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

SECOND SECTION

CASE OF TALAT TEPE v. TURKEY

(Application no. 31247/96 (/sites/eng/pages/search.aspx#{"appno":["31247/96"]}))

JUDGMENT

STRASBOURG

21 December 2004

FINAL

21/03/2005

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 Talat Tepe v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 31247/96 (/sites/eng/pages/search.aspx#{"appno":["31247/96"]})) 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 Talat Tepe ("the applicant"), on 8 January 1996.

2. The applicant was represented by Ms A. J. Stock, Mr M. Muller, Mr T. Otty and Ms J. Gordon, lawyers practising 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 was subjected to torture by police officers during his prolonged detention in police custody. He further complained that his detention was unlawful and not based ²on reasonable suspicion of having committed an offence. He invoked Articles 3, 5, 6, 13 and 14 of the Convention.

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, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. 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).

7. By a decision of 22 January 2002, the Court declared the application admissible.

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

9. On 1 November 2004, the Court again 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

10. The applicant was born in 1961 and is at present living in Istanbul.

A. Events concerning the applicant's arrest and detention in police custody

11. On 6 August 1992, based on the statements given by two members of the PKK to the police, the public prosecutor at the Diyarbakır State Security Court ordered the arrest of five people, including the applicant, on suspicion of aiding and abetting an illegal terrorist organisation. Several terrorist acts,

including an attack on the Hersan Police Station, carried out by the PKK were mentioned in the order. The public prosecutor further requested to be kept informed every three months about the progress being made in the investigation.

12. On 9 July 1995 at 5.40 a.m., the police eventually arrested the applicant at the Istanbul Atatürk Airport on the basis of an order prohibiting him from leaving the country. At about 10 a.m. he was taken to the Gayrettepe Office for the Enforcement of Judgments in Istanbul.

13. On 11 July 1995 at 2 p.m., the applicant was taken into custody at the Istanbul Security Directorate. On the same day the public prosecutor at the Istanbul State Security Court authorised the Istanbul Security Directorate to extend the applicant's detention for ten days, starting from 9 July 1995.

14. On 17 July 1995 the applicant was examined by a doctor at the Haseki Hospital in Istanbul. The doctor noted in his report that no pathological findings had been found on the applicant's body and that the final medical report would be drafted by the Forensic Medicine Institute.

15. On 18 July 1995, at about 6 a.m., the applicant was taken to the Istanbul Atatürk Airport. The applicant and the police officers who accompanied him took a plane to Bitlis. At 2 p.m. he was handed over to police officers from the Bitlis Security Directorate. On the same day, the Bitlis Public Prosecutor authorised the extension of the applicant's detention for three more days.

16. The applicant alleged that he was subjected to ill-treatment in the Bitlis Security Directorate, which included beatings, electric shock treatment, blindfolding, verbal insults, hosing with cold water, being stripped naked and deprived of food.

17. On 19 July 1995 the applicant was driven to different places around Bitlis in order to locate his different meeting places with terrorists. A sketch map, describing the attack on the Hersan Police Station and how he had assisted the terrorists, was drafted by police officers. In a statement signed by the applicant on 19 July 1995, he confessed that he had aided members of the PKK. He alleged that, after having signed this confession, he was again subjected to ill-treatment.

18. On 20 July 1995 the applicant was seen by a doctor in Bitlis who noted in his report that there were no marks on his body of beatings or injuries consistent with the use of force. The applicant alleged that the doctor neither spoke to him nor examined him.

19. On the same day the applicant was first brought before the Diyarbakır State Security Court Public Prosecutor who decided to join the investigation file on the applicant dated 1992 to the new investigation file dated 1995. The applicant contended that his police statements were taken under duress and refuted the reliability of the medical report. Moreover, he denied all the allegations made against him. Later he was taken before the judge at the Diyarbakır State Security Court. He repeated that his police statements were taken under duress and refuted the allegations against him. Noting that the applicant had a profession and a permanent address, the judge concluded that there was nothing in the case file that required the applicant's detention pending trial and ordered his release.

20. On 23 July 1995 the applicant went on his own to be examined by another doctor. The subsequent medical report dated 15 August 1995 read as follows (translation):

> “Report:
>
> Talat Tepe, born 1961 in Mutki Bitlis, was taken into custody in Istanbul on 9 July 1995 and was held in custody for a total of twelve days; ten days in Istanbul and two days in Bitlis. During his detention in Istanbul, he was subjected to duress, such as not having access to means of communication and not being allowed to receive visitors despite his requests.
>
> In Bitlis, he was subjected to physical and psychological torture for almost 40 hours. He was interrogated while he was completely naked. He was held in a cold and dirty cell which had a stone floor. His access to the toilet and sanitary materials were restricted. He was subjected to offensive language and behaviour. He was threatened with death. He endured psychological pressure which led to desperation and destroyed his self-confidence (he was repeatedly told that he would be put on trial and subsequently be sentenced to death; he would be killed even if he was released, etc.). He was beaten up four to five times during this interrogation. As a result of moving cables around his body, he was subjected to electric shocks six times in succession, mainly on his legs and feet. He was hosed down with cold water. His testicles were squeezed. He was basically subjected to a kind of torture which endangers the victim's life and causes extreme pain, but does not always leave marks on the body.
>
> While in Istanbul he had to pay for his food. During the 40 hours of detention in Bitlis, he was unable to eat the food given to him since he was exhausted as a result of the torture. He was not supplied with water and he was told that drinking water after being subjected to torture would be dangerous for his health.

Before being released he was taken to the Bitlis State Hospital, where a medical report was issued, revealing that he was in good health. This report was prepared in the absence of a proper physical examination. On 23 July 1995 the torture victim had pain in his shoulders and back. He was suffering from weariness and violent headaches. He was going through the interrogation all over again in his dreams. During his sleep he needed to go to the toilet frequently, and he was often going through the whole interrogation procedure in his dreams. The weariness and the dizziness of the victim were easily observed during the first examination.

The results of blood and urine tests were normal. As a result of the neurological consultation, his neck movements were observed to be painful, and hypoesthesia and hypoalgesia were found in his left C5 dermatome. In the cervical BT examination no medullar and spinal chord compression was discovered. It was considered that the applicant's complaints were due to the trauma applied to the cervical region. He is provided with an anti-inflammatory treatment and he is under surveillance.

As a result of the psychiatric consultation, traumatic experience related insomnia was discovered. It was stated that he did not need psychotherapy.

Considering his state of health, it would be appropriate for him to rest for 7 (seven) days.

15 August 1995

Dr Emel Gökmen (signature)”

21. On 24 November 1995 the public prosecutor at the Diyarbakır State Security Court filed an indictment with the same court accusing the applicant of aiding and abetting an illegal armed organisation, contrary to Articles 31 and 169 of the Criminal Code and Article 5 of Law no. 3713 on the Prevention of Terrorism.

22. On 6 June 1996 the Diyarbakır State Security Court acquitted the applicant of the charges due to lack of evidence.

B. The investigation carried out by the domestic authorities

23. On 12 July 1995 the applicant's lawyers filed petitions with the Ministry of Justice complaining about the excessive length of the applicant's detention in police custody.

24. On 18 July 1995 the Ministry of Interior requested the Istanbul Public Prosecutor to investigate the complaints made by the applicant's lawyers.

25. On 27 July and 1 August 1995 the Istanbul Public Prosecutor took statements from the applicant's lawyers. They complained about the excessive length of their client's detention and his ill-treatment during his detention in Bitlis Security Directorate.

26. On 17 August 1995 the Istanbul Public Prosecutor took the applicant's statements. The applicant complained about the length of his detention and criticised the public prosecutor at the Istanbul State Security Court who had unlawfully authorised the prolongation of his detention. Moreover, he gave details of the alleged ill-treatment in Bitlis Security Directorate. He gave a description of the two police officers who were allegedly responsible for this treatment and maintained that one of them was the person who drove him from the airport to the Security Directorate. He stated that the doctor who examined him on 20 July 1995 did not ask him any questions and only checked the upper part of his body. However, he contended that the treatment that he had been subjected to was not the type of treatment which would necessarily leave traces on the body. Moreover, he was unable to complain to the doctor because police officers were present in the room. He further maintained that, apart from the documents in the case file before the Diyarbakır State Security Court, he did not have any evidence or witnesses to substantiate his allegations.

27. On 18 August 1995 the Istanbul Public Prosecutor sent a letter to the Bitlis Public Prosecutor requesting him to investigate the applicant's allegations of torture.

28. On 29 August 1995 the Bitlis Public Prosecutor requested information from the Bitlis Security Directorate about the identity of the two police officers who drove the applicant from the airport to the Security Directorate. Moreover, he sent a letter to the Diyarbakır State Security Court requesting a copy of the applicant's case file. He also sent a letter to the Istanbul Public Prosecutor requesting to have the applicant examined by a forensic doctor for traces of torture that allegedly occurred during his detention in Bitlis Security Directorate.

29. On 8 September 1995 the Bitlis Security Directorate informed the Bitlis Public Prosecutor of the

names of the police officers who drove the applicant from the airport to the Security Directorate as well as those of the officers who questioned him during his detention. On 14 September 1995 five police officers were summoned before the Bitlis Public Prosecutor. In their statements to the public prosecutor all five police officers refuted the applicant's allegations.

30. On 24 October 1995 the Bitlis Public Prosecutor repeated his requests to the public prosecutor at the Diyarbakır State Security Court and the Istanbul Public Prosecutor.

31. On 8 January 1996 the Bitlis Public Prosecutor issued a decision of non-jurisdiction in respect of the prosecution of the police officers. He transferred the case file to the office of the Bitlis Governor pursuant to the provisions of the Law on the Prosecution of Civil Servants.

32. On 29 January 1996 the deputy police chief, in his capacity of investigator, took statements from the accused police officers and on 1 February 1996 drafted a report. On 6 February 1996 the Provincial Administrative Council in Bitlis rejected the report as the investigator failed to take the applicant's statements.

33. On 18 March 1996, pursuant to a rogatory letter sent by the investigator, a police officer from the Istanbul Security Directorate took the applicant's statements in which he reiterated his allegations and complaints.

34. On 10 April 1996 the applicant was examined by a doctor at the Istanbul Forensic Department. In his report, the doctor noted that there were no traumatic pathological traces found on the applicant's body. However, he concluded that it was also possible that his wounds could have healed by that stage.

35. In his final report, relying on the police officers' statements and the medical reports dated 17 and 20 July 1995 and 10 April 1996, the investigator proposed that no prosecution or disciplinary proceedings should be brought against the police officers as there was no evidence to support the allegations of torture.

36. On 18 April 1996 the Provincial Administrative Council in Bitlis decided that charges should not be brought against the five police officers. It noted in its decision that the applicant was interrogated on 19 July 1995 and seen by a doctor in the Bitlis State Hospital on 20 July 1995; a medical report drafted on the same day found no traces of blows to the applicant's body and mentioned that, subsequently, on 20 July 1995, the applicant was released following a decision of the Diyarbakır State Security Court. The Council consequently held that, contrary to what was claimed by the applicant, he had not been subjected to torture.

37. The applicant did not appeal against the decision of the Provincial Administrative Council. The decision was examined *ex officio* by the Supreme Administrative Court. On 18 March 1998 the court upheld the decision of the administrative council holding that there was no evidence to substantiate the applicant's claim that the police officers had committed the alleged crime.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. The relevant domestic legislation is outlined in the Court's *Tepe v. Turkey* judgment (no. 27244/95 (/sites/eng/pages/search.aspx#{"appno":["27244/95"]}), §§ 115-122, 9 May 2003).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that he had been subjected to various forms of ill-treatment and torture in police custody, in violation of Article 3 of the Convention, which provides:

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

A. Arguments before the Court

1. The applicant

40. The applicant contended that, following his release on 23 July 1995, he arranged for a medical examination to be carried out by an independent doctor. The report was drafted twenty-three days after the actual examination took place as the doctor had to wait for various test results.

41. As regards the medical report dated 20 July 1995, the applicant alleged that, although he repeatedly emphasised the inadequacy of the medical examination, the Government did not take statements from the doctor concerned or from other officials who were present during the examination.

42. He alleged that the Diyarbakır State Security Court acquitted him of the charges because it considered that it was not possible to rely on the statements he made to the police under duress. Therefore, even the State Security Court accepted the fact that he had been tortured in police custody.

43. The applicant also contended that the report of the investigator demonstrated the unsatisfactory nature of the investigation. He argued that, regardless of his denunciation of the medical report of 20 July 1995, the investigator's report was mainly based on the findings therein. He complained that he was not given the opportunity to comment on any of the statements given by the police officers. Furthermore, the investigator who drafted the report was not independent of the suspects.

2. The Government

44. The Government argued that the applicant did not submit any evidence to substantiate his argument concerning the inadequacy of the medical report of 20 July 1995.

45. They contended that the medical report dated 15 August 1995, which was submitted by the applicant to substantiate his allegations of torture, mostly described the alleged ill-treatment instead of his physical condition. Moreover, the report was drafted almost one month after the applicant was released. Although the applicant alleged that the medical examination was carried out on 23 July 1995, there was nothing to prove this claim.

46. The Government also argued that, contrary to the applicant's allegations, the reason why the Diyarbakır State Security Court acquitted him was not the alleged unreliability of his statements to the police. As stated in that court's judgment, he was acquitted because the court was not convinced beyond reasonable doubt that he could be convicted of the charges against him.

B. The Court's assessment

47. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94 (/sites/eng/pages/search.aspx#{"appno":["25803/94"]}), § 95, ECHR 1999−V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998−VIII, p. 3288, § 93).

48. The Court further recalls its case-law that, in assessing evidence in a claim of violation of Article 3 of the Convention, it adopts the standard of proof “beyond reasonable doubt” (*Avşar v. Turkey*, no. 25657/94 (/sites/eng/pages/search.aspx#{"appno":["25657/94"]}), § 282, ECHR 2001−VII). 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, p. 65, § 161).

49. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95 (/sites/eng/pages/search.aspx#{"appno":["28883/95"]}), 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

50. In the instant case, the ill-treatment complained of by the applicant consisted of, on the one hand, beatings, electric shock treatment, hosing with cold water and, on the other, his subjection to blindfolding and insults and being stripped and deprived of food. Nonetheless, a number of elements in the case raise doubts as to whether the applicant suffered treatment prohibited by Article 3 when he was detained in police custody in the Bitlis Security Directorate.

51. Firstly, the medical report dated 20 July 1995 reveals no traces of ill-treatment on his body (see paragraph 18 above). The Court is aware of the lack of details in this report. Nevertheless, it also notes

that the applicant has adduced no material which could call into question the findings in that report and add probative weight to his allegations.

52. Secondly, the Court observes that the only evidence which corroborates the applicant's allegations of torture is the medical report dated 15 August 1995. It notes that the Government pointed out several inconsistencies in that report (see paragraph 45 above). While not underestimating the seriousness of the findings therein, the Court cannot overlook the fact that the evidence relied on by the applicant does not look like a standard medical report. The report does not refer to the name of the medical institution nor the diploma number of the doctor. Furthermore, it does not say whether the applicant was actually examined by the doctor, how, to what extent and when (see paragraph 20 above).

53. Thirdly, the Court is struck by the fact that the applicant did not submit this medical report to any of the domestic authorities, nor mention it when his statements were being taken by the investigator and the public prosecutor. It notes, in particular, that in his statement to the public prosecutor on 17 August 1995, which was twenty-five days after he was allegedly seen by the doctor and only two days after the medical report was drafted, he maintained that he did not have any evidence to substantiate his allegations other than his statements (see paragraph 26 above). It is indeed strange that the applicant did not submit to the national authorities the only evidence which could have substantiated his allegations of torture and could have allowed him to have a remedy in domestic law.

54. In conclusion, since the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to ill-treatment, the Court does not find it proven that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

55. The applicant alleged that his detention in police custody breached Article 5 §§ 1 (c) and 3 of the Convention, which provides:

> “1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 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.”

A. Article 5 § 1 (c) of the Convention

56. The applicant complained that there was no reasonable suspicion on which to arrest him and that his detention was unlawful. He contended that the incriminating statements of the two members of PKK dated back to 1992, over three years before his arrest. These statements were subsequently withdrawn by the suspects before the trial court since they were given under duress. Moreover, the applicant alleged that he was interrogated by the police despite the circular of the Ministry of Justice dated 14 February 1994, which required that any investigation of alleged criminal conduct on the part of a lawyer had to be carried out by a public prosecutor.

57. The Government contended that both suspects gave a detailed description of the attack on the Hersan Police Station in Bitlis carried out by PKK members with the applicant's assistance. Although they withdrew their statements, alleging that they were given under duress, their differing statements cannot remove the existence of a reasonable suspicion against the applicant.

58. The Court reiterates that the “reasonableness” of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (*Labita v. Italy*

[GC], no. 26775/95 (/sites/eng/pages/search.aspx#{"appno":["26775/95"]}), § 155, ECHR 2000-IV). What may be regarded as reasonable will, however, depend on all the circumstances (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

59. The reasonable suspicion referred to in Article 5 § 1 (c) of the Convention does not mean that the suspected person's guilt must at that stage be established. It is precisely the purpose of the investigation that the reality and nature of the offences laid against the accused should definitely be proved (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300−A, p. 27, § 55). Sub-paragraph (c) of Article 5 § 1 does not even presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody (see *Erdagöz v. Turkey*, judgment of 22 October 1997, *Reports* 1997-VI, p. 2314, § 51).

60. Furthermore any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention (see, amongst other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996−V, p. 1864, § 118).

61. In the instant case the Court observes that the applicant was taken into custody on suspicion of aiding and abetting an illegal terrorist organisation. The police acted on the basis of an arrest warrant, issued by the public prosecutor at the Diyarbakır State Security Court. The arrest warrant was based on information previously provided by two members of the PKK. The Court notes that the fact that the incriminating statements dated back to 1992 and were later withdrawn by the suspects did not remove the existence of a reasonable suspicion against the applicant and did not have an effect on the lawfulness of the arrest warrant.

62. Having regard to the specific circumstances of the case, the Court considers that the applicant's detention was lawful and that he was detained on reasonable suspicion of having committed an offence, within the meaning of Article 5 § 1 (c) of the Convention.

In so far as the applicant maintains that the procedure governing his detention was illegal under domestic law since he was not questioned by a public prosecutor (see paragraph 56 above), the Court would add that the Ministry of Justice circular of 14 February 1994 only addresses the manner in which inquiries are to be conducted into offences allegedly committed by lawyers (see, *Elçi and Others v. Turkey,* nos. 23145/93 (/sites/eng/pages/search.aspx#{"appno":["23145/93"]}) and 25091/94 (/sites/eng/pages/search.aspx#{"appno":["25091/94"]}), §§ 584-586, 13 November 2003). The fact that the police interrogated the applicant during his detention in alleged breach of the terms of that circular does not invalidate the domestic legal basis for his actual arrest and subsequent detention. It notes that the applicant was apprehended and detained on the strength of a warrant issued by the public prosecutor and his detention extended on the authorisation of a public prosecutor (compare and contrast, *Elçi and Others,* cited above, §§ 674-684).

63. In the light of the foregoing, it concludes that there has been no violation of Article 5 § 1 of the Convention.

B. Article 5 § 3 of the Convention

64. The applicant complained under Article 5 § 3 of the Convention that he was held in police custody for twelve days without being brought before a judge or other officer authorised by law to exercise judicial power.

65. The Government argued that the length of the applicant's detention in police custody was in conformity with the legislation in force at the time. Given that the relevant law had since been amended in accordance with the case-law of the Court, the applicant's allegations were groundless.

66. The Court recalls that Article 5, in general, aims to protect the individual against arbitrary interference by the State with his right to liberty. Article 5 § 3 intends to avoid arbitrariness and to secure the rule of law by requiring a judicial control of interferences by the executive (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2623, § 44).

67. To be in accordance with Article 5 § 3, judicial control must be prompt. Promptness has to be assessed in each case according to its special features (see *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, pp. 24-25, §§ 51-52). However, the scope of flexibility in interpreting and applying the notion of promptness is very limited (*Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145−B, pp. 33-34, § 62).

68. The Court has accepted on several occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see the following judgments: *Brogan and Others*, cited above, p. 33, § 61, *Murray*, cited above, p. 27, § 58, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2282, § 78, and *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41). This does not mean, however, that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved (see *Murray*, cited above, p. 27, § 58).

The Court observes that the applicant was held in police custody for twelve days from 8 July to 20 July 1995. It recalls 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 *Brogan and Others*, cited above, p. 33, § 62).

69. Even though the investigation of terrorist offences presents the authorities with special problems, the Court cannot accept that it was necessary to detain the applicant for twelve days without judicial intervention.

70. The Court finds, therefore, that there has been a breach of Article 5 § 3 of the Convention.

C. Article 5 § 4 of the Convention

71. The applicant complained under Article 13 of the Convention that he was not able to initiate proceedings to challenge the lawfulness and the length of his detention in police custody. The Court is of the opinion that the applicant's complaint under this head should be examined under Article 5 § 4 of the Convention, which provides as follows:

> “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.”

72. The Court reiterates that the existence of a remedy must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of Article 5 § 4 (see, among other authorities, *mutatis mutandis*, *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 30, § 54, *De Jong, Baljet and Van den Brink*, cited above, p. 19, § 39, and *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319−A, p. 17, § 42).

73. The Court recalls that in its *Sakık and Others v. Turkey* judgment (26 November 1997, *Reports* 1997-VII, § 53), it was not persuaded that at the material time there existed an effective remedy before a State Security Court by which an applicant could challenge the lawfulness of his detention in police custody. It sees no reason to depart from that conclusion in the instant case (see also *Dalkılıç v. Turkey*, no. 25756/94 (/sites/eng/pages/search.aspx#{"appno":["25756/94"]}), § 27, 5 December 2002). As to the length of the applicant's custody before being brought before a judge - twelve days – the Court would add that this period, which was lawful under the relevant domestic law at the time, sits ill with the notion of “speedily” contained in Article 5 § 4 (see the above-cited *Sakık and Others* judgment, § 51).

74. In conclusion, the Court finds that there has been a breach of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

75. The applicant complained that the Turkish authorities failed to initiate proceedings before an independent and impartial tribunal in relation to his allegations of torture, in violation of Article 6 § 1 of the Convention, which provides as relevant:

> “In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

76. The Court observes that the applicant's grievance under Article 6 § 1 of the Convention is inextricably bound up with his more general complaint concerning the manner in which the investigating authorities treated his complaints concerning his detention and his alleged ill-treatment and the repercussions which these had on his access to effective remedies. It finds it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention.

77. It does not therefore find it necessary to determine whether there has been a violation of Article 6 §

1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant complained that there were no effective remedies in domestic law in respect of his allegations of torture and the unlawfulness of his detention, in breach of Article 13 of the Convention, which reads:

> "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."

79. The Court has already examined the applicant's complaints concerning the ineffectiveness of remedies in respect of his detention under Article 5 § 4 of the Convention, which is regarded as the *lex specialis* concerning the procedures relating to detention (see paragraphs 71-74 above).

80. As regards the applicant's complaint concerning the ineffectiveness of remedies in respect of his allegations of torture, the Government alleged that there were effective remedies in domestic law. Moreover they contended that the applicant failed to appeal against the decision of the Provincial Administrative Council to the Supreme Administrative Court, although he had the right and the possibility to do so. They maintained that the Supreme Administrative Court examined the case *ex officio* and held that there was no evidence to substantiate the applicant's allegations of ill-treatment in police custody.

81. 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 and including effective access for the complainant to the investigatory procedure (see *Aksoy*, cited above, § 98).

82. The Court further reiterates that for an investigation into alleged torture or ill-treatment by State officials to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see, among other authorities, *Oğur v. Turkey* [GC], no. 21594/93 (/sites/eng/pages/search.aspx#{"appno":["21594/93"]}), § 91, ECHR 1999−III).

83. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that the applicant had been ill-treated by police officers. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 3 from being an "arguable" one for the purposes of Article 13 (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998−VI, p. 2442, § 112).

84. The Court notes that the investigation file initiated by the Bitlis Public Prosecutor was transferred to the office of the Bitlis Governor in accordance with the provisions of the Law on the Prosecution of Civil Servants. The investigation was carried out by the Provincial Administrative Council in Bitlis, which ultimately decided that no prosecution should be brought against the suspected police officers (see paragraphs 31 and 36 above). It reiterates its earlier finding in a number of cases that the investigation carried out by the administrative councils cannot be regarded as independent since they are chaired by the governors, or their deputies, and composed of local representatives of the executive, who are hierarchically dependent on the governors (see, among other authorities, *Oğur,* cited above, § 91, *Yöyler v. Turkey*, no. 26973/95 (/sites/eng/pages/search.aspx#{"appno":["26973/95"]}), § 93, 24 July 2003, and *Kurt v. Turkey* (dec.), no. 37038/97 (/sites/eng/pages/search.aspx#{"appno":["37038/97"]}), 12 June 2003).

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

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

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

87. The applicant alleged that he was subjected to discrimination on the ground of his Kurdish origin, in breach of Article 14 of the Convention, which provides in so far as relevant as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any

ground such as ... national or social origin, [or] association with a national minority, ...

88. The applicant submitted that during his detention the focus of his interrogation was on the Kurds and the PKK. He argued that the effect of that interrogation was to penalise the holding of a particular political opinion and to have associations with a particular national minority.

89. On the basis of the facts established in this case and the materials before it, the Court does not find it proven that there has been a violation of Article 14 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant maintained that he was a successful lawyer. However, as a result of his detention in police custody and torture he had lost most of his clientele since he was unable to work with the same vigour. He claimed 100,000 US dollars (USD) in respect of the loss of his past earnings. Moreover, he claimed a further USD 196,000 in respect of his future earnings. The claim as to his loss of future earnings was based on the Ogden actuarial tables and on the assumption that he would continue to work for twenty more years.

92. The Government submitted that the actuarial calculations were speculative and highly susceptible to abuse by those seeking unjust enrichment. In addition, they pointed out that no documents had been submitted to substantiate the applicants' actual earnings. Any assessment based on fictitious figures would therefore be speculative. They also claimed that the amounts claimed were excessive.

93. The Court considers that it is clear that the applicant incurred some loss of earnings during his detention, which has been found to violate Article 5 of the Convention, and that he needed time to recover after his stressful experience in order to restore his health and his clients' confidence (see, *mutatis mutandis*, *Elçi and Others*, cited above, § 721).

94. In these circumstances, the Court, deciding on an equitable basis as required by Article 41 of the Convention, awards the applicant 1,000 euros (EUR) for pecuniary damage.

B. Non-pecuniary damage

95. The applicant claimed the sum of USD 100,000 for non−pecuniary damage. He further claimed that finding of a violation of Article 14 should entail a 100% increase in the award to be made.

96. The Government maintained that this claim was not only excessive, but without any basis whatsoever.

97. The Court considers that the applicant must have suffered distress, which cannot be compensated solely by the finding of a violation. Having regard to the nature of the violations found in the present case and deciding on an equitable basis, it awards the applicant EUR 5,000 under the head of non-pecuniary damage.

C. Costs and expenses

98. The applicant sought the reimbursement of USD 38,694 for his costs and expenses incurred in the domestic and Convention proceedings as well as for his medical expenses:

(a) 10,801 pounds sterling in fees for the work carried out by his United Kingdom-based representatives. This included administrative costs incurred for translations and summaries from English into Turkish and from Turkish into English and expenses such as telephone calls, postage, photocopying and stationery;

(b) USD 11,000 for the legal fees incurred during the proceedings before the domestic courts;

(c) USD 12,000 for the applicant's psychiatric treatment.

99. The Government alleged that the domestic legal costs were not relevant to the instant case. They submitted that, while only costs and expenses actually incurred and which were reasonable as to quantum can be reimbursed, no acceptable receipt, document or invoice with a taxation number has been submitted in support of the applicant's claims regarding the domestic legal costs or his medical fees. In addition, the costs and expenses were inflated and not all were necessarily incurred. In particular, the Government objected to any reimbursement in respect of the costs and expenses claimed in respect of the Kurdish Human Rights Project (KHRP).

100. The Court observes that only legal costs and expenses necessarily and actually incurred and which are reasonable as to quantum can be reimbursed pursuant to Article 41 of the Convention. It notes that this case involved complex issues of fact and law requiring detailed examination. However, it considers excessive the total amount which the applicant claims in respect of his legal costs and expenses and considers that it has not been demonstrated that they were necessarily and reasonably incurred. The applicant did not provide any documentation in support of his expenses for his psychiatric treatment. Furthermore, the domestic legal fees claimed were not incurred during the proceedings which were brought with a view to obtaining redress for the matter found by the Court to constitute a violation.

101. In these circumstances, the Court is unable to award the totality of the amount claimed; deciding on an equitable basis and having regard to the details of the claims submitted by the applicant, it awards him the sum of EUR 7,000.

D. Default interest

102. 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 no violation of Article 3 of the Convention;

2. *Holds* that there has been no violation of Article 5 § 1 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 it is not necessary to consider the applicant's complaint under Article 6 § 1 of the Convention;

6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds* that there has been no violation of Article 14 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, together with any tax that may be chargeable:
      (i) EUR 1,000 (one thousand euros) in respect of pecuniary damage to be converted into Turkish liras at the rate applicable at the date of settlement and paid into the applicant's bank account in Turkey;
      (ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage to be converted into Turkish liras at the rate applicable at the date of settlement and paid into the applicant's bank account in Turkey;
      (iii) EUR 7,000 (seven thousand euros) in respect of costs and expenses to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the bank account in the United Kingdom indicated in the applicant's just satisfaction claim;

(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. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President