



Gynaecological examination of an unaccompanied 16-year-old girl in police custody amounted to degrading treatment

In today's Chamber judgment in the case [Yazgül Yılmaz v. Turkey](#) (application no. 36369/06), which is not final¹, the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights concerning the medical examinations of the applicant in police custody, and

by a majority, that there had been a **violation of Article 3** concerning the lack of an effective investigation directed against the individuals responsible for the impugned acts.

The case concerned a gynaecological examination to which the applicant, a minor, was subjected while she was in police custody – in order to ensure, according to the authorities, that she had not been assaulted – and the failure to prosecute the doctors who had carried it out.

Principal facts

The applicant, Yazgül Yılmaz, is a Turkish national who was born in 1986 and lives in İzmir (Turkey). In 2002, when she was sixteen years old, she was taken into police custody for lending assistance to the PKK (Workers' Party of Kurdistan, an illegal organisation). On the second day of her police custody a medical and gynaecological examination was requested by the police superintendent responsible for juveniles in order to establish whether there was evidence of assault committed during the police custody and if her hymen was broken. The examination request was not signed by the applicant. The next day she was remanded in custody and criminal proceedings were brought against her in July 2002, then in October 2002 she was acquitted and released.

After her release, Ms Yılmaz, suffering from psychological problems, went for a medical examination. A report of 16 January 2003, drawn up by a number of doctors (psychiatrist, gynaecologist, orthopaedist, general practitioner), concluded that she was suffering from post-traumatic stress and depression. In addition, at the applicant's request, a panel of the İzmir Medical Association produced a report of 13 October 2004 based on the conclusions of numerous examinations carried out between 7 November 2002 and 2 July 2004 by a general practitioner, an orthopaedist, a gynaecologist and a psychiatrist. This report indicated that the medical reports drawn up during the applicant's police custody did not meet the requirements of the Istanbul Protocol or the circular of the Ministry of Health concerning forensic medical services and the drafting of forensic medical reports, because they had not shown whether the applicant had

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

sustained any physical or psychological violence. It moreover confirmed the diagnosis of post-traumatic stress disorders.

In December 2004 Ms Yılmaz filed a complaint for abuse of authority against the doctors who had examined her in police custody. She alleged that she had been deprived of the fundamental safeguards afforded to detainees and that she had not given her consent to the gynaecological examination. The case was entrusted to the Deputy Director for Health in the provincial governor's office. In spite of the non-compliance of the medical reports, as established by the inquiry report, he proposed that no disciplinary proceedings should be opened against the doctors, as the disciplinary offence was subject to a two-year limitation period. That proposal was accepted by the provincial governor's office and in March 2005 the public prosecutor's office terminated the proceedings. A challenge by the applicant was dismissed by the Assize Court.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life), the applicant complained about the manner in which the medical reports had been drawn up, about the fact that she had been subjected to a gynaecological examination without her consent and about the decision not to prosecute the doctors concerned. She also alleged under Article 13 (right to an effective remedy) that she did not have a remedy by which to assert her complaints.

The application was lodged with the European Court of Human Rights on 29 August 2006.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 3

The examinations

The applicant had been detained for two days on the premises of the security police without her parents or legal representative being informed. There was nothing to suggest that the authorities had tried to obtain her consent or that of her legal representative for the gynaecological examination. Ms Yılmaz had stated before the public prosecutor that she had never given her consent.

In the Court's view, the obtaining of a minor's consent should have been surrounded by minimum guarantees commensurate with the importance of a gynaecological examination. At the time there had been an omission in the law as regards such examinations of female detainees, which were carried out without any safeguards against arbitrariness. Unlike other medical examinations, a gynaecological examination

could be traumatising, especially for a minor, who had to be afforded additional guarantees and precautions (for example, by ensuring that consent was given at all stages and by allowing the minor to be accompanied and to choose between a male or female doctor, and by informing her of the reason for the examination, its organisation and results, as well as respecting her sense of decency).

The Court could not agree with a general practice of automatic gynaecological examinations for female detainees, for the purpose of avoiding false sexual assault accusations against police officers. Such a practice did not take account of the interests of detained women and did not relate to any medical necessity. In that connection, moreover, Ms Yilmaz had never complained of a rape during her police custody – she had alleged sexual harassment, which could certainly not be disproved by an examination of her hymen. The Court noted with interest that the new Code of Criminal Procedure regulated, for the first time, internal bodily examinations, including of a gynaecological nature, although there was no specific provision for minors.

In addition, the report of 13 October 2004 had indicated that the medical certificates were not compliant with the medical assessment criteria provided for in the circulars adopted by the Ministry of Health or in the Istanbul Protocol. The report had also shown that the applicant's allegations of assault in police custody were largely corroborated by the new medical examinations, which supported her assertions about the superficial nature of the examinations in police custody.

Thus, the lack of fundamental safeguards during the applicant's police custody – no measure having been taken to protect her during that deprivation of liberty – had placed Ms Yilmaz in a state of deep distress. The extreme anxiety that the examination must have caused her, and of which the authorities could not have been unaware given her age and the fact that she was not accompanied, enabled the Court to characterise the examination in the present case as degrading treatment.

The investigation

Following the applicant's complaint, it was the Deputy Director for Health who was entrusted with the case, whereas he reported to the same hierarchy as the doctors whom he was investigating. The Court observed that it had already expressed serious doubts as to the capacity of the administrative organs concerned to conduct an independent investigation. Following the conclusion of the Deputy Director for Health that the prosecution of the doctors was time-barred, the public prosecutor had decided to discontinue the proceedings and therefore no criminal investigation had been conducted. Moreover, the report, which had found the doctors liable, had not been notified to the applicant and the doctors had thus benefited from the statute of limitations without any judicial finding as to their possible liability.

Accordingly, the shortcomings in the investigation had had the result of granting virtual impunity to the presumed perpetrators of the offending acts and had rendered the criminal action – and also any civil action for compensation – ineffective.

Other Articles

Having regard to the violations of Article 3, the Court took the view that it did not need to examine separately the applicant's complaints under Articles 6, 8 and 13 of the Convention.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicant 23,500 euros in respect of non-pecuniary damage.

Separate opinion

Judge Sajó expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.