CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43922/98
by Nazarit VARTANOĞLU
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President,*
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Ms D. JOČIENĖ, *judges,*

and Mrs S. DOLLÉ, *Section Regitrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 25 July 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Nazarit Vartanoğlu, is a Turkish national of Armenian origin who was born in 1958 and lives in Hannover, Germany. He is

represented before the Court by Mr M. A. Kırdök, Mrs M. Kırdök and Ms M. Hanbayat, lawyers practising in Istanbul.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 19 October 1995 the applicant was arrested and taken into custody by police officers at the Anti-terror Branch of the Istanbul Security Directorate on suspicion of membership of an illegal organisation, namely the TKP/ML[1].

The applicant alleged that during his detention in police custody, he was blindfolded, isolated, hung, beaten, given electric shocks and had his testicles squeezed. He further maintained that he was neither given his medicine for epilepsy nor treated. Finally, he claimed that he was subjected to psychological pressure on account of his ethnic origin.

On 31 October 1995 the applicant, together with six other suspects, was taken to the Istanbul Forensic Institute for a medical examination. The doctor noted that there were no pathological signs on the applicant's body, save for the applicant's subjective complaint of general widespread pain as well as pain in his testicles. In respect of the other suspects, the doctor recorded certain physical findings on three suspects and considered the transfer of one of them to a neurology department of a State hospital for further examination.

On the same day, the applicant was brought before the public prosecutor and a judge at the Istanbul State Security Court.

Before the prosecutor, the applicant refuted the accusations against him. He acknowledged that, in 1995, he was caught with a false passport at the Atatürk Airport. He admitted knowing some of the suspects but denied having any involvement in an illegal organisation. He maintained that the documents found on his person were not related to an illegal organisation and that some of the documents found in his house belonged to some of his friends involved with the TKP/ML. The applicant acknowledged his statement given in custody. However, he maintained that he had been subjected to torture in custody. In this respect, he claimed that he was hung, given electric shocks and that his testicles were squeezed. He further admitted knowing six of the suspects but denied knowing ten others. The prosecutor, noting that the applicant had denied his involvement with the organisation whilst acknowledging his statements to the police, given under torture, requested the applicant to explain this contradiction. The applicant refused to answer the question, stating that he would defend himself before the court.

1. Turkish Communist Party/Marxist-Leninist.

The public prosecutor, in view of the complaints of ill-treatment of the applicant and other suspects, forwarded the case file to the Fatih public prosecutor's office.

Before the court, the applicant acknowledged his statements given to the prosecutor and refuted those given in police custody. The court ordered his remand in custody.

On 7 November 1995 the Fatih public prosecutor, after having examined the case file, decided that no prosecution should be brought against the police officers at the Anti-terror branch of the Security Directorate because there was insufficient evidence in support of the allegations made by the applicant and five other suspects.

On 25 March 1998 the applicant objected to the aforementioned decision of the prosecutor. In his petition, the applicant complained that he was not notified of the decision of non-prosecution and that, despite the fact that he was epileptic, he was kept blindfolded in custody for eleven days. He further submitted that, despite medical evidence, the prosecutor had unlawfully decided not to bring proceedings against the police officers.

On 14 May 1998 the Beyoğlu Assize Court dismissed the applicant's objections.

By a letter dated 4 November 1999, the applicant's representative informed the Court that, upon the instructions of the Istanbul State Security Court, the applicant was transferred from prison to the Forensic Medicine Institute on 19 July 1999. He submitted that during this transfer the applicant was ill-treated and, as a result, admitted on 3 August 1999 to Bayrampaşa State Hospital. He claimed that this event proved that the applicant continued to be subject to ill-treatment and discrimination at the hands of the authorities. In support of his allegations, the applicant's representative submitted a medical report dated 4 August 1999 drafted by doctors at the Bayrampaşa Prison who noted injuries on the applicant's left leg, right arm, left shoulder and left eyebrow, as well as small bruises on other parts of his body. They further noted that the applicant was weak, had difficulty walking and had lost his time orientation.

According to the numerous transfer records and medical and other reports submitted by the Government, the applicant was regularly transferred, examined and treated by various institutions, in particular, the Bakırköy Hospital Neurology Polyclinic between 1 November 1995 and 19 April 2000 while he was in Bayrampaşa prison.

B. Relevant domestic law and practice

A description of the relevant domestic law at the material time can be found in *Batı and others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004).

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment and denied adequate medical assistance while held in police custody.

The applicant submitted under Article 6 § 1 of the Convention that the authorities had failed to conduct an effective and objective investigation into his complaints of ill-treatment. He maintained, in this connection, that the public prosecutor and the Assize Court were not independent of the executive.

The applicant complained under Article 13 of the Convention about the lack of an effective domestic remedy before an independent authority before which his complaints could be brought with a prospect of success.

The applicant maintained under Article 14 of the Convention, in conjunction with Article 3, that he was subjected to ill-treatment on account of his ethnic origin.

THE LAW

1. The applicant complained that he had been subjected to ill-treatment and denied adequate medical assistance while held in police custody. He invoked Article 3 of the Convention, which provides:

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

A. Parties' submissions

The Government maintained that the applicant had failed to provide a detailed description of the alleged ill-treatment both before the national authorities and before the Court. They further submitted that the applicant's allegations were not supported by appropriate evidence. Finally the Government considered that there were serious doubts as to whether the applicant mentioned his medical problem and his need for medication while he was held in custody. On this point the Government, referring to the numerous documents submitted on 5 September 2005, pointed out that the applicant was given adequate medical assistance while in prison.

The applicant maintained his allegations. In particular, he submitted that the medical report of 31 October 1995 was inadequate and superficial, and that he was examined together with seven other suspects. In this respect, he stated that no further examination was conducted to determine the causes of the pains he had complained of in that medical report. He maintained that he had complained before the public prosecutor of the ill-treatment inflicted on

him. The applicant noted that the findings of the medical report of 4 August 1999 and the events of 19 July 1999 clearly showed that he had continued to suffer ill-treatment at the hands of the authorities. Finally, the applicant noted that amongst the documents submitted by the Government there was no indication that he had been taken to a hospital while he was in police custody and after the events of 19 July 1999.

B. Court's assessment

1. Alleged ill-treatment in police custody

The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrıkulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002).

In the instant case, the Court observes that the medical report of 4 August 1999 contains certain physical and mental findings which could be the result of acts of ill-treatment. However, the Court observes that the report was drawn up nearly four years after the applicant was remanded in custody. Consequently, the Court considers that the findings of the medical report, while relevant, cannot be regarded either as affording strong support for the applicant's allegations of having been ill-treated while held in police custody between 19 and 31 October 1995 or, in the absence of cogent evidence, i.e. a complaint to the national authorities, as proof that the applicant continued to be ill-treated at the hands of the authorities.

The Court notes that the medical report established at the end of his stay in custody does not contain any indication, apart from subjective pain felt by the applicant, that he was ill-treated while held in police custody. On this point, the Court reiterates that any ill-treatment inflicted in the way alleged by the applicant would have left marks on his body, in particular pressure hosing and beatings, which injuries would have been observed by the doctor who examined him at the end of his detention in police custody, some twelve days later, before he was formally remanded in custody (see *Tanrıkulu and Others v. Turkey* (dec.), nos. 29918/96, 29919/96 and 30169/96, 24 February 2005). The Court is aware of the lack of details in this report in respect of the applicant. Nevertheless, it notes that there is no material in the case file which could call into question the findings in this report or add probative weight to the applicant's allegations. In particular, it notes that the applicant did not object to the contents of this medical report in the course of the domestic proceedings and that there is no indication in the case file that the applicant requested and had been refused permission to see another doctor at the end of his custody period.

In view of the above, the Court is of the opinion that the applicant has not laid the basis of an arguable claim that he was subjected to ill-treatment whilst in police custody (see, *a contrario*, *Yavuz v. Turkey*, no. 67137/01,

10 January 2006). It follows that this part of the application is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Alleged lack of adequate medical assistance in police custody

The Court reiterates that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention (see *Mouisel v. France* no. 67263/01, § 37, ECHR 2002-IX). Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79).

In the instant case, the Court observes that there is no evidence in the case file supporting the applicant's allegations of having been denied his medicine for epilepsy or of not being provided adequate medical assistance while held in police custody. Nor do such arguments appear to have been brought to the attention of the national authorities. Therefore, the Court finds that the applicant has not substantiated his allegations under this head. In view of the above, the Court finds that this complaint is also inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained that the authorities had failed to conduct an effective and objective investigation into his complaints of ill-treatment. He maintained, in this connection, that the public prosecutor and the Assize Court were not independent from the executive. He further complained about the lack of an effective domestic remedy before an independent authority before which his complaints could be brought with a prospect of success. The applicant relied on Articles 6 and 13 of the Convention.

The Court considers that these complaints should be examined from the standpoint of Article 13 alone, 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."

The Government denied the applicant's allegations.

The Court reiterates that Article 13 of the Convention cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be. The grievance must be an arguable one in terms of the Convention (see, in particular, *Boyle and Rice v. the United Kingdom,* judgment of 27 April 1988, Series A no. 131, § 52). In view of its conclusions above, the Court considers that the

applicant had no arguable claim of a violation of his rights under Article 3, which would have required a remedy within the meaning of Article 13. Consequently, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. The applicant complained that he was subjected to ill-treatment on account of his ethnic origin in breach of 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."

The Government refuted the applicant's allegations.

The Court has examined the applicant's allegation in the light of the evidence submitted to it, but considers it unsubstantiated. In particular, the Court notes that no such complaint was brought to the attention of the national authorities. Moreover, the applicant has not submitted any evidence to support his allegations that he was the deliberate target of alleged ill-treatment on account of his ethnic origin. It follows that this complaint is also to be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ	J.-P. COSTA
Registrar	President