



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

FIRST SECTION

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

*(Applications nos. 33097/96 and 57834/00)*

JUDGMENT  
[Extracts]

STRASBOURG

3 June 2004

**FINAL**

*03/09/2004*



**In the case of *Bati and Others v. Turkey*,**

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

Mr P. LORENZEN, *President*,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mrs F. TULKENS

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 May 2004,

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

**PROCEDURE**

1. The case originated in two applications (nos. 33097/96 and 57834/00) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 28 July 1996 and with the Court under Article 34 of the Convention on 19 May 2000 by fifteen Turkish nationals, Mr Ulař Batı, Mr Bülent Gedik, Mr Müřtak Erhan İl, Mr Özgür Öktem, Mr Sinan Kaya, Mr İsmail Altun, Mr İzzet Tokur, Mr Okan Kablan, Mr Cemal Bozkurt, Mrs Devrim Öktem, Miss Sevgi Kaya, Miss Arzu Kemanoglu, Miss Zülcihan řahin, Miss Ebru Karahancı and Miss Zühal Sürücü (“the applicants”).

2. Mr Ulař Batı, Mr Okan Kablan and Mr Bülent Gedik were granted legal aid. The applicants were represented before the Court by Mr G. Tuncer, Mr İ. Ergün, Mr S. Akat, Mr G. Alpul, Mr S. Demir and Mr O. Demir, of the Istanbul Bar. The Turkish Government (“the Government”) did not appoint an Agent for the proceedings before the Court.

3. Mr Ulař Batı, Mr Bülent Gedik, Mr Müřtak Erhan İl, Mr Özgür Öktem, Mr Sinan Kaya, Mr İsmail Altun, Mr İzzet Tokur, Mr Okan Kablan, Mrs Devrim Öktem, Miss Sevgi Kaya, Miss Arzu Kemanoglu, Miss Zülcihan řahin and Miss Ebru Karahancı alleged a violation of Article 3 of the Convention. With the exception of Mr Okan Kablan, all the applicants complained under Article 5 § 3 of the Convention of the length of time they had spent in police custody. Mrs Devrim Öktem, Mr Özgür Öktem, Mr Okan Kablan and Mr Müřtak Erhan İl also complained that they

were not tried within a reasonable time or released pending trial, within the meaning of the second sentence of Article 5 § 3 of the Convention.

4. Application no. 33097/96 was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). These cases were assigned to the newly composed First Section (Rule 52 § 1).

7. By a decision of 7 March 2002, the Chamber declared the applications partly admissible and ordered their joinder.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. Mr Ulaş Batı was born in 1979, Mr Bülent Gedik in 1974, Mr Müştak Erhan İl in 1971, Mr Özgür Öktem in 1976, Mr Sinan Kaya in 1978, Mr İsmail Altun in 1974, Mr İzzet Tokur in 1973, Mr Okan Kablan in 1980, Mr Cemal Bozkurt in 1973, Mrs Devrim Öktem in 1975, Miss Sevgi Kaya in 1980, Miss Arzu Kemanoglu in 1972, Miss Zülcihan Şahin in 1977, Miss Ebru Karahancı in 1978 and Miss Zühal Sürücü in 1979. All are Turkish nationals and live in Istanbul.

#### **A. The applicants' arrest and the medical evidence**

10. In February and March 1996, as part of a police operation against an illegal Marxist organisation, the TKEP/L (Communist Labour Party of Turkey/Leninist), the Istanbul police arrested the applicants and held them for questioning at the headquarters of the anti-terrorist branch of the Istanbul security police ("Security Headquarters") for questioning.

11. The facts in each individual case may be summarised as follows:

##### *1. Ulaş Batı*

12. Mr Batı was arrested on 8 February 1996.

13. On 19 February 1996 he informed the public prosecutor during an interview that he had been ill-treated by the police while in custody. He was later brought before a judge of the Istanbul National Security Court (“the judge”), to whom he repeated the statement he had made to the public prosecutor. The judge ordered his detention pending trial.

14. Mr Batı says that his ill-treatment at Security Headquarters took various forms: he was beaten, forced to remain standing, deprived of sleep, and threatened with death, rape and sexual assault with a truncheon.

15. He was given only one medical examination. In his report of 19 February 1996, the forensic doctor, a member of the Istanbul Institute of Forensic Medicine, found partly healed bruising measuring 0.5 cm by 0.5 cm in the sternal region. He noted that Mr Batı had complained of pain in his shoulders and certified him unfit for work for one day.

## 2. *Bülent Gedik*

16. Mr Gedik was arrested on 6 February 1996.

17. On 19 February 1996 he informed the public prosecutor during an interview that he had been coerced into making a statement which he had signed without reading. He subsequently repeated this account to the judge, who ordered his detention pending trial.

18. Mr Gedik says his ill-treatment in custody included suspension by the arms, death threats and electric shocks.

19. He was given three medical examinations:

(a) In a report of 19 February 1996, a forensic doctor noted scab-covered lesions measuring 3 cm by 3 cm to the rear of the thighs and an old bruise measuring 3 cm by 3 cm in the upper scapular region. He certified Mr Gedik unfit for work for three days.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor found bruising with scabs to the left arm and a leg. He noted that Mr Gedik complained of pain in various parts of the body and referred him to a forensic doctor for a final report.

(c) Mr Gedik was re-examined by a forensic doctor on 7 March 1996. The doctor recorded his complaints of pain in the left shoulder in the medical certificate. However, he considered that a final report could only be drawn up once Mr Gedik had been examined by a hospital neurology service. It appears from the case file, however, that the additional examination was never carried out.

## 3. *Müştağ Erhan İl*

20. Mr Erhan İl was arrested on 6 February 1996.

21. On 19 February 1996 he was interviewed by the public prosecutor, before whom he denied all the offences he was alleged to have committed. Subsequently he was brought before the judge, to whom he complained of

ill-treatment by police officers while in custody. The judge ordered his detention pending trial.

22. Mr Erhan İl says that he was subjected to various forms of ill-treatment while in custody at Security Headquarters: suspension by the arms, blows, threats and insults.

23. He was given three medical examinations:

(a) After examining Mr Erhan İl, a forensic doctor drew up a medical report in which he noted reduced extension and impaired supination and pronation in both arms. He said that a final report could be drawn up once Mr Erhan İl had been examined by a hospital neurology service.

(b) In his report of 27 February 1996, the Bayrampaşa Prison doctor noted that Mr Erhan İl had complained of pain in his shoulders, thorax, back and respiratory tract, and numbness in both arms and hands. He referred him to a forensic doctor for a final report.

(c) On 6 March 1996, in the light of the medical certificate issued on 19 February 1996, the forensic doctor ordered Mr Erhan İl's transfer to hospital for neurological examination. It appears from the case file, however, that no such additional examination was ever carried out.

#### 4. *Özgür Öktem*

24. Mr Öktem was arrested on 8 February 1996.

25. On 19 February 1996, after being interviewed by the public prosecutor, he was brought before the judge to whom he complained of ill-treatment by police officers while in custody. The judge ordered his detention pending trial.

26. Mr Öktem says that he was subjected to various forms of ill-treatment while in custody, including suspension by the arms and beating of the soles of the feet (*falaka*).

27. He was given three medical examinations:

(a) According to a medical certificate issued on 19 February 1996, the forensic doctor initially did not find any marks of violence on Mr Öktem's body. He noted that Mr Öktem had complained of pain in his thigh, labial mucosa and internal or lateral walls of his mouth. He certified him unfit for work for three days.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor noted that Mr Öktem had a tear to the mouth that had been caused by the use of force, pain in various parts of the body and difficulty breathing. He referred him to a forensic doctor for a final report.

(c) In a report of 6 March 1996, the forensic doctor confirmed the findings in the reports of 19 and 27 February 1996.

#### 5. *Sinan Kaya*

28. Mr Kaya was arrested on 8 February 1996.

29. On 19 February 1996 he was brought before the judge after being interviewed by the public prosecutor. He complained to the judge of ill-treatment by police officers while in custody. The judge ordered his detention pending trial.

30. Mr Kaya says that he was subjected to various forms of ill-treatment while in custody: suspension by the arms, blows, threats and insults.

31. He was given three medical examinations:

(a) The first was performed by a forensic doctor on 19 February 1996, who found that Mr Kaya presented scab-covered lesions measuring 1 cm by 1.5 cm and 1 cm by 1 cm to the side of the right armpit, bruising measuring 2 cm by 2 cm to the mastoid, and pain in the shoulders and arms. He certified him unfit for work for five days.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor found loss of movement in the arms, cramps in the shoulders, breathing difficulties and cuts and bruising to the right foot. He referred him to a forensic doctor for a final report.

(c) In a report of 7 March 1996, the forensic doctor noted scab-covered lesions measuring 1 cm by 1.5 cm and 1 cm by 1 cm on the side of the right armpit, bruising and grazing to the mastoid, and pain in the shoulders and arms. He certified him unfit for work for five days.

#### 6. *Sevgi Kaya*

32. Miss Kaya (who is Sinan Kaya's sister) was arrested on 8 February 1996.

33. On 19 February 1996 she was brought before the judge after being interviewed by the public prosecutor and complained of ill-treatment by police officers while in custody. The judge ordered her detention pending trial.

34. Miss Kaya says that while in custody she was subjected to *falaka*, sprayed with water, threatened with rape and undressed.

35. She was given three medical examinations:

(a) In a report dated 19 February 1996, a forensic doctor found old bruising to the soles of the feet measuring 5 cm by 4 cm that was in the process of healing, bruising to both palms and pain in the shoulders and arms. He certified her unfit for work for seven days.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor noted bruising, swelling and tenderness to the sole of the left foot, and loss of movement and deformity to the little finger of the right hand. He referred her to a forensic doctor for a final report.

(c) In a report of 7 March 1996, the forensic doctor noted scab-covered lesions measuring 5 cm by 4 cm to the soles of both feet, bruising to both palms and pain in the shoulders and arms. He certified Miss Kaya unfit for work for seven days.

### 7. *İsmail Altun*

36. Mr Altun was arrested on 8 February 1996.

37. He was interviewed by the public prosecutor on 16 February 1996 and complained of ill-treatment by police officers while in custody. He was subsequently brought before the judge, to whom he repeated the statement he had made to the public prosecutor. The judge ordered his detention pending trial.

38. Mr Altun says that he was subjected to various forms of ill-treatment: he was suspended by his arms (which were tied together), beaten, sprayed with cold water and deprived of sleep. He further complains that he was blindfolded and his testicles were wrung.

39. He was given three medical examinations:

(a) In a report of 16 February 1996, a forensic doctor noted that Mr Altun was suffering from headaches and pain in his arms.

(b) In a report of 28 February 1996, the Bayrampaşa Prison doctor noted bruising below the eyes, scab-covered lesions measuring 0.5 cm by 0.5 cm on the upper right ear, pain running from the neck to the anus, restricted movement of the thumb of the right hand, scab-covered lesions on the back of the left foot, grazing on the back of the right foot, bruising measuring 5 cm by 2 cm to the anterior left leg (tibia) and pain in the chest and respiratory tract.

(c) In a report of 6 March 1996, the forensic doctor confirmed the findings set out in the report of 16 February 1996.

### 8. *Devrim Öktem*

40. Mrs Öktem (who is Bülent Gedik's wife) was arrested on 6 February 1996.

41. On 19 February 1996, after being interviewed by the public prosecutor, she was brought before the judge, who ordered her detention pending trial.

42. Mrs Öktem says that she was subjected to various forms of ill-treatment while in custody: she was beaten, suspended by the arms, undressed and sprayed with water. She also alleges that she suffered a miscarriage as a result of the ill-treatment.

43. She was given seven medical examinations:

(a) In a report of 19 February 1996, a forensic doctor said that he had found no marks on Mrs Öktem's body that were consistent with assault. Noting that she alleged that she had miscarried as a result of ill-treatment in police custody, he said that a final report could be drawn up once she had been examined by a hospital obstetrics service.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor noted a bruise measuring 1 cm by 1 cm on Mrs Öktem's left leg, and pain in the



soles of her feet and kidneys. He referred her to a forensic doctor for a final report.

(c) In a report of 6 March 1996, in the light of the information contained in the aforementioned medical certificates, the forensic doctor ordered her transfer to a hospital obstetrics service.

(d) In a report of 6 March 1996, a gynaecologist from the Haseki General Hospital noted bleeding and particles in the region of the uterus and diagnosed post-abortive endometritis.

(e) In a report of 18 April 1996, the Bayrampaşa Prison doctor noted a 0.5 cm by 1 cm swelling to the occipital region and pain in the back. He referred her to a forensic doctor for a final report.

(f) On 31 May 1996 a gynaecologist from the Istanbul General Hospital informed the Istanbul Assize Court that the hospital register showed that Mrs Öktem had been examined on 20 February 1996 and that no genital pathology in the region of the uterus had been found. However, in view of her allegation that she had suffered a miscarriage, she had been given appropriate treatment.

(g) Mrs Öktem's medical file was examined by a team of seven gynaecologists, who, in a report of 19 February 1997, concluded that she had suffered a miscarriage while in police custody. However, since there were no marks on her body consistent with assault and she had not had a full medical examination, they said that it was impossible to confirm a causal link between the miscarriage and the alleged ill-treatment.

#### *9. Arzu Kemanoglu*

44. Miss Kemanoglu was arrested on 6 February 1996.

45. On 19 February 1996 she was interviewed by the public prosecutor. She complained of ill-treatment by police officers while in custody and denied all the offences she was alleged to have committed. She was subsequently brought before the judge, who ordered her detention pending trial.

46. Miss Kemanoglu was given three medical examinations:

(a) On 19 February 1996 a forensic doctor noted that there were no marks on her body consistent with assault.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor noted a 3 cm by 3 cm bruise on her leg, and bruising to the neck, shoulders and rib cage. He referred her to a forensic doctor for a final report.

(c) On 6 March 1996, in the light of the aforementioned medical reports, the forensic doctor made an order for her to be examined by the Institute of Forensic Medicine Special Office. However, the file shows that that examination did not take place.

*10. Zülcihan Şahin*

47. Miss Şahin was arrested on 7 February 1996.

48. On 19 February 1996 she stated before the public prosecutor and the judge that she had been ill-treated by police officers while in custody. The judge ordered her detention pending trial.

49. Miss Şahin was given three medical examinations:

(a) In a report of 19 February 1996, a forensic doctor noted two old bruises measuring 0.5 cm by 1 cm and 0.5 cm by 2 cm on the anterior left arm and an old bruise measuring 1 cm by 1.5 cm on the same arm. He did not certify her unfit for work.

(b) In a report of 22 February 1996, the Bayrampaşa Prison doctor noted a 2 cm by 2 cm bruise on the neck and cuts to the shoulders.

(c) In a report of 7 March 1996, the forensic doctor confirmed the findings in the report of 22 February 1996 and certified Miss Şahin unfit for work for three days.

*11. Ebru Karahancı*

50. Miss Karahancı was arrested on 8 February 1996.

51. On 19 February 1996 she stated before the public prosecutor and the judge that she had been ill-treated by police officers while in custody. The judge ordered her detention pending trial.

52. Miss Karahancı says that she was subjected to various forms of ill-treatment while in custody: she was beaten, suspended by the arms, sprayed with water and deprived of sleep for three days.

53. She was given three medical examinations:

(a) In a report of 19 February 1996, a forensic doctor noted that she complained of pain in the back and arms. He found a 2 cm by 3 cm bruise in the middle of the outer left leg, and an old bruise measuring 0.5 cm by 0.5 cm on the lower leg. He certified her unfit for work for five days.

(b) In a report of 27 February 1996, the Bayrampaşa Prison doctor noted a bruise on the left ankle and pain in different parts of the body. He considered an examination by a forensic doctor necessary.

(c) In a report of 6 March 1996, the forensic doctor confirmed the findings in the report of 19 February 1996.

*12. İzzet Tokur*

54. Mr Tokur was arrested on 8 February 1996.

55. On 19 February 1996 he stated before the public prosecutor and the judge that he had been ill-treated by police officers while in custody. The judge ordered his detention pending trial.

56. Mr Tokur says that while in police custody he was beaten approximately twenty to twenty-five times, threatened with death, sprayed with water and deprived of sleep for four days.

57. On 19 February 1996 a forensic doctor found no visible marks on Mr Tokur's body on examination that were consistent with assault. He noted, however, that Mr Tokur complained of pain in his shoulders and certified him unfit for work for one day.

*13. Okan Kablan*

58. Mr Kablan was arrested on 6 February 1996.

59. On 19 February 1996 he stated before the public prosecutor and the judge that he had been ill-treated by police officers while in custody. The judge ordered his detention pending trial.

60. Mr Kablan says that he was subjected to various forms of ill-treatment while in custody: suspension by the arms, blows and sleep deprivation.

61. He was examined three times:

(a) In a report of 19 February 1996, a forensic doctor noted old bruises measuring 2 cm by 3 cm on his right leg. He certified Mr Kablan unfit for work for one day.

(b) In a report of 28 February 1996, the Bayrampaşa Prison doctor noted a bruise on the right leg, bruising to the axillary region, reduced movement in both arms and pain in various parts of the body. He referred Mr Kablan to a forensic doctor for a final report.

(c) In a report of 7 May 1996, the forensic doctor noted that Mr Kablan was suffering from a problem with his ears entailing unfitness for work for fifteen days.

*14. Zühal Sürücü*

62. Miss Sürücü was arrested on 14 March 1996.

63. She was interviewed by the public prosecutor on 25 March 1996, following a medical examination which did not disclose any marks consistent with assault. She was then brought before the judge, who ordered her detention pending trial.

*15. Cemal Bozkurt*

64. Mr Bozkurt was arrested on 14 March 1996.

65. He was interviewed by the public prosecutor on 25 March 1996, following a medical examination which did not disclose any marks consistent with assault. He was then brought before the judge, who ordered his detention pending trial.

### **B. The charges against the applicants and their applications for release**

66. On 10 April 1996 the public prosecutor instituted criminal proceedings against twenty people, including the applicants, under both Article 146 of the Criminal Code, which makes it an offence to attempt to change or modify the Constitution of the Republic of Turkey in whole or in part, to attempt a *coup d'état* against the National Assembly or to use force to prevent the National Assembly from carrying out its functions, and Article 168 § 2 of the Criminal Code, which makes it an offence to be a member of an armed group. The applicants were accused of various acts of violence, including voluntary homicide, attempted homicide, throwing explosive devices, taking part in an illegal and violent demonstration and armed robbery.

...

72. The case is still pending in the domestic courts.

### **C. The applicants' complaints and the charges of ill-treatment against six police officers on duty at the time**

73. On 5 March 1996 ten of the applicants, Bülent Gedik, Zülcihan Şahin, Sinan Kaya, Sevgi Kaya, Devrim Öktem, Okan Kablan, Arzu Kemanoglu, Müştak Erhan İl, İzzet Tokur and Ulaş Batı, lodged a complaint of ill-treatment against the police officers who had been on duty while they were in custody.

74. They also lodged a complaint against O.T. (the Istanbul police commissioner) and R.A. (the deputy director of the Istanbul anti-terrorist branch). They argued that these two senior police officers were the hierarchical superiors of the police officers who had subjected them to torture. This complaint was dismissed on 24 February 1998 for lack of sufficient evidence. That decision was upheld by the President of the Beyoğlu Assize Court on 23 September 1998.

75. On 12 April 1996 the public prosecutor questioned four police officers (Fatih Berkup, Mehmet A. Çavdar, Ahmet Bereket and Yakup Doğan) in connection with the complaint that had been lodged on 5 March 1996. All four officers had been on duty while the applicants were in custody. They denied having ill-treated the applicants concerned.

76. Meanwhile, on a date that has not been specified by the parties, a complaint was lodged by Ebru Karahancı, Özgür Öktem and İsmail Altun. They alleged, *inter alia*, that six police officers (Mustafa Sara, Mustafa Taner Paylaşan, Fatih Berkup, Mehmet A. Çavdar, Ahmet Bereket and Yakup Doğan) had ill-treated them while they were in custody. On 21 February 1997 the Istanbul public prosecutor's office decided not to take any action on the complaint. However, the applicants say that on

5 December 1997 the President of the Beyoğlu Assize Court set aside that decision following an appeal by the applicants' representative.

77. By an indictment that was lodged on 4 March 1997, the public prosecutor instituted criminal proceedings in the Istanbul Assize Court against five police officers (Mustafa Taner Paylaşan, Ahmet Bereket, Fatih Berkup, Mehmet A. Çavdar and Yakup Doğan) for an offence under Article 243 of the Criminal Code (see paragraph 96 below).

78. The first hearing in the case took place on 26 May 1997 in the Istanbul Assize Court, in the absence of the five police officers. The Assize Court heard the applicants, who complained in particular of the decision not to prosecute Mustafa Sara. In addition, Mrs Öktem testified that she had suffered a miscarriage after being assaulted and subjected to repeated blows to the abdomen while in custody. With the exception of İzzet Tokur, Ebru Karahancı, Özgür Öktem and İsmail Altun, the applicants applied to be joined to the criminal proceedings as civil parties under Article 365 of the Code of Criminal Procedure (see paragraph 98 below). That application was granted.

79. On 7 July 1997 a brawl broke out between the applicants and members of the security forces as nine of the applicants (Zülcihan Şahin, Sinan Kaya, İsmail Altun, Müştak Erhan İl, Arzu Kemanoglu, Okan Kablan, Devrim Öktem, Özgür Öktem and Bülent Gedik) were being taken to the hearing room in the Istanbul court-house. The Istanbul Assize Court proceeded with the hearing, which it began by hearing evidence from the four defendant police officers who were present, namely Mustafa Taner Paylaşan, Fatih Berkup, Mehmet A. Çavdar and Yakup Doğan.

80. At the hearing the applicants formally identified those police officers. The Assize Court decided that it was unnecessary to remand the accused in custody and adjourned the question of whether Mustafa Sara should be prosecuted to a later date.

81. At a hearing on 20 October 1997, Mr Öktem (the father of Mrs Öktem and Mr Öktem) and Miss Karahancı gave evidence. The latter said that she was unable to identify anyone, as she had been kept blindfolded throughout her time in police custody.

82. The testimony of one of the accused, Ahmet Bereket, was obtained on commission and placed in the case file of the Assize Court on 29 July 1997.

83. At a hearing on 25 December 1997, the Assize Court sought to establish the addresses of two of the victims, A. Kılıç and Ay. Kılıç, so that their testimony, which was not on the case file, could be obtained.

84. At a hearing on 11 March 1998, Mr A. Tunga gave evidence.

85. On 7 January 1998 a supplementary indictment was lodged by the public prosecutor, accusing police officer Mustafa Sara of ill-treatment with a view to extracting confessions.

86. On 14 April 1998 evidence was taken from Mustafa Sara on commission and placed in the case file.

87. Between 21 May 1998 and 25 December 2002 the Assize Court held approximately thirty hearings, at which it sought, *inter alia*, to establish the addresses of a witness and of a victim with a view to serving them with witness summonses. Although the applicants' representatives urged the Assize Court on 24 June 1999, 20 November 2001 and 23 December 2001 to dispense with the evidence of the two people concerned, it did not accede to their request until 13 February 2002.

88. At a hearing on 17 July 2002, the representative acting for Mustafa Taner Paylaşan, Fatih Berkup and Yakup Doğan informed the Assize Court that he was withdrawing from the case. The court was also informed that Mehmet A. Çavdar had died.

89. On 1 October 2002 the applicants' representatives asked the Assize Court to expedite the proceedings, as there was a danger that the prosecution of the offences would become statute-barred.

90. At a hearing on 20 November 2002, Yakup Doğan sought an adjournment to enable him to obtain legal representation. Mustafa Sara lodged a medical certificate excusing his absence. The Assize Court granted the defendants an extension of time. From the case file it would seem that Mustafa Sara never in fact appeared before the Assize Court.

91. At a hearing on 25 December 2002, the public prosecutor made his submissions. He sought an order dismissing the criminal proceedings against Mehmet A. Çavdar, who had died, and against Mustafa Taner Paylaşan, Ahmet Bereket, Fatih Berkup and Yakup Doğan under the statute of limitations. As regards Mustafa Sara, he sought a conviction only on the count of torturing Bülent Gedik. He submitted that Mustafa Sara should be acquitted on the other charges.

92. In a judgment of 5 February 2003, the Assize Court decided to discontinue the proceedings against the defendants Mustafa Taner Paylaşan, Ahmet Bereket, Fatih Berkup and Yakup Doğan by virtue of the statute of limitations and against Mehmet A. Çavdar on the ground of intervening death. It found Mustafa Sara guilty of torturing Mr Gedik and Mrs Öktem and sentenced him to two years' imprisonment. It also made an order prohibiting him from holding public office for a period of six months. However, it acquitted him on the other charges.

...

94. The case is currently pending before the Court of Cassation.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Rules on detention in police custody

95. At the material time section 16 of Law no. 2845 on procedure in the national security courts provided that any person arrested in connection with an offence within the exclusive jurisdiction of those courts had to be brought before a judge within forty-eight hours at the latest or, if the offence was a joint one committed outside the region under emergency rule, within fifteen days, not including the time needed to convey the detainee to the judge.

### B. Prosecution for ill-treatment

96. Under the Turkish Criminal Code, it is an offence for a public official to subject a person to torture or ill-treatment (Article 243 in relation to torture and Article 245 in relation to ill-treatment). The authorities' obligations in respect of conducting a preliminary investigation into acts or omissions capable of constituting such offences that have been brought to their attention are governed by Articles 151 to 153 of the Code of Criminal Procedure. Offences may be reported to the authorities and the security forces as well as to the public prosecutor's office. Complaints may be made orally or in writing. If a complaint is made orally, the authority must keep a record (Article 151).

By Article 235 of the Criminal Code, any public official who fails to report to the police or a public prosecutor's office an offence of which he has become aware in the course of his duties is liable to imprisonment. A public prosecutor who is informed by any means whatsoever of a situation that gives rise to suspicion that an offence has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 of the Code of Criminal Procedure).

97. Under Article 102 of the Criminal Code, taken in conjunction with Articles 243 and 245, a prosecution for an offence of ill-treatment or torture by a public official must be brought within five years.

98. Article 365 of the Code of Criminal Procedure also contains a provision allowing victims of crime to join the proceedings as "intervening parties" alongside the prosecution. As a direct victim, an intervening party may also claim reparation for any loss sustained as a result of the offence provided that he or she has not previously brought an action in the civil courts. The admissibility of applications to join the proceedings as an intervening party is determined by the judge, after hearing representations from the public prosecutor's office (Article 366 of the Code of Criminal Procedure). A person who has been given leave to intervene in proceedings

may, like the public prosecutor, appeal to the Court of Cassation against the verdict (Article 371 of the Code Criminal Procedure).

### **B. Civil and administrative liability arising out of criminal offences**

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

However, under section 13 of Law no. 657 on State employees, anyone who has sustained loss as a result of an act done in the course of an official's duties under public law may, in principle, only bring an action against the authority for whom the official concerned works and not directly against the official (Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). This is not an absolute rule, however. When an act is found to be illegal or tortious and, consequently, is no longer an "administrative act" or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

### **D. The United Nations Istanbul Protocol**

100. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) was submitted to the United Nations High Commissioner for Human Rights on 9 August 1999. The "Istanbul Principles" subsequently received the support of the United Nations through resolutions of the United Nations Commission on Human Rights and the General Assembly. It is the first set of guidelines to have been produced for the investigation of torture. The Protocol contains full practical instructions for assessing persons who claim to have been the victims of torture or ill-treatment, for investigating suspected cases of torture and for reporting the investigation's findings to the relevant authorities.

The principles applicable to the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment are to be found in Annex 1 of the Manual, the relevant parts of which read as follows:

"The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution



or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. ...

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. ... Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence.

...

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response.

Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;

(b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;

(e) The report should clearly identify those carrying out the examination and should be signed.

..."

## THE LAW

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

101. Thirteen of the applicants, Mr Ulaş Batı, Mr Bülent Gedik, Mr Müştak Erhan İl, Mr Özgür Öktem, Mr Sinan Kaya, Mr İsmail Altun, Mr İzzet Tokur, Mr Okan Kablan, Mrs Devrim Öktem, Miss Sevgi Kaya, Miss Arzu Kemanoglu, Miss Zülcihan Şahin and Miss Ebru Karahancı, alleged a violation of Article 3 of the Convention, which provides:

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

...

#### C. Allegation of ill-treatment at the hands of the police

110. The Court notes that the applicants have complained that they were subjected to various forms of ill-treatment while in police custody, including: suspension (Bülent Gedik, Müştak Erhan İl, Özgür Öktem, Sinan Kaya, İsmail Altun, Okan Kablan, Devrim Öktem, Arzu Kemanoglu, Zülcihan Şahin and Ebru Karahancı); repeated beatings (Ulaş Batı, Müştak Erhan İl, Sinan Kaya, İsmail Altun, İzzet Tokur, Okan Kablan, Devrim Öktem, Zülcihan Şahin and Ebru Karahancı); being sprayed with water (Zülcihan Şahin, Sevgi Kaya, Arzu Kemanoglu, Ebru Karahancı, İzzet Tokur and İsmail Altun); and *falaka* (Özgür Öktem and Sevgi Kaya). They

also alleged that they had been deprived of sleep, insulted, and threatened with death or rape.

111. The applicants were also critical of the manner in which the authorities had conducted the investigation into their allegations of ill-treatment.

112. The Government submitted that the Court could not find a violation of Article 3, as there had been no final determination of the alleged charges.

113. The Court reiterates, in line with its settled case law, that it remains free to make its own assessment in the light of all the material before it (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 86, ECHR 1999-V; see also paragraph 148 below).

114. The Court notes that the medical certificates drawn up by the doctors showed that the applicants presented serious injuries at the end of their stay in police custody; it is common ground that those injuries were not sustained before the applicants were taken into police custody. Furthermore, the evidence adduced by the parties, both in the criminal proceedings in the domestic courts and in the proceedings before the Court, corroborates the applicants' allegations that they were subjected to multiple acts of violence by the police officers. Accordingly, in the light of the material before it, the Court accepts that the applicants were subjected to various forms of ill-treatment, including: suspension in the cases of Bülent Gedik, Müştak Erhan İl, Özgür Öktem, Sinan Kaya, İsmail Altun, Okan Kablan, Devrim Öktem, Arzu Kemanoglu and Ebru Karahancı; spraying with water in the cases of İsmail Altun, İzzet Tokur, Devrim Öktem, Sevgi Kaya, Arzu Kemanoglu, Zülcihan Şahin and Ebru Karahancı; repeated beatings in the cases of Ulaş Batı, Müştak Erhan İl, Sinan Kaya, İsmail Altun, İzzet Tokur, Okan Kablan, Devrim Öktem, Zülcihan Şahin and Ebru Karahancı; and *falaka* in the cases of Özgür Öktem and Sevgi Kaya. Similarly, in the light of the consistent statements of the applicants and all the material before it, the Court is satisfied that they were insulted, deprived of sleep for several days and subjected to assault, which, though not of a kind that would necessarily leave physical marks that would show up on medical examination, was liable to harm their mental integrity.

115. Having regard to the findings set out in the previous paragraph, the Court does not consider it necessary to go on to assess whether the other allegations of physical or psychological abuse are true, particularly in view of the difficulty of proving such treatment.

116. As to the seriousness of the acts which have been proved, the Court reiterates that, under its case-law in this sphere (see, among other authorities, *Selmouni*, cited above, §§ 96-97), 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.

117. In that connection, the Court notes at the outset that the Istanbul Assize Court classified the treatment to which Bülent Gedik and Devrim Öktem were subjected as torture, in view of the severity of the acts in question and the fact that the treatment was intentionally inflicted on them by State agents acting in the course of their duties in order to extract confessions or obtain information from them on offences they were alleged to have committed (see paragraph 93 above). The Court sees no reason to disagree with those findings in the cases of Bülent Gedik and Devrim Öktem.

118. As regards the other applicants, the Court finds that the existence of physical pain or suffering is attested by both the various lesions recorded in the medical certificates and the applicants' statements regarding their ill-treatment in custody (see paragraphs 13-61 and 93 above). The sequence of events also demonstrates that the pain or suffering was inflicted on the applicants intentionally, in particular with a view to obtaining confessions from them on the offences they were alleged to have committed.

119. The acts complained of were such as to arouse in the applicants feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance. In any event, the Court reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

120. It remains to be determined whether the "pain or suffering" inflicted on the applicants can be defined as "severe". The Court considers that the term "severe" is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

121 The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2279, § 64; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1891-92, §§ 83-84 and 86; *Selmouni*, cited above, § 105; and *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII).

122. In the instant case, the applicants were indisputably kept in a permanent state of physical pain and anxiety owing to their uncertainty about their fate and to the level of violence to which they were subjected throughout their period in police custody. This applied especially to the

younger and more vulnerable applicants (Ulaş Batı and Zühal Sürücü were 17 years old at the material time, Sinan Kaya and Ebru Karahancı 18, and Okan Kablan and Sevgi Kaya 16, while Devrim Öktem was pregnant).

The Court considers that such treatment was intentionally inflicted on the applicants by agents of the State acting in the course of their duties, with the aim of extracting from them a confession or information about the offences of which they were suspected.

123. In these circumstances, the Court finds that, taken as a whole and having regard to their purpose and duration, the acts of violence to which the applicants were subjected were particularly serious and cruel and capable of causing “severe” pain and suffering. They therefore amounted to torture within the meaning of Article 3 of the Convention.

124. There has consequently been a violation of Article 3 on that account.

#### **D. Adequacy of the investigation**

125. The applicants alleged that the relevant authorities had not carried out an effective investigation into their complaints of ill-treatment. This was disputed by the Government.

126. The Court observes that the essence of the applicants' complaints is that the respondent State failed to conduct a thorough investigation into allegations of ill-treatment for which the Court has held it responsible under Article 3 (see paragraph 123 above). The Court also refers to *İlhan v. Turkey* ([GC], no. 22277/93, §§ 92-93, ECHR 2000-VII), where it held that whether it is appropriate or necessary to find a procedural breach of Article 3 will depend on the circumstances of the particular case.

127. In the light of the foregoing, the Court considers it appropriate to examine these complaints under Article 13 of the Convention, it being understood that, since the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a Government (see, *mutatis mutandis*, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 223, §§ 44-45; as regards Article 13 of the Convention, see also *Aksoy*, cited above, p. 2287, § 98, and *Assenov I and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3291, § 107; for an example of a case in which the Court examined Article 13 of its own motion, see *Büyükdağ v. Turkey*, no. 28340/95, § 60, 21 December 2000).

## **II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

128. Thirteen of the applicants, Ulaş Batı, Bülent Gedik, Müştak Erhan İl, Özgür Öktem, Sinan Kaya, İsmail Altun, İzzet Tokur, Okan Kablan, Devrim Öktem, Sevgi Kaya, Arzu Kemanoglu, Zülcihan Şahin and

Ebru Karahancı, alleged that the authorities had not responded effectively to their complaints of ill-treatment.

Article 13 of the Convention provides:

“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.”

129. In the applicants' submission, the investigations and ensuing criminal proceedings could not be considered to have been thorough and effective, since they offered no prospect of identifying those responsible and bringing them to justice.

Firstly, the investigation generally had not been conducted promptly or with due expedition, as the five police officers concerned were not charged until a year after the complaint was lodged. Similarly, only seventeen hearings were held during the first three and a half years of the proceedings. The last witnesses and complainants were heard on 14 September 1998. No evidence was adduced after that date, while a series of hearings were adjourned purely in order to establish the whereabouts of a witness and victim.

130. Another reason the investigation could not be considered effective was that one of the police officers, Mustafa Sara, never in fact appeared before the Assize Court, which acquitted him on some of the charges on the ground that the torture victims had not identified him.

131. The applicants also submitted that the investigation was not designed to bring those responsible for acts of torture to justice, despite incontrovertible evidence against them. The gaps in the investigation and the lack of diligence meant that the police officers responsible for acts of torture had enjoyed impunity.

132. Likewise, as the civil courts that had heard claims for compensation in similar cases had considered themselves bound by the factual findings of the criminal courts, torture victims could no longer use the civil remedies provided by Turkish law to secure compensation. In cases in which the criminal court had not definitively found a causal link between the acts of torture and the recorded injuries, the civil courts refused to grant compensation.

### **A. General principles**

133. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention.

Where an individual has an arguable claim that he has been tortured while in the hands of agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate and without prejudice to any other remedy available in domestic law, a thorough and effective investigation. The kind of investigation that will achieve those purposes may vary according to the circumstances. However, whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when strictly speaking no complaint has been made, an investigation must be started if there are sufficiently clear indications that torture or ill-treatment has been used (see, among other authorities, *Özbey v. Turkey* (dec.), no. 31883/96, 8 March 2001; see also the Istanbul Protocol, paragraph 100 above). The authorities must take into account the particularly vulnerable situation of victims of torture and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint (see *Aksoy*, cited above, pp. 2286-87, §§ 97-98).

134. The investigation must be “effective” in practice as well as in law, and not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy*, cited above, p. 2286, § 95, and *Aydin*, cited above, pp. 1895-96, § 103). It should be capable of leading to the identification and punishment of those responsible (see *Aksoy*, cited above, p. 2287, § 98). Otherwise, the general legal prohibition of torture and inhuman or degrading treatment or punishment would, despite its 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 *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

Admittedly, this is a qualified, not an absolute, obligation. The Court takes note of the fact that allegations of torture in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble the necessary evidence (see *Aksoy*, cited above, p. 2286, § 97). The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injury or the person responsible will risk falling foul of this standard.

135. For an investigation into torture or ill-treatment by agents of the State to be regarded as effective, the general rule is that the persons responsible for the inquiries and those conducting the investigation should

be independent of anyone implicated in the events (see, *mutatis mutandis*, *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, §§ 81-82, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). This means not only that there should be no hierarchical or institutional connection but also that the investigators should be independent in practice (see, *mutatis mutandis*, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, pp. 1778-79, §§ 83-84, and *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, 4 May 2001).

136. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment 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, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001, and *Özgür Kılıç v. Turkey* (dec.), no. 42591/98, 24 September 2002). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II).

137. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the complainant must be afforded effective access to the investigatory procedure (see *Aksoy*, cited above, p. 2287, § 98, and *Büyükdag*, cited above, § 67).

## **B. Application of the above principles in the instant case**

138. On the basis of the evidence before it, the Court has found that the respondent State's responsibility under Article 3 is engaged as a result of acts of torture on the applicants (see paragraph 123 above). The applicants' complaints are accordingly "arguable" for the purposes of Article 13. The authorities were therefore under an obligation to launch and conduct an effective investigation satisfying the requirements set out above.

139. The Court notes that the applicants' complaint was investigated and that criminal proceedings, which are still pending in the Court of Cassation, were instituted. The Court's task, therefore, is to determine whether the investigation and ensuing criminal proceedings were conducted diligently and thus "effectively".

140. The applicants have argued that the investigation suffered from various shortcomings.



*1. Alleged shortcomings of the investigation*

141. The applicants submitted that the investigation could not be regarded as effective, as one of the police officers, Mustafa Sara, never in fact appeared before the Assize Court, which acquitted him on some of the charges on the grounds that he had not been identified by the torture victims.

142. The Court notes that the evidence of two police officers charged, Mustafa Sara and Ahmet Bereket, was taken on commission and that neither defendant ever appeared before the Istanbul Assize Court (see paragraphs 82, 86 and 90 above). In that connection, Mustafa Sara's acquittal on the charges of torture against Zülcihan Şahin, Sevgi Kaya, Okan Kablan, Arzu Kemanoglu, Müştak Erhan İl, Ulaş Batı, İzzet Tokur and Sinan Kaya on the ground that he had not been identified, when in fact the alleged victims were never given an opportunity to meet him face to face during the course of the proceedings is incomprehensible.

143. The Court also finds it regrettable that additional examinations ordered by the doctors who examined Bülent Gedik, Müştak Erhan İl and Arzu Kemanoglu to establish how the marks found on their bodies had been caused (see paragraphs 19, 23 and 46 above) were never carried out and neither the public prosecutor nor the Istanbul Assize Court made any attempt to remedy the situation. Likewise, it notes that, as a result of the failure to perform the additional medical examinations in the instant case, Bülent Gedik, Müştak Erhan İl and Arzu Kemanoglu were deprived of the fundamental guarantees to which persons in detention are entitled. Not only does this constitute an omission in the investigation, it may also amount to "inhuman and degrading treatment" (see *Algür v. Turkey*, no. 32574/96, § 44, 22 October 2002).

144. In the light of the foregoing, the Court finds that these two shortcomings undermined the effectiveness of the investigation.

*2. Alleged lack of promptness and reasonable diligence and the defendants' impunity*

145. The Court notes at the outset that the investigation and trial taken as a whole were very slow: eight years after the events, the criminal proceedings against the defendant police officers are still pending in the Court of Cassation.

On 4 March 1997, that is to say a year after the complaint was lodged, the Istanbul public prosecutor's office instituted criminal proceedings against five police officers who had been on duty while the applicants were in custody. Two years later a sixth police officer was also charged with acts of torture. The Assize Court heard testimony from the main witnesses and the defendants until 21 May 1998. However, over the course of some thirty hearings between 21 May 1998 and 25 December 2002 it unsuccessfully

sought to secure the attendance of two witnesses. It decided to dispense with their evidence on 13 February 2002, three years and nine months after 21 May 1998, by which date it already had the main evidence in its possession. The proceedings were then further delayed as a result, in particular, of the withdrawal from the case of the defendants' representatives (see paragraphs 73 to 93 above).

On 5 February 2003, six years and approximately eleven months after the complaint was lodged, the court of first instance discontinued the proceedings against Mustafa Taner Paylaşan, Ahmet Bereket, Fatih Berkup and Yakup Doğan on the ground that they were statute-barred and against Mehmet A. Çavdar as a result of intervening death. It found Mustafa Sara guilty of acts of torture on Bülent Gedik and Devrim Öktem and sentenced him to two years' imprisonment, while prohibiting him from holding public office for a period of six months. It acquitted him on the other charges. However, Mustafa Sara, who is the only person to have been convicted in the case, may be able to plead the statute of limitations for want of a final conviction within the period of five years after proceedings were instituted against him (see paragraph 97 above).

146. The Court considers it regrettable that the domestic courts did not ensure that agents of the State who had been charged with torture or ill-treatment were not tried promptly, before the limitation period expired.

147. In view of the very substantial delay in the conduct of the proceedings at first instance, the Court finds that the Turkish authorities cannot be considered to have acted with sufficient promptness or with reasonable diligence, with the result that the main perpetrators of acts of violence have enjoyed virtual impunity, despite the existence of incontrovertible evidence against them.

### *3. Conclusion*

148. Consequently, the aforementioned shortcomings of the investigation, coupled with the lack of due promptness and diligence that resulted in virtual impunity for the suspected perpetrators of acts of violence, rendered the criminal remedy ineffective. This, in turn, meant that the civil remedies were inoperative in the instant case, as they did not enable the applicants to obtain compensation for the alleged violations.

In the light of the foregoing, the applicants are also to be regarded as having satisfied the obligation to exhaust the relevant remedies in this sphere (see paragraphs 104 and 112 above).

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

...

## FOR THESE REASONS, THE COURT UNANIMOUSLY

...

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the treatment suffered by Mr Ulaş Batı, Mr Bülent Gedik, Mr Müştak Erhan İl, Mr Özgür Öktem, Mr Sinan Kaya, Mr İsmail Altun, Mr İzzet Tokur, Mr Okan Kablan, Mrs Devrim Öktem, Miss Sevgi Kaya, Miss Arzu Kemanoglu, Miss Zülcihan Şahin and Miss Ebru Karahancı;
3. *Holds* that there has been a violation of Article 13 of the Convention in the cases of Mr Ulaş Batı, Mr Bülent Gedik, Mr Müştak Erhan İl, Mr Özgür Öktem, Mr Sinan Kaya, Mr İsmail Altun, Mr İzzet Tokur, Mr Okan Kablan, Mrs Devrim Öktem, Miss Sevgi Kaya, Miss Arzu Kemanoglu, Miss Zülcihan Şahin and Miss Ebru Karahancı;

...

Done in French, and notified in writing on 3 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President