5 October 2004, and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application.

38. In these circumstances, the Court rejects the Government's preliminary objection.

39. The Court notes that the remainder of the application 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.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

40. The applicant complained that he had been subjected to various forms of ill-treatment and that the national authorities had failed to conduct an effective investigation into his allegations of torture. He relied on Articles 3 and 13 of the Convention, which provide:

Article 3

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

Article 13

"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."

A. The parties' submissions

1. The applicant

41. The applicant claimed that the treatment which he had been subjected to by the police officers in the form of punches, slaps, kicks, electric shocks to his genitals and verbal insults had attained the minimum level of severity and had amounted to ill-treatment within the meaning of Article 3 of the Convention. He maintained that despite his numerous complaints to the administrative and judicial authorities and the medical reports indicating the presence of injuries on his body, which had rendered him unfit for work for three days, no meaningful investigation had been carried out and that those who had inflicted ill-treatment on him had escaped justice without any punishment.

2. The Government

42. Referring to the medical reports dated 25 and 26 May 2002, which indicated that there were no signs of ill-treatment on the body of the applicant, the Government submitted that the applicant's allegations were unsubstantiated. They asserted further that the administrative and judicial authorities had conducted a meticulous investigation into the applicant's allegations and concluded that there was no convincing evidence capable of corroborating his allegations.

B. The Court's assessment

1. General Principles

43. The Court reiterates that Article 3 of the Convention ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. It also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human rights requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Avşar v. Turkey*, no. 25657/94, § 390, ECHR 2001-VII (extracts)).

44. The Court further reiterates that, where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96,

§ 30, 8 January 2004; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, cited above, § 61; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

45. The Court is sensitive to the subsidiary nature of its role 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). However, where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 135, 16 July 2002) and will do so on the basis of all the material submitted by the parties.

46. In assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt” (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002, and *Avşar*, cited above, § 282). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ülkü Ekinci*, cited above, § 142).

47. Furthermore, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

48. Lastly, the Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 102).

2. Application of the above principles to the circumstances of the present case

a. Alleged ill-treatment suffered by the applicant

49. The Court notes that the applicant underwent three medical examinations following his release from the custody of the police officers. The first two examinations took place at Haydarpaşa Numune Hospital on 25 and 26 May 2002 and the last one was at the Üsküdar Forensic Institute on 29 May 2002. Although the medical reports drawn up by the doctor at Haydarpaşa Numune Hospital stated that there were no signs of ill-treatment on the applicant's body, the third medical report indicated that there was pain and sensitivity in the inguinal area, urinary problems and hyperaemia on the penis and concluded that the applicant was unfit to work for three days (see paragraphs 7, 10 and 12 above).

50. In the Court's opinion, the symptoms described in the third medical report, dated 29 May 2002 (see paragraph 12 above), are at least consistent with the applicant's allegation that electric shocks were applied to his genitals and are sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch*, cited above, pp. 9 and 26, §§ 13 and 39).

51. It therefore needs to be ascertained whether the Government have provided a plausible explanation of how those injuries were caused and produced evidence casting doubt on the veracity of the victim's allegations.

52. In response to the applicants' allegations, the Government relied on the first two reports issued by the Haydarpaşa Numune Hospital doctor and submitted that the applicant's allegations had not been corroborated by any evidence. Similar conclusions had also been reached by the local authorities in charge of the investigation, who relied on the same medical reports (see paragraphs 16-18 above).

53. The Court notes at the outset, with grave concern, the applicant's allegation that prior to his examination at Haydarpaşa Numune Hospital, the police officers went into Dr İbrahim Öner's office to have a word with him following which the latter did not note the applicant's complaints of ill-treatment in the medical report (see paragraph 10 above). Although the Court is unable to verify this allegation, it observes that medical doctors involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and that examinations should be conducted in private under the control of the medical doctor and outside the presence of security agents and other government officials (see the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment,

recommended by the United Nations General Assembly Resolution 55/89 of 4 December 2000).

54. Furthermore, notwithstanding the circumstances of their employment, all health professionals owe a fundamental duty of care to the people they are asked to examine or treat. They should not compromise their professional independence by contractual or other considerations but should provide impartial evidence, including making clear in their reports any evidence of maltreatment (see the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Istanbul Protocol”, submitted to the United Nations High Commissioner for Human Rights, 9 August 1999, paragraphs 65 and 70).

55. Be that as it may, the Court must have regard to the fact that the applicant, in his statements to the investigating authorities and later to the Üsküdar Chief Public prosecutor, was unequivocal in his account that he had been ill-treated by police officers while in the custody of the Üsküdar Law and Order Department (see paragraphs 11, 13, 14, and 20 above). He gave a detailed account of the treatment which he had suffered and gave the names of the police officers who had inflicted the ill-treatment (see paragraph 20 above). Moreover, he explained to the Üsküdar Chief Public Prosecutor that he had not suffered ill-treatment at the Çinili Police Station and that there had therefore been no signs of ill-treatment on his body when he underwent the medical examination at Haydarpaa Numune Hospital on 25 May 2002. He also made it clear that the ill-treatment had been inflicted upon him at the Üsküdar Law and Order Department but that his allegations and the signs of ill-treatment had not been noted in the medical report dated 26 May 2002 (*ibid.*). In the light of these explanations, the Chief Public Prosecutor pressed charges against four police officers accusing them of inflicting ill-treatment on the applicant (see paragraph 25 above).

56. However, the Üsküdar Assize Court ignored the medical report dated 29 May 2002 and relying instead on the Haydarpaa Numune Hospital reports and the Forensic Institute’s report dated 13 December 2004, which simply stated that the applicant did not suffer from any sexual impotence, acquitted the police officers. Lastly, despite the Chief Public Prosecutor’s submissions challenging that judgment and his opinion that the first-instance court should have inquired into the cause of the marks identified on the applicant’s body in the medical report dated 29 May 2002, the Court of Cassation upheld the judgment reached by the first-instance court without giving any reasons (see paragraphs 31 and 32 above).

57. The Court reiterates that a State is responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the authorities have a duty to protect them. Bearing in mind the authorities’ obligation to account for injuries caused to persons within their control in custody and in the absence of any explanation concerning the symptoms

noted in the medical report dated 29 May 2002, the Court considers that the Government have failed to provide a plausible explanation of how those injuries were caused. It therefore concludes that the symptoms in question were the result of treatment for which the Government bore responsibility.

58. There has accordingly been a substantive violation of Article 3 of the Convention.

b. Alleged failure to conduct an effective investigation

59. The Court notes that subsequent to the complaints of ill-treatment lodged by the applicant with a number of administrative and judicial authorities (see paragraphs 11 and 13 above), the authorities commenced an investigation into his allegations. In this connection, preliminary investigations carried out by senior police officers, appointed by the offices of the Üsküdar District Governor and Provincial Police Discipline Committee concluded that the applicant's allegations were unsubstantiated as two of the accused police officers had not been on duty on the date of the alleged event and the medical reports issued by Haydarpaşa Numune Hospital did not indicate any signs of ill-treatment (see paragraphs 15-18 above).

60. Yet the Court has already found in previous cases against Turkey that these bodies, which are in charge of investigations concerning similar allegations directed against security forces, cannot be regarded as independent as they are made up of civil servants hierarchically dependent on the governor, an executive officer linked to the very security forces under investigation (see, among others, *Ipek v. Turkey*, no. 25764/94, § 174, 17 February 2004). It considers that, in the circumstances of the present case, the aforementioned bodies' appointment of senior police officers as investigators was inappropriate given that the allegations were directed against the police force of which they are members. In this regard, the willingness of the investigators to give credence to the accounts offered by their colleagues confirms the Court's previous findings (see paragraphs 16 and 18 above).

61. Furthermore, notwithstanding the conclusions reached by the administrative authorities, the Üsküdar Chief Public Prosecutor pressed charges against four police officers in view of the applicant's detailed explanations and the findings contained in the medical report dated 29 May 2002 (see paragraph 25 above). However, the Üsküdar Assize Court acquitted the police officers without inquiring into the cause of the symptoms indicated in the medical report dated 29 May 2002 (see paragraph 29 above). A further submission by the Chief Public Prosecutor before the Court of Cassation failed to yield any result either since it did not elicit any response to his opinion that the first-instance court should have considered whether the findings contained in the report dated 29 May 2002

were the result of the alleged ill-treatment inflicted upon the applicant (see paragraphs 31 and 32 above).

62. The foregoing considerations are sufficient to enable the Court to conclude that the national authorities failed to carry out an effective and independent investigation into the applicant's allegations of ill-treatment at the hands of the police officers. It also considers that the criminal-law system, as applied in the applicant's case, has proved to be far from rigorous and has had no deterrent effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant (see, *mutatis mutandis*, *Okkali v. Turkey*, no. 52067/99, § 78, ECHR 2006-...).

63. There has accordingly been a procedural violation of this provision.

64. In these circumstances, the Court considers that no separate issue arises under Article 13 of the Convention (see *Timur v. Turkey*, no. 29100/03, §§ 35-40, 26 June 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage. Without specifying an amount, he also asked the Court to make an award for pecuniary damage.

67. The Government contended that the amount claimed was excessive.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, having regard to the violations found and ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

69. The applicant also claimed EUR 6,820 for the costs and expenses incurred before the Court. In this connection, he submitted a time sheet indicating 65 hours' legal work carried out by his legal representatives and a table of costs and expenditure incurred for the presentation of his application before the Court.

70. The Government maintained that the amount claimed was not justified or actually and necessarily incurred.

71. According to the Court's case-law, an applicant is entitled to the 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 sum of EUR 3,000 for the proceedings before the Court.

C. Default interest

72. 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* unanimously the remainder of the application admissible;
2. *Holds* by 6 votes to 1 that there has been a violation of Article 3 of the Convention under its substantive aspect;
3. *Holds* unanimously that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds* unanimously that no separate issue arises under Article 13 of the Convention;
5. *Holds* by 6 votes to 1
 - (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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Karakaş is annexed to this judgment.

F.T.
S.D.

PARTLY DISSENTING OPINION OF JUDGE KARAKAŞ

The Court found “substantive” and “procedural” breaches of Article 3 of the Convention in relation to the ill-treatment claimed to have been inflicted on the applicant and as a result of the authorities’ failure to conduct a proper investigation into the applicant’s allegations of police brutality.

I voted in favour of finding a “procedural” breach of Article 3 in view of the shortcomings in the investigation, as identified by the Court. However, to my regret, I respectfully disagree with the majority as regards their finding of a “substantive” breach of that provision. In my opinion, the majority’s conclusion runs counter to the factual findings and legal principles established in the case-law of the Court.

In concluding that there had been a substantive violation of Article 3, the majority attached fundamental importance to the third medical report dated 29 May 2002, not obtained by the applicant until three days after his release from police custody. In so far as the burden of proof is concerned, I find this conclusion erroneous having regard to the Court’s established case-law which states that “where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

In the instant case, the first two medical reports drawn up by the doctor who examined the applicant immediately after his release from custody stated that there were no signs of ill-treatment on the applicant’s body. Accordingly, to my mind, the Government discharged their obligation to provide proof that the applicant did not have any injuries at the time of his release. The burden of proof thus shifted to the applicant, who was under an obligation to adduce evidence that the symptoms noted in the third medical report were the result of treatment which he had suffered during his detention in police custody and had not occurred after his release. However, he has failed to do so. He could also have obtained an additional medical report on the day he was released.

The majority disregarded the first two medical reports on the basis of the applicant’s claim that the doctor who carried out the first two examinations did not take account of his allegations of ill-treatment (see paragraphs 10 and 53). I find it difficult to understand how the majority could draw such a negative inference from this claim which the Court was, moreover, unable to verify (*ibid.*).

In view of the above, I consider that there has been no violation of Article 3 under its substantive limb and that, therefore, the amount awarded to the applicant for just satisfaction should have been less than EUR 10,000.