



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

SECOND SECTION

CASE OF KARAGÖZ AND OTHERS v. TURKEY

(Applications nos. 14352/05, 38484/05 and 38513/05)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

This version was rectified on 10 January 2011 under Rule 81 of the Rules of Court.

In the case of Karagöz and others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in three applications (nos. 14352/05, 38484/05 and 38513/05) 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 three Turkish nationals, Ms Gönül Karagöz, Mr Haydar Ballıkaya and Mr Bekir Çadirci¹ (“the applicants”), on 4 April, 12 October and 7 October 2005.

2. The applicants, who had been granted legal aid, were represented by Mr E. Kanar, Ms F. Karakaş Doğan, Mr and Ms Kırđök and Ms M. Hanbayat, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged in particular that they had been subjected to torture during their detention in police custody and that ensuing criminal proceedings against the police officers involved had been ineffective. The applicants relied on Articles 3, 6 and 13 of the Convention.

4. On 22 May and 24 June 2009 respectively the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

1. Rectified on 10 January 2011. The applicant’s family name reading “Çadircı” was changed.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

A. *Gönül Karagöz v Turkey* (14352/05)

5. The applicant was born in 1974 and lives in Istanbul.

6. On 21 and 22 February 1997 the applicant and a number of other suspects were taken into police custody by officers from the Anti-Terrorist Branch of the Istanbul Security Headquarters, where they were kept until 6 March 1997 and allegedly ill-treated by police officers. The applicant stated in particular that she had been beaten, and subjected to sexual harassment and Palestinian hanging.

7. On 26 February 1997 the applicant was taken to a State hospital for a medical examination. The report drawn up by a doctor indicated that the applicant did not bear any signs of ill-treatment.

8. On 4 March 1997 the applicant was taken to a forensic doctor who reported a lightly bruised area on her left shoulder, old scabs of various sizes on the lower parts of her legs, sensitivity in her thumbs and index fingers on both hands and pain in her arms. During the subsequent domestic proceedings, on 15 October 1999 the Istanbul Forensic Medicine Institute established that the injuries noted on the applicant's body had rendered her unfit to work for three days.

9. On 6 March 1997 the applicant was brought before the Istanbul Public Prosecutor. She denied all accusations against her and mentioned the ill-treatment she had been subjected to. She was subsequently detained pending trial.

10. Following the complaints of ill-treatment lodged by the applicant and fourteen other detainees, an investigation concerning eight police officers on duty at the time was initiated. On 8 May 1997 the Fatih Public Prosecutor took statements from the police officers concerned and, on 23 June 1997, prepared a summary of the case (*fezleke*) proposing that the eight police officers who had questioned the fifteen complainants at the Istanbul Security Headquarters be charged with inflicting torture under Article 243 of the former Criminal Code.

11. On 4 July 1997 the Istanbul Public Prosecutor filed a bill of indictment, charging the police officers as proposed.

12. On 17 July 1998 the Disciplinary Board of the Istanbul Police (*İl Polis Disiplin Kurulu*) decided not to impose any disciplinary measures on the police officers owing to a lack of evidence establishing that they had committed the acts complained of.

13. On an unspecified date the applicant intervened in the criminal proceedings as a civil party. During a hearing held on 29 April 1999, the applicant identified one of the police officers in the hearing room as another one of those who had allegedly been among the perpetrators of her ill-treatment. On 25 October 2000 an additional bill of indictment was issued in respect of that officer.

14. In his opinion delivered on 8 July 2002, the public prosecutor recommended that the police officers be convicted as charged.

15. On 2 December 2002 the Istanbul Assize Court acquitted five of the police officers for lack of evidence. The remaining four officers were sentenced to eleven months and twenty days' imprisonment and disbarred from public service for two months and twenty-seven days. This sentence was suspended at the discretion of the trial court judges, who noted that the police officers did not have criminal records and were not likely to perpetrate any crimes if their sentence was suspended. One of the judges expressed a dissenting opinion.

16. The applicant appealed. On 1 April 2004 the Court of Cassation upheld the acquittal decision regarding the police officer who had been identified by the applicant during the proceedings. In addition, the Court of Cassation quashed the judgment in respect of the other acquitted police officers on the ground that the prosecution had been time-barred. It subsequently dismissed the criminal proceedings. Finally, the Court of Cassation quashed the judgment in respect of the four convicted police officers on procedural grounds, stating, in particular, that the sentence given did not take into account the existence of several victims, and remitted the case to the Istanbul Assize Court.

17. On 11 November 2004 the Istanbul Assize Court discontinued the criminal proceedings in respect of the remaining four officers on the ground that the prosecution was time-barred.

18. The applicant appealed. On 29 November 2006 the Court of Cassation upheld the judgment.

B. *Haydar Ballıkaya v. Turkey (38484/05) and Bekir Çadirci¹ v. Turkey (38513/05)*

19. The applicants were born in 1965 and 1974 respectively and live in Istanbul.

20. On 25 November 1997 the applicants were taken into police custody at the Istanbul Security Headquarters, where they were held until 2 December 1997 and questioned regarding their alleged involvement in a terrorist organisation.

1. Rectified on 10 January 2011. The applicant's family name reading "Çadircı" was changed.

21. In his statements made before the State Security Court and before the Fatih Public Prosecutor on 2 December 1997, the first applicant complained that he had been subjected to torture by police officers while in custody.

22. On 2 December 1997 the applicants and eight other detainees were examined by a forensic doctor who noted, in respect of the first applicant, 1-3 cm crusted scars on various parts of both hands, particularly around his wrists, a 2 cm healing lesion under his left armpit and a haematoma and yellow marks on and around his right toenail. As to the second applicant, it was reported that he had had a 1 x 6 cm hyperaemia and abrasion which had started under the left armpit and extended towards the outside of his armpit.

23. Both applicants, who were interviewed by the Fatih Public Prosecutor on 10 March 1998, mainly said that they had been blindfolded and beaten, that their testicles had been squeezed, and that they had been hung by the arms and put under psychological pressure throughout the whole interrogation. The second applicant also claimed to have been sprayed with hot and cold pressurised water.

24. On 17 April 1998 the Istanbul Public Prosecutor filed a bill of indictment in which he charged four police officers (S.A., M.C., E.M. and N.C.) with ill-treating the applicants and two other detainees.

25. On 25 June 1998 the second applicant joined the proceedings as a civil party.

26. During hearings held on 26 April 1999 the second applicant, and on 24 June 1999 the first applicant, reiterated their complaints before the court. The first applicant also identified E.M. and S.A. as two of the police officers who had ill-treated him and, reiterating his previous complaints, said that he had been sprayed with pressurised water.

27. Throughout the proceedings, the accused police officers claimed that the applicants had shown resistance at the time of their arrest which explained the marks found on their body. Consequently, at the hearing held on 29 June 2000, the applicants requested that the Forensic Medicine Institute be consulted in order to determine the exact cause of the marks on their bodies.

28. The Forensic Medicine Institute issued its report on 19 December 2001. As the report contained no findings relating to the first applicant, on 3 October 2002, the court asked the Forensic Medicine Institute to issue its report in respect of the first applicant.

29. In its report issued on 19 February 2003 the Forensic Medicine Institute concluded that the crusted scars on the first applicant's hands and wrists could have been about seven days old at the time of his examination by the forensic doctor on 2 December 1997, whereas the lesion under his left armpit and the yellow mark around the right toe could have occurred five to seven days previously. As for the haematoma on his right toenail, the report stated that it was two to three weeks old. Finally the report stated that

the lesions under his armpit and the yellow mark on his toenail could have been caused by the application of a solid object directly to the area or by someone hitting those parts of his body or having them forced against a solid and dented surface. The report added that it was not medically possible to identify which one of these three reasons had been the exact cause of each finding.

30. On 20 June 2003, on the basis of the evidence in the case file, the Istanbul Assize Court held that all three complainants had been subjected to ill-treatment which fell under Article 243 of the Criminal Code. Accordingly, the police officers had inflicted this treatment intentionally in order to extract confessions. The first applicant had been able to identify M.C. and S.A. at one of the hearings. Referring, *inter alia*, to the findings in the medical reports, the court found M.C. and S.A. guilty as charged and sentenced them to one year's imprisonment, further prohibiting them from holding public office for a period of three months. For lack of evidence, the court acquitted N.C. in respect of the accusations made by the first applicant and S.A. and E.M. in respect of the accusations made by the second applicant. In reaching this conclusion the court took into account the fact that the second applicant could not identify the perpetrators.

31. Both parties appealed. On 29 March 2005 the Court of Cassation quashed the judgment in respect of N.C., M.C. and S.A. on the ground that the investigation had been insufficient. The court noted in particular that the medical reports on the complainants, issued when they were taken into police custody, and their statements taken there, were missing from the case file. As to the judgment acquitting S.A. and E.M. in respect of the complaints lodged by the second applicant, the court initially quashed it and then dismissed the proceedings on the ground that the prosecution had become time-barred.

32. The case was remitted to the Istanbul Assize Court, which, on 24 June 2005, decided to discontinue the proceedings in respect of M.C. and S.A. because the prosecution had ultimately become time-barred.

33. On 26 July 2005 the second applicant appealed. On 18 April 2007 the Court of Cassation upheld the Istanbul Assize Court's judgment with simple reference to the hearings, evidence, the trial court's discretion and the case file in general.

II. RELEVANT DOMESTIC LAW

34. A description of the relevant domestic law at the material time can be found in *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, ECHR 2004-IV), *Okkalı v. Turkey* (no. 52067/99, § 71, ECHR 2006-...) and *Zeynep Özcan v. Turkey* (no. 45906/99, 20 February 2007).

THE LAW

I. JOINDER

35. Given the similarity of the applications, both as regards fact and law, the Court deems it appropriate to join them.

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

36. The applicants complained under Article 3 of the Convention that they had been subjected to torture whilst in police custody. In this connection they also relied on Article 13 of the Convention and alleged that they had been denied an effective domestic remedy in respect of their complaint of ill-treatment by the police officers because the public prosecution had become time-barred, resulting in the discontinuance of the proceedings. The applicant in application no. 38513/05 also invoked Article 6 of the Convention in this respect.

37. The applicant in application no. 38513/05 further asserted that he had been denied the right to seek compensation before the civil courts because the criminal proceedings against the police officers had been dismissed for statutory time limitations. He relied on Article 13 of the Convention.

38. The Court considers that these complaints should be examined from the standpoint of Articles 3 and 13 alone, which read as follows in their respective order:

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

“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. Admissibility

39. The Government argued that the applicants had failed to exhaust the domestic remedies available to them within the meaning of Article 35 § 1 of the Convention. In this connection, they submitted that the applicants had not availed themselves of the civil and administrative-law remedies which could have provided reparation for the harm which they had allegedly sustained. Furthermore, the third applicant had not appealed against the Istanbul Assize Court's judgment of 24 June 2005, hence not exhausting criminal proceedings either.

40. The Court reiterates that it has already examined and rejected the Government's preliminary objections (see, in particular, *Müdet Kömürcü v. Turkey* (no. 2), no. 40160/05, § 20, 21 July 2009). The Court finds no particular circumstances in the instant cases which would require it to depart from its previous findings. It therefore rejects the Government's preliminary objection.

41. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The responsibility of the respondent State in the light of the substantive aspect of Article 3 of the Convention

42. In respect of the first applicant the Government maintained that the treatment of the police officers had not attained the level of severity proscribed by Article 3, whereas the second and third applicants had resisted the police officers during their arrest, which was reflected by the marks on their bodies. In this respect, the Government added that the medical reports, in particular the last one issued by the Forensic Medicine Institute, did not lead to the conclusion beyond reasonable doubt that the findings on the second and third applicants' bodies had resulted from torture inflicted by police officers.

43. The Court reiterates the basic principles laid down in its judgments concerning Article 3 (see, in particular, *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 62, 12 April 2007; *Yavuz v. Turkey*, no. 67137/01, § 38, 10 January 2006; *Emirhan Yıldız and Others v. Turkey*, no. 61898/00, §§ 41-42, 5 December 2006; *Diri v. Turkey*, no. 68351/01, §§ 35-39, 31 July 2007; *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004). It will examine the present cases in the light of these principles.

a. Gönül Karagöz v. Turkey (14352/05)

44. The Court notes that the applicant was held in police custody between 21 February and 6 March 1997. Two medical reports were drafted in respect of the applicant during this period, on 26 February and 4 March 1997. The first report, drafted five days after her arrest, indicated no signs of ill-treatment on the applicant's body, whereas the latter report, drawn up two days before the end of police custody, referred to a lightly bruised area on the applicant's left shoulder, old scabs of various sizes on the lower parts of the legs, sensitivity of the thumb and index fingers of both hands and pain in

the arms. It was later established by the Istanbul Forensic Medicine Institute that those findings had rendered the applicant unfit for work for three days. In the absence of any finding in the first medical report, the Court considers that the marks described in the latter report must have occurred during the subsequent days while the applicant was still in police custody. In this connection the Court notes that the applicant's allegations included beatings and Palestinian hanging which match the findings indicated in the latter report.

45. Under the circumstances, the Court concludes that the injuries observed on the applicant must be attributable to a form of ill-treatment for which the authorities at the Anti-Terrorist Branch of the Istanbul Security Headquarters bear responsibility.

46. Furthermore, the Court takes into account the decision of the Istanbul Assize Court which, after acquainting itself with the evidence and examining the facts of the case, found four of the police officers guilty, but that that decision was quashed by the Court of Cassation on a sentencing technicality (see paragraph 16 above).

47. As to the seriousness of the treatment in question, the Court reiterates that, under its case-law in this sphere (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 96-97, ECHR 1999-V), in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

48. In this connection, the Court considers that the treatment complained of was inflicted intentionally by the police officers with the purpose of extracting confessions while the applicant was in custody. In these circumstances, the Court finds that this act was particularly serious and cruel and capable of causing severe pain and suffering. It therefore concludes that this ill-treatment amounted to torture within the meaning of Article 3 of the Convention.

49. There has therefore been a substantive violation of Article 3 of the Convention.

b. Haydar Ballıkaya v. Turkey (38484/05) and Bekir Çadırcı¹ v. Turkey (38513/05)

50. The Court observes that in *Müdet Kömürcü* (cited above, § 26) where it examined the allegations of ill-treatment of an applicant who had also been party to the same criminal proceedings against the police officers

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as in the present case, it found that the treatment to which the applicant in that case had been subjected had amounted to a violation of Article 3 of the Convention.

51. Having examined the documentary evidence submitted by the parties, the Court does not consider there to be any material difference between the above-mentioned case and the present ones. In this connection, it observes that, after acquainting itself with the evidence and having had the benefit of hearing various witnesses and of evaluating their credibility, the Istanbul Assize Court, in its decision of 20 June 2003, found that all the complainants, including the applicants in the present cases, had been ill-treated by police officers from the Istanbul Security Headquarters. In convicting those police officers under Article 243 of the Criminal Code, the court also found that the police officers had inflicted such treatment intentionally in order to extract confessions (see paragraph 30 above). However, the proceedings were subsequently discontinued for being time-barred. In the instant case no cogent evidence has been provided which could lead the Court to depart from the findings of fact of the first-instance court in this respect. The Court therefore concludes that the ill-treatment inflicted on the applicants amounted to torture within the meaning of Article 3 of the Convention.

52. Accordingly, there has been a substantive violation of Article 3 of the Convention in the present cases.

2. The responsibility of the respondent State in the light of the procedural aspect of Article 3 of the Convention

53. The Court reiterates that, in a number of similar cases where prosecutions have been time-barred following lengthy proceedings, it has noted that the criminal law system has proved to be far from rigorous and lacking in the dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicants (see *Müdet Kömürcü*, cited above, § 30; *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 101, 17 March 2009; *Erdoğan Yılmaz and Others v. Turkey*, no. 19374/03, § 57, 14 October 2008).

54. Having examined the documentary evidence submitted by the parties, the Court observes that the Turkish criminal-law system was applied in the same manner in the instant cases. The Court therefore concludes that the criminal proceedings brought against the accused police officers in all three cases were inadequate.

55. Accordingly, there has been a procedural violation of Article 3 of the Convention.

3. *Alleged violation of Article 13 of the Convention*

56. The applicant in application no. 38513/05 also asserted that he had been denied the right to seek compensation before the civil courts because the criminal proceedings against the police officers had been dismissed for statutory time limitations. The applicant relied on Article 13 of the Convention.

57. The Government rejected that allegation and maintained that effective domestic civil law remedies had been available to the applicant.

58. The Court refers to its finding above (see paragraphs 39-41 above) and reiterates its conclusion in a number of previous cases that the civil-remedies were inoperative in similar situations, because they did not enable the applicants to obtain compensation for the alleged violations (see, among others, *Bati and Others*, cited above, § 148). The Court finds no reason in the instant case to depart from its earlier conclusion.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Lastly, the applicant in application no. 14352/05 asserted that, in violation of Article 6 of the Convention, the length of the criminal proceedings lodged against the police officers had been excessive, as a result of which the prosecution had become time-barred. Under the same Article, she also questioned the independence and impartiality of the domestic court, which had not initiated criminal proceedings against the hierarchical superiors of the nine police officers tried.

61. The Court notes that these complaints are linked to the ones examined above and must likewise be declared admissible.

62. However, having regard to the circumstances of the cases and to its finding of a violation of the procedural aspect of Article 3 of the Convention (see paragraphs 53-55 above) the Court considers that it has examined the main legal question raised in the present applications. It concludes therefore that there is no need to make separate rulings in respect of these other complaints (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *K.Ö. v. Turkey*, no. 71795/01, § 50, 11 December 2007; *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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, costs and expenses

64. The applicant in application no. 14352/05 claimed 100,000 Turkish liras (TRY) (approximately 48,000 euros (EUR)) in respect of pecuniary damage and TRY 100,000 for non-pecuniary damage. Referring to the Istanbul Bar Association's scale of fees, she also claimed TRY 20,725 (approximately EUR 9,900) for costs and expenses incurred before the domestic courts and before the Court, which included expenditure such as telephone calls, mail, translation, stationary and travelling.

The applicant in application no. 38484/05 claimed EUR 10,000 for pecuniary damage and EUR 40,000 for non-pecuniary damage. In respect of costs and expenses he also claimed EUR 7,000. In this connection the applicant submitted a lawyer's contract for TRY 10,500 (approximately EUR 9,600), the Istanbul Bar Association's scale of fees and a postal receipt. He finally demanded an additional payment of 4.26% in interest.

The applicant in application no. 38513/05 did not request pecuniary damage but claimed EUR 30,000 as non-pecuniary damage. Regarding costs and expenses, he claimed EUR 5,000 for lawyer's fees and EUR 600 for translation and transportation costs, stationary and postal expenses. In support of his claims the applicant submitted a lawyer's contract, a schedule of costs, which indicates fifty-three hours of legal work carried out by his representative, and a list of the claimed expenses.

65. The Government contested these claims and asserted that only costs actually incurred could be reimbursed.

66. As regards the alleged pecuniary damage sustained, the Court observes that the applicants did not produce any document in support of their claims, which the Court accordingly dismisses. However, it considers that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations and to equitable considerations, it awards the applicants the full sums claimed under this head.

67. In respect of the claims by the applicant in application no. 14352/05 regarding costs and expenses, the Court notes that an applicant is entitled to reimbursement under this head only in so far as it has been shown that the claimed costs and expenses have been actually and necessarily incurred and are reasonable as to quantum. In this connection the Court notes that a bar association's scale of fees submitted without additional supporting documents cannot be considered sufficient to substantiate a claim under this head (see *Güngil v. Turkey*, no. 28388/03, § 33, 10 March 2009). Accordingly, the Court makes no costs award to this applicant. As for the claims by the other two applicants, regard being had to the information and

documents in its possession as well as the above criteria, the Court considers it reasonable to award each of these applicants EUR 3,500.

B. Default interest

68. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs in all three applications;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of application no. 38513/05;
5. *Holds* that there is no need to examine separately the complaints under Article 6 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months of 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 on the date of settlement:
 - (i) to Ms Gönül Karagöz, EUR 48,000 (forty-eight thousand euros), to Mr Haydar Ballıkaya, EUR 40,000 (forty thousand euros), to Mr Bekir Çadirci¹ EUR 30,000 (thirty thousand euros) plus any tax that may be payable, in respect of non-pecuniary damage;
 - (ii) to Mr Haydar Ballıkaya and Mr Bekir Çadirci² EUR 3,500 (three thousand five hundred euros) each plus any tax that may be payable to them, 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

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rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Françoise Tulkens
President