CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ABDÜLSAMET YAMAN v. TURKEY

(Application no. 32446/96)

JUDGMENT

STRASBOURG

2 November 2004

FINAL

02/02/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yaman v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 December 1999 and 12 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 32446/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Abdülsamet Yaman ("the applicant"), on 3 January 1996.

2. The applicant, who had been granted legal aid, was represented by Mr Mark Muller, Mr Timmy Otty, Ms Jane Gordon and Ms Anke Julia Stock, lawyers attached to the Kurdish Human Rights Project in London. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that he had been subjected to torture while in police custody and that there had been no adequate or effective investigation into his complaints. He invoked Articles 3 and 13 of the Convention. He complained under Article 5 of the Convention about the lawfulness of his arrest, the length of his custody, the failure of the authorities to inform him about the reasons of his arrest, his inability to initiate proceedings by which the lawfulness of his detention in police custody could be decided and to receive compensation for the excessive length of the custody period. The applicant maintained under Articles 10 and 11 of the Convention that he had been arrested and detained in order to dissuade him from continuing his political activities. He maintained under Article 14 of the Convention that he had been detained and tortured due to his ethnic origin and his affiliation to a political party. The applicant submitted under Article 18 that the

restrictions on his rights and freedoms set forth in the Convention had been applied for purposes not permitted under the Convention. He finally complained under Article 34 (former Article 25) of the Convention that he had been subjected to torture because he had provided assistance to torture victims in Turkey.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was 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. Mr Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 14 December 1999 the Court declared inadmissible the applicant's complaints concerning the alleged unlawfulness of his arrest, the failure of the authorities to inform him about the reasons of his arrest, the alleged interference with his rights to freedom of expression and association and the alleged hindrance of the effective exercise of his right of individual application. The Court retained the remainder of the application.

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

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1964 and was detained in the Konya prison in Turkey at the time of the application. In May 2000 he went to Germany and sought asylum. He currently lives in Germany. He was the provincial leader of HADEP (People's Democracy Party) in Adana.

A. The detention in police custody and the medical certificates concerning the alleged ill-treatment of the applicant

10. On 3 July 1995 the applicant was taken into custody by police officers from the Adana Security Directorate. He alleges that he was

blindfolded, put in a car, beaten and threatened. After being driven around for some time, still blindfolded, he was taken to the Adana Security Directorate. The applicant claims that he did not realise that the persons who had abducted him were police officers and that the building to which he had been taken was the Security Directorate.

11. The applicant further alleges that he was blindfolded, stripped naked and immersed in cold water in the Security Directorate. He was attached by the arms to the ceiling pipes and made to stand on a chair. Electric cables were attached to his body, in particular to his sexual organs. The chair was then pulled away and he was left suspended while electric shocks were administered. From time to time the shocks were stopped and his testicles were squeezed. The applicant was interrogated about his work and his connections with an illegal organisation, the PKK (Kurdistan Workers' Party). He was further questioned as to why he had helped torture victims apply to the European Commission of Human Rights.

12. Between 3 and 11 July 1995 the applicant was detained in the Adana Security Directorate. The applicant alleges that his family had not been informed of his detention and that the interrogation under torture continued during this nine-day period.

13. On 11 July 1995 the applicant was examined by a medical expert from the Forensic Medicine Institute. The applicant stated that - as a result of the torture – he did not have the full use of his left arm, one of his ribs had been broken and there were injuries to various parts of his body on account of having been attached and suspended. The forensic medical expert's report stated the following:

> "4 x 3 cm superficial scab wounds were identified on the right knee of the person and inside both wrists. The person described numbness in his left arm and pain in the right side of his chest."

14. On the same day the applicant was brought before the Adana public prosecutor and then before the Adana Magistrates' Court *(Sulh Ceza Mahkemesi)*. On both occasions the applicant denied the veracity of the statements that had been taken from him by the police. The Adana Magistrates' Court ordered his detention on remand. He alleges that on the way from the courthouse to the Adana prison he was ill-treated by the policemen accompanying him, who used rifle butts and truncheons to beat him.

15. On 12 July 1995 the applicant was brought to the sickbay of the prison and examined by Dr. H.Ö. who noted the following in the prison patients' examination book:

> "He claims to have been subjected to duress in the Security Directorate. He further alleges that he was beaten up between the courthouse and the prison. There are bruises of 3-4 cm on the upper left arm, numerous erythematic and some ecchymosed lesions on the back. There are lesions, i.e. scratches and grazes, on the right ankle."

16. The applicant claims that Dr. H.Ö. advised him to obtain permission from the prison authorities to be transferred to a hospital for treatment.

17. The applicant further claims that he submitted petitions to the Adana public prosecutor's office through the prison authorities on 12, 13 and 14 July 1995, requesting that he be given permission to be treated at the hospital and that he be sent to the Forensic Medicine Institute for a further medical examination. He contends that no action was taken on his requests and that the prison administration did not permit him to see a doctor from the Turkish Human Rights Foundation who had come to the prison to inquire about his situation.

18. On unspecified dates the applicant was transferred from the Adana prison to the Konya prison and from the latter to the Ceyhan prison. In 1997 the applicant was released pending trial.

19. On 12 September 1997 a doctor from the Rehabilitation and Research Centre for Torture Victims in Denmark commented on the medical procedures used to examine the applicant. She stated that, following a lapse of time, it was difficult to see any marks on the body after electrical torture. However, it was possible to observe a superficial lesion on the skin in the acute phase on a minority of victims. She further stated that exposure to cold water did not necessarily cause pneumonia, fever or soreness of the throat. She maintained that numbness, pain or reduced strength in the arms were symptoms of suspension by the arms. She finally stated that scab formations on the wrists were often seen when the wrists were tied together tightly for a period of time.

20. On 9 October 1997 the applicant was examined by a doctor from the Adana branch of the Human Rights Foundation of Turkey. According to the doctor's report, the applicant's symptoms included pain in the gums, inability to eat due to missing teeth, pain in the chest and pain and restricted movement in the wrists and knees. The applicant further contracted pleurisy (inflammation of the pleura) which necessitated surgical treatment. As to the reasons for the applicant's poor state of health, the report referred to his ill-treatment and the prison conditions.

21. In May 2000 the applicant arrived in Germany where he claimed asylum. On 20 June 2000 he was granted a residence permit in Germany.

22. On 5 March 2001 the applicant was examined by a doctor in Germany. The doctor noted the following symptoms: chronic pain in the feet, knees and femur; dyspnoea (breathing difficulties); depression; and reduced pulmonary functioning. The doctor concluded that it could not be excluded that the applicant's complaints were the result of torture. He further noted that the applicant would receive somatic and psychological treatment at his surgery.

23. On 29 January 2002 the applicant was examined by a doctor working in *München Refugio*, an organisation based in Munich specialised in providing advice and treatment to refugees and torture victims. The doctor,

after referring to the somatic and psychological findings consistent with the report of 5 March 2001, diagnosed the applicant as suffering from chronic post-traumatic stress syndrome. He further stated that the applicant was also suffering from serious psychosomatic problems.

B. Criminal proceedings against the applicant

24. On an unspecified date the Adana public prosecutor issued a decision of non-jurisdiction and sent the applicant's case file and the case files of twenty-six other defendants to the Konya State Security Court.

25. On 4 August 1995 the public prosecutor at the Konya State Security Court filed a bill of indictment charging the applicant under Article 168 § 2 of the Criminal Code with membership of the PKK.

26. On an unspecified date, the applicant's case file was transferred to the Adana State Security Court.

27. On 16 March 1999 the Adana State Security Court convicted the applicant under Article 169 of the Criminal Code of aiding and abetting the members of the PKK and sentenced him to three years and six months' imprisonment.

28. On 19 September 2000 the Court of Cassation upheld the judgment of 16 March 1999.

C. Criminal proceedings against the police officers

29. On 20 October 1995 the applicant filed a complaint with the public prosecutor's office in Adana alleging that he had been ill-treated during his detention in police custody.

30. On 29 December 1995, following a preliminary investigation against two police officers from the Adana Security Directorate, the Adana public prosecutor declined to take criminal proceedings against the officers due to lack of evidence against them.

31. On 15 April 1997 the International Law and Foreign Relations Directorate of the Ministry of Justice sent a letter to the chief public prosecutor's office in Adana requesting the latter to conduct an investigation into the allegations which the applicant had filed with the European Commission of Human Rights.

32. Between May 1997 and March 1999, the Adana chief public prosecutor's office conducted a new preliminary investigation into the applicant's allegations of ill-treatment. The applicant was heard in the context of this investigation. He gave the names of four witnesses on his behalf. The Adana public prosecutor heard three of these witnesses, who confirmed the applicant's allegations. The public prosecutor heard the accused police officers, who denied the allegations against them.

33. On 25 March 1999 the Adana public prosecutor filed a bill of indictment with the Adana Assize Court *(Ağır Ceza Mahkemesi)*, charging six police officers, who had been on duty in the Adana Security Directorate at the time of the alleged ill-treatment of the applicant, under Article 243 of the Criminal Code. The defendants were accused of torturing the applicant in order to obtain a confession from him.

34. Between 9 April 1999 and 27 March 2003, the Adana Assize Court held twenty-three hearings in the case against the police officers.

35. The court heard the evidence of the accused and some of the witnesses until 10 April 2000. On that date, the court abandoned the proposal to hear the applicant and six witnesses. It held that the statements which they had given during the preliminary investigation were sufficient and observed that they could not be found.

36. On 16 June 2000 the Adana Assize Court withdrew its decision of 10 April 2000 in relation to the applicant on the ground that he could probably be summoned to give evidence before the court since he had filed an application with the European Court of Human Rights. The first-instance court issued a further summons requiring the applicant to give evidence.

37. The applicant's whereabouts could not be determined until 27 March 2003.

38. On 27 March 2003 the Adana Assize Court held that the criminal proceedings against the police officers should be discontinued on the ground that the prosecution was time-barred (*zamanaşımı*).

II. RELEVANT DOMESTIC LAW

39. A description of the relevant domestic law at the material time can be found in *Sakık and Others v. Turkey* (judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII § 18-28) and *Elçi and Others v. Turkey* (nos. 23145/93 and 25091/94, §§ 573 and 575, 13 November 2003).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that he had been subjected to various forms of ill-treatment and that there had been no adequate or effective investigation into his complaints. He relied on Article 3 of the Convention, which provides:

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

41. The applicant alleged that the suffering to which he had been subjected, taken as a whole, amounted to torture. He submitted that he had been kept blindfolded, stripped naked and immersed in cold water. He contended that he had been suspended by the arms from ceiling pipes and made to stand on a chair and that electric cables had been attached to his body, in particular to his sexual organs. He further averred that the chair on which he had been placed had then been pulled away and he had been left hanging while electric shocks were administered to his body. He stated that the police officers at times discontinued the electric shocks and squeezed his testicles. The applicant relied on the medical report of 11 July 1995 and the medical record of 12 July 1995 (see paragraphs 13 and 15 above). He finally submitted that the domestic authorities had not effectively investigated his allegation of ill-treatment.

42. The Government submitted that the applicant's allegations were unsubstantiated. They maintained that the applicant had failed to adduce any concrete evidence in support of his allegations. They contended that the allegations were deceitful and were part of a scenario used by the terrorist organisation to dishonour the fight against terrorism. They concluded that there was no violation of Article 3 of the Convention.

43. The Court reiterates that, where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, § 30, 8 January 2004; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2278, § 61; and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

44. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (*Avsar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the

authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

45. In the instant case, the Court notes that the applicant was not medically examined at the beginning of his detention and did not have access to a lawyer or doctor of his choice while in police custody. Following his transfer from police custody, he underwent two medical examinations which resulted in a medical report and the inclusion of a medical note in the prison patients' examination book. Both the report and the note referred to scabs, bruises and lesions on various parts of the applicant's body (see paragraphs 13 and 15 above). The findings contained in the medical certificates drafted by independent medical professionals in 1997, 2000 and 2001 (see paragraphs 19, 20, 22 and 23 above) were consistent with the applicant's allegations of ill-treatment. In this connection, the Court observes that the Government have not provided a plausible explanation for the marks and injuries identified on the applicant's body.

46. In the light of the circumstances of the case as a whole and in the absence of a plausible explanation by the Government, the Court is led to conclude that the injuries noted in the medical report and the note contained in the prison patients' examination book were the result of ill-treatment for which the Government bore responsibility.

47. Having regard to the nature and degree of the ill-treatment and to the strong inferences that can be drawn from the evidence that it was inflicted in order to obtain information from Abdülsamet Yaman about his suspected connection with the PKK, the Court finds that the ill-treatment involved very serious and cruel suffering that only be characterised as torture (see, among other authorities, the *Salman* and *Aksoy* judgments, cited above, at §§ 115 and 64 respectively).

48. The Court concludes that there has been a violation of Article 3 of the Convention.

49. The Court does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the alleged deficiencies in the investigation. In the circumstances, this matter is more appropriately examined under Article 13 (see, among other authorities, *Mahmut Kaya v. Turkey,* no. 22535/93, § 120, ECHR 2000-III).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant alleged that he was denied an effective domestic remedy in respect of his complaint of ill-treatment, in violation of Article 13 of the Convention, which 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."

51. The applicant contended that he had petitioned the Adana public prosecutor's office concerning the ill-treatment to which he had been subjected. He maintained that he took all reasonable steps to ensure that his allegations of torture could be properly and thoroughly investigated by the State. He submitted that the response of the authorities had been totally inadequate. The applicant also alleged that the investigation which started in May 1999 had not been effective. In this connection, he averred that for an investigation to be effective, it needed to be conducted as soon as possible after the allegations have been made. The applicant further argued that the Adana Assize Court had not made any credible efforts to find out his whereabouts since it had not been able to determine that he had travelled to Germany where he had applied for asylum. He finally submitted that he could not return to Turkey since he feared for his life and his freedom.

52. The Government submitted that there were several effective domestic remedies at the applicant's disposal. They argued that domestic law provided the applicant with adequate means of redress in respect of his complaint under Article 3 of the Convention. They further maintained that a case had been brought against police officers from the Adana Security Directorate who had allegedly ill-treated the applicant. In their observations of 26 June 2002, the Government claimed that the case was still pending and that the delay in the proceedings could not be attributed to the conduct of the domestic court since the reason for the postponements was the absence of the applicant and one of his witnesses.

53. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigatory procedure (see the above-cited *Aksoy* judgment, § 98).

54. A requirement of promptness and reasonable expedition is implicit in this context (see *Yasa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-04; *Çakici v. Turkey* [GC], no. 23657/94, § 105, ECHR 1999-IV §§ 80, 87 and 106; and the above-cited *Mahmut Kaya* judgment, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating torture or 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.

55. The Court further points out that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost

importance for the purposes of an "effective remedy" that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible. The Court also underlines the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see Conclusions and Recommendations of the United Nations Committee against Torture: Turkey, 27 May 2003, CAT/C/CR/30/5).

56. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 of the Convention for the ill-treatment suffered by the applicant in police custody. The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 in connection with Article 3 of the Convention (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 64, 29 April 2003, and the above-cited *Yasa* judgment, § 112).

57. The Court notes that the applicant complained of ill-treatment to the public prosecutor's office in Adana. Despite the applicant's serious allegations, the latter remained totally passive and failed to bring any criminal charges against the perpetrators of the ill-treatment. In this connection, it observes that it was not until one year and four months later, following the communication of the application by the European Commission of Human Rights to the Government, that a new investigation was conducted into the applicant's allegations. It then took the Adana public prosecutor one year and eleven months to file a bill of indictment with the Assize Court. The latter however decided to discontinue the criminal proceedings against the police officers almost five years after the initiation of the proceedings and nine years after the acts of ill-treatment had occured.

58. As regards the Government's argument that the delay in the proceedings stemmed from the absence of the applicant and one of his witnesses, the Court notes that the applicant notified the Court and the Government about his address in Germany as early as 20 February 2001 and that the International Law and Foreign Relations Directorate of the Ministry of Justice failed to transmit this information to the Adana Assize Court. As to the absence of one of the witnesses, the Court observes that on 10 April 2000 the Adana Assize Court abandoned its proposal to hear her. The first-instance court continued to issue orders requiring the Adana public prosecutor to determine the witness' address in Germany. The public prosecutor, however, failed to provide details of the witness' address. The Court considers that the failure of the authorities to determine the applicant's and the witness' whereabouts cannot be blamed on the applicant.

59. The Court is struck by the fact that the proceedings in question have not produced any result on account mainly of the substantial delays throughout the trials and, decisively, the application of the statutory limitations in domestic law.

60. In the light of the foregoing, the Court does not consider that the above proceedings can properly be described as thorough and effective such as to meet the requirements of Article 13 of the Convention.

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

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

62. The applicant complained of violations of Article 5 §§ 3, 4 and 5 of the Convention, the relevant parts of which provide:

> "... 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

63. The Government referred to their derogation of 6 August 1990 and their letter to the Secretary General of 5 May 1992 under Article 15 of the Convention. They submitted that the measures taken against the applicant had been authorised pursuant to the legislation pertaining to states of emergency.

64. The Court must accordingly first determine whether the derogation concerned applies to the facts of the case.

A. Applicability of the derogation notified by Turkey under Article 15 of the Convention

65. Article 15 of the Convention provides:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (§ 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which

it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

66. The applicant argued that the derogation notice was invalid. In this connection he referred to the above-mentioned *Aksoy* judgment (ibid., § 86). He further contended that even if the derogation in question had been valid, it could not be applied in the province of Adana since the latter was not in the state of emergency region in Turkey.

67. The Government maintained that it was absolutely essential to have derogated from the procedural guarantees governing the detention of persons belonging to armed terrorist groups. It had been impossible to provide judicial supervision of detention in accordance with Article 5 of the Convention owing to the difficulties inherent in investigating and suppressing terrorist activities.

68. The Court notes that Legislative Decrees nos. 424, 425 and 430, which are referred to in the derogation of 6 August 1990 and the letter of 3 January 1991, applied, according to the descriptive summary of their content, only to the region where a state of emergency has been proclaimed, which, according to the derogation, does not include the city of Adana. However, the applicant's arrest and detention took place in Adana on the order of the Adana public prosecutor.

69. In the present case the Court would be undermining the object and purpose of Article 15, when assessing the territorial scope of the derogation concerned, it were to extend its effects to a part of Turkish territory not explicitly named in the notice of derogation. It follows that the derogation in question is inapplicable *ratione loci* to the facts of the case. (see, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, § 39)

70. Consequently, it is not necessary to determine whether it satisfies the requirements of Article 15.

B. Article 5 § 3 of the Convention

71. The applicant complained under Article 5 § 3 of the Convention that he had been kept in police custody for nine days without being brought before a judge or other officer authorised by law to exercise judicial power.

72. The Government contended that the applicant's arrest had been based on the existence of reasonable grounds of suspicion of his having committed a terrorist offence and that the custodial measure had been ordered by a competent authority and enforced by that authority in accordance with the requirements laid down by law at the relevant time.

73. The Court has already accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see *Brogan and Others v. the United Kingdom*, judgment

of 29 November 1988, Series A no. 145-B, pp. 33-34, § 61; *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 58; *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41; and the above-cited *Aksoy* judgment, § 78). This does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence (see, among others, the above-cited *Murray* judgment, § 58).

74. The Court notes that the applicant's detention in police custody lasted nine days. It reiterates that in the *Brogan and Others* case it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict constraints as to the time laid down by Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism (see the above-mentioned *Brogan and Others* judgment, p. 33, § 62).

75. Even supposing that the activities of which the applicant stood accused were linked to a terrorist threat, the Court cannot accept that it was necessary to detain him for nine days without judicial intervention.

76. There has, accordingly, been a violation of Article 5 § 3 of the Convention.

C. Article 5 § 4 of the Convention

77. The applicant alleged that there were no remedies in domestic law to challenge the lawfulness of his detention in police custody. He invoked Article 5 § 4 of the Convention.

78. The Government contended in reply that the period in which the applicant was kept in police custody had been in accordance with the national law since, at the time of the events, custody could last up to fifteen days for those crimes within the jurisdiction of the State security courts.

79. Having regard to the conclusion reached with regard to Article 5 § 3 (see paragraphs 74 and 75 above) the Court considers that the period in question (nine days) sits ill with the notion of “speedily” under Article 5 § 4 of the Convention (see *Igdeli v. Turkey*, no. 29296/95, § § 34 and 35, 20 June 2002; *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 29, § 53).

80. The Court notes that, in the present case, the length of the applicant's detention in police custody did not exceed the time-limit prescribed by law. This is, in fact, the reason why the applicant was unable to challenge his detention in police custody, since the nine-day period was in conformity with the Turkish law at the relevant time (see the above-cited *Igdeli* judgment, § 35).

81. In conclusion, there has been a breach of Article 5 § 4 of the Convention.

D. Article 5 § 5 of the Convention

82. The applicant complained under Article 5 § 5 of the Convention that he had no right to compensation for the alleged violations of Article 5 of the Convention.

83. The Government submitted that, in cases of illegal detention, a request for compensation could be submitted within three months following the final decision of the trial court under the terms of Law no. 466 on compensation payable to persons unlawfully arrested or detained.

84. The Court notes that an action for compensation under Law no. 466 could only be brought for damage suffered as a result of unlawful deprivation of liberty. It observes that the applicant's detention in police custody was in conformity with the domestic law. Consequently, he did not have a right to compensation under the provisions of Law no. 466 (see the above-cited *Sakık* judgment, § 60).

85. The Court therefore concludes that there has been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUCTION WITH ARTICLES 3, 5, 13 AND 18 OF THE CONVENTION

86. The applicant alleged that he had been detained and tortured because of his Kurdish ethnic origin and his affiliation to HADEP, HADEP being perceived as the main political party for the Kurds and a tool of the PKK. He invoked Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

87. The Government maintained that the applicant's complaint under Article 14 of the Convention was without any foundation.

88. The Court has examined the applicant's allegation. However, it finds that no violation of this provision can be established on the basis of the evidence before it.

V. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

89. The applicant submitted that the interferences with the exercise of his Convention rights were not designed to secure ends permitted under the Convention. He relied on Article 18 of the Convention, which provides:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

90. The Government did not comment on this complaint.

91. The Court finds that no violation of this provision can be established on the basis of the evidence before it.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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. Pecuniary damage

93. The applicant claimed the sum of 21,571.71 pounds sterling (GBP) (34,044.477 euros (EUR)) for pecuniary damage.

94. The Government contended that the applicant had failed to submit any evidence in support of his claims. They maintained that the claims were exaggerated.

95. The Court notes that the applicant failed to substantiate that he suffered pecuniary damage as a result of the breaches of his Convention rights. Therefore, it disallows the claim under this head.

B. Non-pecuniary damage

96. The applicant claimed the sum of GBP 25,000 (EUR 39,547) for non-pecuniary damage.

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

98. The Court has found a violation of Articles 3 and 13 of the Convention on account of the ill-treatment of the applicant in police custody and the lack of effective remedies in domestic law. Having regard to the circumstances of the present case, and deciding on an equitable basis, it awards the applicant EUR 15,000.

99. The Court has further found a violation of Article 5 § § 3, 4 and 5 of the Convention in respect of the applicant's detention in police custody. It

accepts that the applicant suffered non-pecuniary damage - such as distress resulting from his detention for nine days without the opportunity to challenge its lawfulness - which cannot be sufficiently compensated by the finding of a violation. Having regard to its case-law, and making its assessment on an equitable basis, the Court awards the applicant EUR 2,700 (see *İgdeli v. Turkey*, no. 29296/95, § 41, 20 June 2002 and *Dalkılıç v. Turkey*, no. 25756/94, § 36, 5 December 2002).

100. In total, the Court awards the applicant EUR 17,700 under the head of non-pecuniary damage.

C. Costs and expenses

101. The applicant claimed a total of GBP 7,594.76 (EUR 12,014) for his costs and expenses.

102. The Government submitted that the claims were excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicant to prove his claims.

103. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see *Sawicka v. Poland,* no. 37645/97, § 54, 1 October 2002). The Court is not satisfied that in the instant case all the costs and expenses incurrred were necessary. However, it considers that the claims made in respect of translations, summaries and administrative costs may be regarded as having been necessarily incurred and reasonable in their amounts.

104. In the light of the foregoing, the Court awards the sum of EUR 8,659 exclusive of any value-added tax that may be chargeable, less the sum of EUR 725 received in legal aid from the Council of Europe, this amount to be converted into pounds sterling and paid into the applicant's representatives' bank account in the United Kingdom as set out in his just satisfaction claim.

D. Default interest

105. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;

2. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds* that there has been no violation of Article 14 of the Convention;

7. *Holds* that there has been no violation of Article 18 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 17,700 (seventeen thousand seven hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 8,659 (eight thousand six hundred and fifty-nine euros), in respect of costs and expenses, exclusive of any value-added tax that may be chargeable, less EUR 725 (seven hundred and twenty-five euros) granted by way of legal aid, to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the applicant's representatives' sterling bank account in the United Kingdom;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismissed* unanimously the remainder of the applicant's claim for just satisfaction.

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

S. DOLLÉ
Registrar

J.-P. COSTA
President