



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

SECOND SECTION

CASE OF YETER v. TURKEY

(Application no. 33750/03)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Yeter v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 33750/03) 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 four Turkish nationals, Ms Ayşe (Yeter) Yumlu, Ms Sırma Yeter, Mr Mustafa Yeter, and Mr Dursun Yeter (“the applicants”), on 30 September 2003.

2. The applicants were represented by Mr F.N. Ertekin, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 3 April 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Chamber further decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1970, 1924, 1955 and 1957 respectively. The first applicant lives in Istanbul, the second and third applicants live in Erzincan and the fourth applicant lives in Neunkirchen (Austria). The first applicant is the wife, the second applicant is the mother and the third and

fourth applicants are the brothers of Mr Süleyman Yeter, who was born in 1962 and died on 7 March 1999.

1. Factual background¹

6. On 22 February 1997 Mr Süleyman Yeter was taken into police custody at the Istanbul Security Headquarters on suspicion of membership of an illegal armed organisation, namely the MLKP (Marxist-Leninist Communist Party). He was subjected to torture while in custody. On 6 March 1997 Mr Süleyman Yeter was remanded in custody by a judge at the Istanbul State Security Court.

7. On 10 March 1997 Mr Süleyman Yeter filed a complaint with the Fatih public prosecutor against the police officers who had tortured him during his detention. Subsequently, on 4 July 1997 the Istanbul public prosecutor filed an indictment against nine officers before the Istanbul Assize Court, accusing them of ill-treatment under Article 243 of the Criminal Code. Mr Yeter joined the case as an intervening party.

8. In the meantime, on 8 October 1997 he was released from detention on remand.

9. At a hearing on 2 March 1999 the Istanbul Assize Court decided to confront the accused police officers and the plaintiffs at the next hearing, to be held on 29 April 1999.

2. The subsequent arrest and death of Mr Süleyman Yeter

10. On 5 March 1999, the police raided the office of the magazine *Dayanışma* (Solidarity)² in Istanbul. Mr Süleyman Yeter and four others who worked for the magazine were arrested and taken into custody by police officers from the anti-terrorism branch of the Istanbul Security Directorate.

11. On the same day, a medical report taken from the Haseki State Hospital certified that Mr Süleyman Yeter bore no signs of ill-treatment.

12. On 7 March 1999 Mr Süleyman Yeter collapsed while his statement was being taken by deputy superintendent A.O. and police constable M.Y.; he died on the way to the hospital.

13. The same day, the Fatih public prosecutor examined the state of the room where Süleyman Yeter had collapsed and checked the custody register. An incident report drawn up by him and two police officers noted

1. An application concerning the events prior to Mr Süleyman Yeter's death was examined by the Court in the case of *Erdoğan Yılmaz and Others v. Turkey* (no. 19374/03, 14 October 2008).

2. "Solidarity for a World without exploitation" (*Sömürsüz bir Dünya için Dayanışma Gazetesi*), a left-wing magazine, identified by the police as one of the publications of the MLKP.

that nothing had been erased from the custody records. He also took statements from officers A.O. and M.Y., who had been present.

14. On 8 March 1999 a post-mortem of the body was conducted in the presence of the public prosecutor and the family's lawyers. The examination revealed wounds to the forehead and chin, and extensive bruising to the rest of the body.

15. On the same day, the applicants submitted a petition to the Fatih public prosecutor's office, requesting that the prosecutor hear testimonies from the persons who had been detained at the same time as Mr Süleyman Yeter in the detention unit.

16. On 9 March 1999 the applicants' lawyers filed a complaint with the Fatih public prosecutor's office against H.O. (the Istanbul police commissioner), A.C. (the deputy to the commissioner of the Istanbul anti-terrorism branch), and S.K. (the director of the anti-terrorism branch), as well as the police officers who had allegedly detained and interrogated Mr Süleyman Yeter. They argued that the two senior police officers were the hierarchical superiors of those officers who had tortured and killed Mr Süleyman Yeter. They further stated that, for the proper administration of the investigation, all these persons should be suspended from duty in order to prevent the possible destruction of evidence. They also requested that the public prosecutor bring criminal proceedings against these persons and that they be remanded in custody, having regard to the nature of the offence.

17. On the same day, an administrative investigation was launched by the Ministry of the Interior and three chief police officers were appointed as inspectors to investigate the incident. The inspectors heard statements from the police officers of the anti-terrorism branch who had been on duty at the time of the incident.

18. On 10 March 1999 the Fatih public prosecutor took a statement from E.E., a co-detainee of Mr Süleyman Yeter at the anti-terrorism branch, who testified that one or two days after his arrest, the police officers had brought Mr Süleyman Yeter into his cell. Upon entering the cell, Mr Süleyman Yeter told him that he had been suspended by his arms and tortured. Later that day, the officers had taken Mr Süleyman Yeter from the cell again. He never returned. The following day, E.E. had told a police officer that Süleyman Yeter's coat was left in the cell. The officer responded: "He does not need a coat anymore!" E.E. added that he would definitely be able to recognise that officer.

19. On 11 and 25 March and 2 and 4 June 1999 the Fatih public prosecutor took statements from ten police officers who had allegedly been involved in the arrest and questioning of Mr Süleyman Yeter, including A.C. and S.K., their hierarchical superiors. They all denied their involvement in Mr Süleyman Yeter's questioning. Some of them alleged

that they had only taken Mr Süleyman Yeter upstairs from his cell, which was why their signatures were on the custody records.

20. A.C. stated that on 5 March 1999 S.K. had telephoned and informed him about the arrest of four persons from the *Dayanışma* magazine. He had immediately ordered that the detainees undergo a medical examination. On 7 March 1999, at around 7.30 a.m., S.K. had called him about the death. A.C. maintained that, as chief police officer, he was not involved directly in questioning but only supervised such occasions. He added that he had been targeted because of his position in order to intimidate him. S.K.'s statement was identical.

21. On 18 March 1999 the applicants' lawyers further petitioned the Fatih public prosecutor's office. They cited five other people (B.N., E.O., I.Y., H.K. and E.E.), who had allegedly witnessed the events. They requested that the public prosecutor take statements from these people. Apart from E.E., who had previously been interviewed by the Fatih public prosecutor, no statements were taken from these persons at that time.

22. On 28 April 1999 the doctors who had conducted the post-mortem examination submitted their autopsy report. The report noted numerous grazes, lesions and bruises on twenty-five different parts of Mr Süleyman Yeter's body. The report was then referred to the First Committee of Experts of the Forensic Medicine Institute in order to determine the precise cause of death.

23. On the same day, B.N., one of Mr Süleyman Yeter's fellow detainees, made an official complaint to the Fatih public prosecutor's office. Stating that he had been placed in the cell next to Mr Süleyman Yeter, he maintained that he had seen the police officers take Süleyman Yeter from the cell in the evening of 5 March and bring him back the following morning. It was evident that Mr Süleyman Yeter had been tortured. B.N. confirmed that Mr Süleyman Yeter had again been taken out of his cell that afternoon. On 9 March 1999 he himself, together with other detainees, was brought before the investigating judge, where he learned that Mr Süleyman Yeter had died.

24. On 28 July 1999 the First Committee of Experts of the Forensic Medicine Institute submitted its report, which confirmed the findings of the autopsy examination, such as the scars, scratches and bruises on different parts of Mr Süleyman Yeter's body. It also noted fractures and bleeding in the bone and cartilage of the neck. The report concluded that these findings were consistent with the definition of torture given in the World Health Organisation's Tokyo Declaration and that, on the basis of an assessment of all the findings, the death had occurred as a result of mechanical asphyxia caused by trauma to the neck area.

3. The criminal and disciplinary proceedings against the police officers

25. On 5 August 1999 the Fatih public prosecutor drew up a report in which he recommended that the Istanbul public prosecutor initiate criminal proceedings against sixteen police officers who had been on duty at the anti-terrorism branch at the time of the events in question, including their superiors A.C. and S.K., under Article 243, Article 452 § 1 and Article 463 of the Criminal Code. He concluded that a separate complaint should be made in respect of H.O. (the Istanbul police commissioner) in view of his high office.

26. On 18 August 1999 the Istanbul public prosecutor returned the report to the Fatih public prosecutor. In his covering letter he stated that, according to the file, some of the accused had been appointed to other branches of the security directorate prior to the incident, whereas others had only taken Mr Süleyman Yeter from the cell to the questioning room. He also stated that the chief police officers' involvement in the incident was not clearly defined in the report. He maintained that, considering the seriousness of the incident, all of Mr Süleyman Yeter's fellow detainees should be interviewed, that a confrontation should be carried out and that evidence enabling the establishment of a causal link between the act of torture and the death should be collected in order to identify those who had interrogated Mr Süleyman Yeter.

27. On the same day, as a result of the administrative investigation conducted by the chief police inspectors, deputy superintendent A.O. and two police constables, M.Y. and E.Er., were suspended from duty, as it was considered inadvisable to allow them to remain in their posts.

28. On 23 August 1999 the chief inspectors submitted their investigation report to the competent disciplinary board. They opined that A.O., M.Y. and E.Er. had been responsible for Mr Süleyman Yeter's death. They also concluded that these police officers should be punished by dismissal from the force, in accordance with section 8 of the Police Force Disciplinary Regulations, on the grounds of allegedly committing the offence of torture. The report was forwarded to the competent disciplinary board. On 29 December 1999 the Central Disciplinary Board decided that no further action should be taken on the file because it fell under Amnesty Law no. 4455.

29. On 16 September 1999 the Fatih public prosecutor submitted a second report to the Istanbul public prosecutor, in which he accused four police officers, A.O., M.Y., E.Er. and a certain S.Yz., of torturing and killing Mr Süleyman Yeter. He further issued a decision not to prosecute twelve other officers on the ground of insufficient evidence.

30. On 29 September 1999 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court against three of the aforementioned police officers (A.O., M.Y. and E.Er.), accusing them of

murder as a result of ill-treatment, under Article 243 and Article 452 § 1 of the Criminal Code. He decided not to prosecute S.Yz.

31. On 28 October 1999 the applicants challenged the Fatih public prosecutor's decision not to prosecute before the Beyoğlu Assize Court. In their application, they maintained that some of the accused should at least be liable for dereliction of duty as they were the superiors of the defendant police officers, whilst others were members of the team which had questioned Mr Süleyman Yeter and, therefore, had been in direct contact with him. On 19 June 2000 the Beyoğlu Assize Court dismissed that objection.

32. On 4 November 1999 the Ministry of Justice decided not to take further action in the prosecution of H.O. (the Istanbul police commissioner).

33. On 29 November 1999 the Istanbul Assize Court commenced the trial of the three police officers. The applicants and their lawyers requested and were granted permission to intervene in the proceedings as complainants. They further asked the court to remand the accused in custody. On the same day, the court issued arrest warrants *in absentia* for the defendant policemen.

34. On 30 November 1999 the Istanbul Assize Court asked the Istanbul Security Directorate to provide it with a list of the police officers who had been on duty at the material time. The court also heard evidence from the applicants as intervening complainants. On 10 February 2000 the Security Directorate provided the names of ten police officers who had been on duty between 5 and 7 March 1999.

35. On 7 April 2000 two of the defendant police officers, E.Er. and M.Y., surrendered to the police. The court took statements from them on 17 July 2000.

36. In his statement, E.Er. submitted that he had been working as a driver at the anti-terrorism branch. He stated that the day before the incident, at around 7.30 p.m., A.O. had asked him to take Mr Süleyman Yeter from his cell and hand him over to A.O. on the fourth floor. E.E. maintained that this was why his signature was on the custody record. The Istanbul Assize Court asked him two further questions regarding inconsistencies between his current statement and those made earlier to the public prosecutor and the chief police inspector. He maintained the current version given to the court, and denied ever having participated in the questioning of Mr Süleyman Yeter.

37. M.Y. recounted that, on 7 March 1999 at 7 a.m., A.O. had told him that a statement had to be taken from Mr Süleyman Yeter. Accordingly, Mr Yeter had been brought to the statement room by police officers and seated next to A.O. behind M.Y., who was sitting in front of the computer. He submitted that, when typing Mr Süleyman Yeter's identification details, he had heard a noise behind him. Turning round, he saw that Mr Süleyman Yeter had collapsed. He had immediately been taken to hospital. M.Y.

further maintained that he had been working as a typist at the anti-terrorism branch and that he had never seen Mr Süleyman Yeter before that morning. He added that A.O. had been in charge of the questioning of Mr Süleyman Yeter, and had already questioned the deceased several times by 7 a.m. that morning. M.Y. partially denied the content of the statement he had made to the public prosecutor. He maintained that he had not actually been asked by the chief police inspector to give a statement. He was told that a statement had been drafted on his behalf which was consistent with that of A.O. He was unable to question the content of that statement as it was his superiors who had asked him to sign it.

38. E.Er. and M.Y. were released pending trial on 12 March 2001 and 19 November 2001 respectively.

39. At the hearings on 17 July, 11 September, 23 October and 4 December 2000, the Istanbul Assize Court heard statements from the police officers whose names had been mentioned in the letter of 10 February 2000 as witnesses.³ Some of them stated that Mr Süleyman Yeter had been in good health when they had seen him. Others said that they had assisted their colleagues in taking him to hospital after his collapse.

40. On 11 June 2001 the applicants' lawyers asked the court to broaden its investigation. In their application they requested the court to:

- inspect the crime scene and conduct an on-site investigation;
- find out whether Mr Süleyman Yeter's clothes had been examined after his death and, if not, ask the Fatih public prosecutor why;
- ask whether a video recording of Mr Süleyman Yeter's questioning had been made and, if so, obtain it; and
- hear evidence from the chief police commissioners who had been in charge of the anti-terrorism department.

The court dismissed these requests except for the one concerning the video recording.

41. During the hearing on 11 October 2001, the court noted that Mr Süleyman Yeter's questioning had not been recorded.

42. On 1 November 2002 the applicants submitted their written observations to the Istanbul Assize Court, drawing the court's attention to the inadequacy of the preliminary investigation. They further requested the court to:

- lodge a complaint against the officers who had failed to comply with the arrest warrant and find A.O. (the fugitive defendant);
- sentence the accused police officers, pursuant to Article 450 § 3 of the Criminal Code, for having committed a brutal murder;
- bring proceedings against the hierarchal superiors of the defendants; and

3. The Fatih public prosecutor had previously decided not to bring criminal proceedings against six of these officers in his decision of 16 September 1999 (see paragraph 29 above).

– order that the defendants who had been released pending trial be remanded in custody in view of the vicious nature of the crime.

43. On 27 November 2002 the public prosecutor concluded that E.Er. should be acquitted and M.Y. convicted, pursuant to Article 243, Article 452 § 1 and Article 463 of the Criminal Code.

44. On 1 April 2003 the Istanbul Assize Court, in the absence of the accused, acquitted E.Er. because of insufficient evidence and convicted M.Y. of the unintentional killing of Mr Süleyman Yeter. M.Y. was first sentenced to ten years' imprisonment. This sentence was subsequently reduced to five years because the offence had been carried out by two or more people and the main perpetrator had not been identified. The court further reduced this sentence to four years and two months' imprisonment because of M.Y.'s good conduct during the hearings. It also disjoined the case against the fugitive defendant, A.O.

45. The applicants appealed against the judgment. The public prosecutor and the defendants also appealed.

46. On 3 November 2004 the Court of Cassation upheld the judgment of the Istanbul Assize Court. The proceedings against A.O. are still pending before the latter.

47. The convicted police officer M.Y. was arrested on 28 February 2005 and was conditionally released on 19 March 2005.

4. The compensation proceedings

48. In the meantime, on 6 March 2000 the applicants applied to the Ministry of the Interior, claiming compensation for the pecuniary and non-pecuniary damage they had suffered as a result of Mr Süleyman Yeter's death.

49. On 27 March 2000 the Ministry dismissed their claim. The applicants brought an action for compensation against the Ministry of the Interior before the Istanbul Administrative Court.

50. On 31 March 2003 that court partially allowed the applicants' claim and awarded the first applicant, Ms Ayşe Yeter, 22,012,913,956 old Turkish liras (TRL) and the second applicant, Ms Sırma Yeter, TRL 1,262,162,871 for pecuniary damage. The court also awarded all of the applicants a lump sum of TRL 35,000,000,000 in respect of the non-pecuniary damage sustained by them. The applicants appealed against that decision.

51. On 11 January 2007 the Supreme Administrative Court quashed the judgment of the first-instance court as regards non-pecuniary damage and upheld the judgment in respect of pecuniary damage. According to the information provided by the parties, the case is currently pending before the Istanbul Administrative Court and no payment has yet been made to the applicants.

II. RELEVANT DOMESTIC LAW

52. A description of the relevant domestic law may be found in *Ali and Ayşe Duran v. Turkey* (no. 42942/02, § 45, 8 April 2008) and *Albayrak v. Turkey* (no. 38406/97, § 29, ECHR 2008-....., in respect of Amnesty Law no. 4455).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 13 OF THE CONVENTION

53. Relying on Articles 2 and 13 of the Convention, the applicants complained that their relative, Mr Süleyman Yeter, had been tortured to death at the hands of the police and that the authorities had failed to carry out an effective investigation. They further maintained that no deterrent sanction had been imposed on those who were responsible for Mr Yeter's ill-treatment and death.

54. The Government did not make any comments about the substantive aspect of Article 2 of the Convention. They only argued that the investigation into the incident, and the prosecution and subsequent trial of the accused police officers, had provided an effective remedy into the applicants' allegations.

55. The Court considers that these complaints should be examined from the standpoint of Article 2 alone, which reads:

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

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

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

56. The Government complained that the applicants could no longer be considered victims, since they had obtained redress before the domestic courts. In this connection, they submitted that the applicants had been awarded compensation by the administrative court.

57. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for a breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-193, ECHR 2006-V).

58. The Court notes in the first place that, according to the information in the case file, the proceedings as regards non-pecuniary compensation are still pending before the Istanbul Administrative Court and no payment has been made to the applicants to date. Furthermore, it observes that in cases of wilful ill-treatment resulting in death, a breach of Article 2 cannot be remedied exclusively through an award of compensation to the relatives of the victim. This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions on killing, torture or inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007; *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI; *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I; *Tanrikulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV; *Velikova v. Bulgaria*, no. 41488/98, § 89, ECHR 2000-VI; *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; *Gül v. Turkey*, no. 22676/93, § 57, 14 December 2000). It is apparent from the above that the possibility of seeking and receiving compensation represents only one part of the measures necessary to provide redress for death resulting from wilful ill-treatment by State agents. The Court must, then, also examine the effectiveness of the criminal proceedings against the police officers. Accordingly, as the Government's preliminary objection under this head is closely linked to the merits of the applicants' complaints, the Court decides to join it to them.

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

B. Merits

1. General principles

60. The Court reiterates that Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention. Together with Article 3, from which no derogation is permitted, it 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 beings also requires that these provisions be interpreted and applied so as to make its safeguards practical and effective (see *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV; *Salman*, cited above, § 97; *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

61. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (see *Salman*, cited above, § 99; *Tanlı v. Turkey*, no. 26129/95, § 141, ECHR 2001-III; *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII).

62. The Court further reiterates that where there is a credible assertion that a detainee has died as a result of ill-treatment by the police or other such agents of the State in breach of Article 3, that provision and the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", require by implication that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Ali and Ayşe Duran*, cited above, § 60; and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). Otherwise, the obligation to protect the right to life and the prohibition of ill-treatment would, despite their fundamental importance, 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 *Diri v. Turkey*, no. 68351/01, § 49, 31 July 2007, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

63. The requirements of Articles 2 and 3 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law and the prohibition of ill-treatment. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences and grave attacks on physical and moral integrity to go unpunished (see *Salman*, cited above, §§ 104-109, and *Okkali v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII).

64. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Articles 2 and 3 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life and the prohibition of ill-treatment are not undermined (see *Okkali*, cited above, § 66, and *Ali and Ayşe Duran*, cited above, § 62).

65. That being said, a requirement of promptness and reasonable expedition is implicit in this context (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 108, ECHR 2001-III). A prompt response by the authorities in a case in which a person dies while in the custody of the authorities may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Ali and Ayşe Duran*, cited above, § 63).

2. Application of the general principles to the facts of the present case

66. The Court observes that the domestic courts, after acquainting themselves with the evidence and examining the facts of the case, found that Mr Süleyman Yeter had died as a result of the ill-treatment he had been subjected to in police custody, and police constable M.Y., who had taken part in questioning Mr Yeter, was held responsible for his death. The Court therefore finds that the death of Mr Yeter is attributable to the respondent State. It follows that there has been a violation of the substantive limb of Article 2 of the Convention.

67. In the present case, the Court is further called upon to assess whether the judicial authorities, as the guardians of the laws laid down to protect the lives and physical and moral integrity of persons within their jurisdiction, were determined to punish those responsible (see *Okkali*, cited above, § 68, and *Ali and Ayşe Duran*, cited above, § 66). While it is true that it is not the Court's task to address issues of domestic law concerning individual criminal responsibility, or to deliver guilty or not guilty verdicts, in order to determine whether the respondent State has fulfilled its international

responsibility under the Convention, the Court must have regard to the Istanbul Assize Court's considerations in convicting police officer M.Y. and to the punishment imposed on him as a result. In so doing, the Court should grant substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment and homicide by State agents. However, it must still exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Ali and Ayşe Duran*, cited above, § 66).

68. In this connection the Court reiterates that it has been established that Mr Süleyman Yeter died under torture during police questioning. The first-instance court convicted a police constable, M.Y., and the proceedings against deputy superintendent A.O. are still pending as A.O.'s whereabouts cannot be established. The Court further notes that, although initially the first-instance court sentenced officer M.Y. to ten years' imprisonment, his sentence was reduced to five years, as the court held that the offence had been carried out by two or more people and the main perpetrator had not been identified. The sentence was further reduced to four years and two months' imprisonment on account of the accused's good conduct during the proceedings. It is noteworthy that following his conviction, M.Y. was sent to prison on 28 February 2005, but was released on 19 March 2005, nineteen days later. In the light of the foregoing, the Court considers that the Istanbul Assize Court used its power of discretion to lessen the consequences of a serious criminal act – causing death as a result of inflicting ill-treatment upon a detainee – rather than to show that such acts could in no way be tolerated (see *Okkaleli*, cited above, § 75). The Court is also concerned that, although the proceedings have been pending for more than nine years, the former deputy superintendent A.O., who is accused of killing Mr Yeter under torture, cannot be located.

69. In the light of the foregoing, the Court considers that the assessment made by the Istanbul Assize Court and the light punishment imposed on the superintendent, demonstrated a serious disproportion between the gravity of the offence in question and the punishment imposed.

70. As regards the disciplinary proceedings, the Court observes that although the accused police officers were suspended from duty, the disciplinary proceedings against them were terminated as they benefited from Amnesty Law no. 4455. As a result, no disciplinary sanction was imposed on them. In this connection, 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, and *Yeşil and Sevim v. Turkey*, no. 34738/04, § 38, 5 June 2007). In the present case, the way in which domestic law was applied (see paragraph 23 above) undeniably falls within the category of "measures" which are unacceptable

according to the Court's case-law, as they once again rendered the disciplinary proceedings ineffective. The Court is concerned about the Government's repeated failure to deal with this problem (see, amongst many others *Ali and Ayşe Duran*, cited above, §§ 47-73; *Gülşenoğlu v. Turkey*, no. 16275/02, §§ 49-54, 29 November 2007; *Mansuroğlu v. Turkey*, no. 43443/98, §§ 75-104, 26 February 2008; *Kişmir v. Turkey*, no. 27306/95, §§ 100-121, 31 May 2005, and *Süheyla Aydın v. Turkey*, no. 25660/94, §§ 155-186, 24 May 2005).

71. In conclusion, the Court considers that the criminal-law system, as applied in the instant case, proved to be far from rigorous and had little dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicants (see *Okkalı*, cited above, § 61, and *Ali and Ayşe Duran*, cited above, § 72).

72. In view of the above, the Court finds that there has been a violation of the procedural aspect of Article 2 of the Convention.

73. In sum, the Court dismisses the Government's preliminary objection based on the applicants' victim status (see paragraph 56 above) and concludes that there has been a violation of Article 2 of the Convention under both its substantive and procedural aspects.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

74. Relying on Article 3 of the Convention, the applicants alleged that their relative, Mr Süleyman Yeter, had been killed as a result of torture. Article 3 of the Convention reads:

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

75. Having regard to the grounds on which it has found a violation of Article 2 of the Convention (see paragraphs 66-73 above), the Court considers that, although this complaint is admissible, there is no need to make a separate examination of its merits.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicants claimed the following sums in respect of non-pecuniary damage:

- 120,000 euros (EUR) for Ms Ayşe Yeter Yumli, the wife of the deceased;
- EUR 80,000 for Ms Sırma Yeter, the mother of the deceased; and
- EUR 40,000 each for Mr Mustafa Yeter and Mr Dursun Yeter, the brothers of the deceased.

78. The Government considered these amounts excessive.

79. The Court observes that it has found a violation of Article 2 of the Convention on account of the killing of the applicants' relative under torture and the lack of an effective investigation. It considers that an award should be made in respect of non-pecuniary damage, bearing in mind the family ties between the applicants and the victim, and the seriousness of the violation found. Acting on an equitable basis, the Court awards EUR 40,000 each to the first and second applicants (the victim's widow and mother), and EUR 15,000 each to the third and fourth applicants (the victim's brothers).

B. Costs and expenses

80. The applicants also claimed EUR 7,691 for the costs and expenses incurred before the domestic courts and EUR 8,052 for those incurred before the Court. In support of their claims, the applicants submitted a fee agreement, prepared on the basis of the Istanbul Bar Association's schedule of costs. According to this agreement, apart from the amount awarded by the Court for costs and expenses, the applicants undertook to pay their representatives 25% of the amount awarded by the Court in respect of pecuniary and/or non-pecuniary damage. It was further concluded that this amount could not be less than EUR 7,700. They further submitted an invoice certifying that they had paid 1,180,000,000 New Turkish lira (TRY), (approximately EUR 720), to the lawyer on 2 June 2003.

81. The Government contested the claims.

82. 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 documents in its possession and the above criteria, the Court dismisses the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 720 for the proceedings before the Court.

C. Default interest

83. 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. *Declares* the application admissible;
2. *Joins to the merits* the Government's preliminary objection concerning the victim status of the applicants and *dismisses* it;
3. *Holds* that there has been a violation of Article 2 of the Convention in both its substantive and procedural aspects;
4. *Holds* that it is not necessary to make a separate examination of the merits of the complaint under Article 3 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 in accordance with 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 40,000 (forty thousand euros) to each of the first and second applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) to each of the third and fourth applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 720 (seven hundred and twenty euros), plus any tax that may be chargeable to the applicants, in respect of 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President