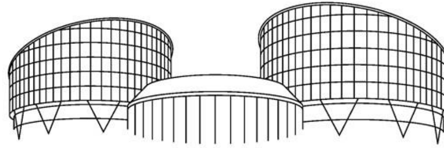

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

AVCIOĞLU v. TÜRKİYE

(Application no. 59564/16)

UNOFFICIAL TRANSLATION FROM THE ORIGINAL FRENCH VERSION: PREPARED ON BEHALF OF REDRESS

JUDGEMENT

Article 3 (procedural) - Failure of the national authorities to carry out an adequate and effective investigation into the applicant's allegations of ill-treatment while in police custody

STRASBOURG

17th October 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Avcıoğlu v. Türkiye (the Republic of Turkey)

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

Arnfinn Bårdsen, *President*
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović, *Judges*,
and Hasan Bakırcı, *Section Registrar*

Having regard to the application (no. 59564/16) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27th September 2016 by a national of that State, Mr Mustafa Avcıoğlu ("the applicant"),

Having regard to the decision to inform the Turkish Government ("the Government") of the applicant's complaint that he was a victim within the meaning of Article 34 of the Convention and of the alleged inadequacy of the investigation carried out by the domestic authorities into the ill-treatment to which he said he had been subjected while in police custody on 30th and 31st May 2003 at the Yayladere gendarmerie, within the meaning of Article 3 of the Convention,

Having regard to the decision to declare inadmissible, on the grounds of failure to exhaust domestic remedies, the applicant's complaint that the public prosecutor had failed to open an investigation, following the Constitutional Court's decision of 31st March 2016,

Having regard to the observations of the parties,

Having deliberated in private on 26th September 2023,

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

INTRODUCTION

1. The application concerned allegations that the investigation carried out in the present case by the competent domestic authorities into claims of ill-treatment - suffered by the applicant while in police custody on 30th and 31st May 2003 on the premises of the Yayladere gendarmerie - had failed to satisfy the requirements of Article 3 of the Convention.

AS TO THE FACTS

2. The applicant was born in 1972 and lives in London. He was represented by C. Esdaile, legal advisor.

3. The Government was represented by its agent, Mr Hacı Ali Açıkgül, Head of the Human Rights Department at the Ministry of Justice.

I. ARREST OF THE APPLICANT

4. On 30th May 2003, the applicant was taken into police custody on suspicion of aiding and belonging to an armed terrorist organisation.

5. On 31st May 2003, he was remanded in custody.

6. On an unspecified date, the Yayladere public prosecutor brought criminal proceedings against the applicant before the Diyarbakır State Security Court, on the basis of Article 169 of the former Criminal Code, for aiding and belonging to an illegal terrorist organisation.

7. On 22nd July 2003, the Diyarbakır State Security Court ordered the applicant's release.

8. On 30th September 2003 the Diyarbakır State Security Court acquitted the applicant of the charges against him. It found that members of the PKK terrorist organisation had taken food from the applicant's home at gunpoint and that he had reported the incident to the police. It concluded that the applicant had not voluntarily assisted the terrorist organisation and that there was no evidence to confirm that he had done so.

9. According to the applicant's statements, he was granted asylum in the United Kingdom on 10th February 2004, followed by British citizenship on 10th March 2004.

II. APPLICANT'S COMPLAINT OF ILL-TREATMENT

10. On 9th March 2012, the applicant filed a criminal complaint against Ad.At, C.O. and A.A., gendarmes at the time of the events, for acts of torture that he alleged he had suffered while in police custody on 30th and 31st May 2003 in Yayladere. He claimed that he had been threatened with death with a weapon and beaten violently. He was allegedly subjected to *falaka* (blows to the soles of the feet) and electric shocks.

11. It was clear from the parties' comments and the Constitutional Court's establishment of the facts that the applicant was not examined by a doctor either when he was taken into police custody or at the end of his detention.

12. On 11th January 2013, the Karakoçan Public Prosecutor issued a ruling dismissing the case. The public prosecutor gave the following reasons for this ruling:

- C. O. had stated at his hearing on 18th July 2012 that the applicant's allegations were unrealistic and asserted that he had not ill-treated him,

– At his hearing on 27th July 2012, A.A. contested the allegations of torture made by the applicant,

– M.S., who lived in the same village as the applicant and had been arrested at the same time, had not made any statements at his hearing on 4th December 2012 that confirmed the applicant's allegations.

13. The public prosecutor concluded that there was no evidence, apart from the applicant's allegations and abstract statements, that could lead to criminal proceedings being brought against the alleged perpetrators of the alleged acts.

14. On 11th June 2013, the Malatya Assize Court confirmed the dismissal of the case.

III. INDIVIDUAL APPEAL TO THE CONSTITUTIONAL COURT

15. On 28th August 2013, the applicant lodged an individual appeal with the Constitutional Court ("CC"). He alleged that he had been subjected to psychological and physical torture while in police custody and claimed 150,000 Turkish lira (TRL), the equivalent of approximately 56,594 euros (EUR), for non-pecuniary damage.

16. A panel of five CC judges considered the applicant's individual appeal and handed down its ruling on 31st March 2016. The CC established the facts as follows.

17. It emerged from this ruling that the applicant, after his release, went first to Istanbul and then to the United Kingdom, where he was granted refugee status on 10th February 2004. Six years later, on 9th February 2010, he was examined by the Medical Foundation for the care of victims of torture ("MFVT"). The medical report drawn up at the time found that the applicant had a slipped lumbar intervertebral disc and approximately seven wounds on the front of both legs consistent with irregular trauma resulting from blows with a blunt object. The medical report noted pain and tenderness in the soft tissues of both heels. All these findings were considered consistent with acts of torture as reported by the applicant. As to his psychological state, the medical report noted post-traumatic stress disorder and emotional dysregulation.

18. Again according to the CC's ruling, on 9th March 2012 the applicant lodged a complaint with the Bingöl public prosecutor, through his lawyer, against the following police officers: C.O., who had signed the statement which the applicant had made while in police custody, Ad.At., the person in charge of the premises in which he had been held in police custody, the officials who had signed the transcript of his arrest, the members of the police force and of JITEM ("*Jandarma İstihbarat Terörle Mücadele*" - Intelligence and Counter -Terrorism Service of the gendarmerie) who were on duty and present at the scene at the time of the events. He also described another official.

19. The applicant explained in his complaint - as referred to by the CC in the above-mentioned ruling - that from 2000 to 2003 he was a minibus driver and lived in the village of Zeynelli (Bingöl). According to him, the military regularly carried out operations in that village. In particular, he stated that on 28th May 2003 at around 4 p.m., as he was sitting outside his house, around forty gendarmerie vehicles surrounded the village. He was allegedly approached by three officers in uniform, one of whom he said he knew personally (said to be Major N.) and the other two by sight, and by two plainclothes officers whom he did not know and who, according to him, were JITEM agents. One of them allegedly hit him violently in the lumbar vertebrae with the sole of his boot, causing him to fall to the ground in severe pain. He was then put into a vehicle and taken with M.S., another resident of the village, to the Yayladere gendarmerie, where he was placed in a cell after being threatened with death with a weapon. He was reportedly questioned by five officials, two of whom were in civilian clothes; he was allegedly beaten violently and subjected to *falaka* and electric shocks. Lastly, he allegedly signed a twelve-page pre-written statement. The applicant added that he had been heard by the public prosecutor and then by the judge who had ordered his detention. He stated that, since the officials whom he had claimed to have carried out acts of torture were present at the time, he had been unable to explain to either the public prosecutor or the judge that he had been subjected to ill-treatment at their hands. Nor had he been able to inform his lawyers following his transfer to Bingöl prison. According to him, the prison guards were present in the room where he had spoken to his lawyers. He stated that after his release he had travelled to the United Kingdom, where he had applied for asylum. Again, according to the applicant, as part of this application, the legal organisation Redress had had him examined by the MFVT. He explained that fear had prevented him from travelling to Turkey until 2011. At that time, he returned on the advice of Redress, after starting medical treatment at the MFVT. Finally, he asked that those responsible for the acts of torture he allegedly suffered be identified and punished.

20. According to the CC's decision, on 21st March 2013, the public prosecutor in Bingöl declared it did not have jurisdiction *ratione loci in* favour of his counterpart in Karakoçan.

21. The same document shows that, at the request of the Karakoçan public prosecutor, the addresses of C.O. and A.A. (but not Ad.At.) were determined and that these two officials were interviewed.

22. As far as A.A. was concerned, it was clear from the CC's decision that he was heard on 27th July 2012 on the basis of a letter rogatory issued by the public prosecutor in the Republic of Hopa. In his statement, he said that in 2003, following a tip-off from a previously arrested member of a terrorist organisation, he had arrested a number of villagers before taking them to the gendarmeries for questioning. He did not know whether the applicant was among those taken into custody. He maintained that these people had not been ill-treated.

23. As for C.O., he was - again according to the CC's judgement - heard on 18th

July 2012 further to a letter rogatory by the public prosecutor of Kartal (Istanbul). In his statement, he said that at the time of the events in question the applicant was working as a minibus driver. He had been arrested on suspicion of supplying food to the above-mentioned terrorist organisation. C.O. added that the applicant had not been tortured or ill-treated.

24. The same document stated that, on an unspecified date, M.S. was also questioned under a letter rogatory by the Ümraniye (Istanbul) Security Directorate. He stated that from 2000 to 2003 he and the applicant had lived in the above-mentioned village. The gendarmes had visited the village from time to time to ask them for help and information about the above-mentioned terrorist organisation. The applicant, himself and other inhabitants of the village had been taken into custody by the gendarmes on a tip-off. They had made a statement. After being heard by the public prosecutor and the judge, they had been detained at the prison. M.S. - a resident of the same village as the applicant - stated that he had not been ill-treated or tortured. He knew nothing about the applicant's allegations.

25. It was also clear from the CC's establishment of the facts that, at the request of the Karakoçan public prosecutor, the Yayladere gendarmerie command indicated that there was no register of custody for the period from 28th May to 1st June 2003.

26. It was also apparent from the CC's establishment of the facts that on 11th January 2013 the Karakoçan public prosecutor issued a decision dismissing the proceedings. His reasons were that C.O. and A.A. had contested the applicant's allegations and that M.S. had not made any statements capable of confirming those allegations. He concluded that the investigation had not provided any evidence able to confirm the applicant's allegations; they remained abstract and did not justify initiating public proceedings against the suspected perpetrators of the alleged ill-treatment.

27. On 11th June 2013, according to the same document, the Malatya Criminal Court confirmed the decision of the Karakoçan Public Prosecutor.

28. Turning to an examination of the facts thus established, the CC found in its ruling of 31st March 2016 that neither the file submitted by the applicant in his individual appeal nor the file on the investigation conducted by the public prosecutor contained sufficient evidence to lead to the examination of the interested party’s allegations from the standpoint of the substantive aspect of Article 3 of the Convention. It concluded that it could only examine them from the standpoint of the procedural limb of Article 3, that is to say, by setting itself the task of determining whether the respondent State had carried out an effective investigation.

29. In the considerations for its ruling, the CC noted that in 2012 the applicant had lodged a complaint about acts of torture allegedly committed when he was taken into police custody in 2003; that an investigation had been opened immediately; that in the course of the investigation, two officers on duty at the time of the events at the police station where the applicant had been taken into custody had been interviewed, as had the individual who had been taken into custody at the same time as the applicant; finally, the competent public prosecutor had dismissed the case.

30. The CC noted that the applicant acknowledged that he had not made any

statements to the various public authorities to whom he had been brought after his detention relating to any ill-treatment to which he had been subjected. It added that he had not claimed to have been ill-treated during his various hearings. Nor had it been established that the applicant's body had shown, when he had been heard by various authorities in the course of the criminal proceedings against him, any marks such as bruises that might suggest that he had been subjected to torture or ill-treatment.

31. The CC noted that the acts of torture to which the applicant alleged he had been subjected had, assuming they were true, occurred well before the date on which he had lodged his complaint. While acknowledging that difficulties in establishing the facts could arise in the course of an investigation, the CC recalled that in order to determine whether the respondent State had fulfilled its obligation to conduct an effective investigation, it was necessary to ascertain whether the competent domestic authorities had taken all measures necessary to confirm or refute the applicant's allegations.

32. The CC had obtained copies of the statements of suspects C.O. and A.A., as well as the statement of witness M.S. It had requested access to the police custody register for the period during which the applicant had been held in police custody, but to no avail as the register no longer existed.

33. For his part, the applicant, in support of his allegations that he had been tortured and ill-treated while in police custody, had submitted to the investigation file a medical report drawn up by the MFVT.

34. The CC observed that the findings made in the medical report issued by the MFVT, based in the United Kingdom, had been drawn up well after the events in question. In order to ascertain whether these findings were liable to confirm the applicant's allegations of ill-treatment, it stressed that the competent authorities should have ascertained whether the applicant had been examined by a doctor on entering and leaving police custody. However, the CC noted that no such investigation had been carried out. The applicant had not been examined by an official health establishment at the time of the events. It pointed out that in his decision to dismiss the case, the public prosecutor had not commented on the medical report submitted by the applicant.

35. The CC noted that the file on the investigation carried out in the present case showed that it had been limited to hearing the two individuals indicated by the applicant and another public official whose signature appeared on the statement. However, it noted that no attempt had been made to identify the public officials who had been on duty when the applicant was taken into police custody and questioned.

36. The CC specified that the public prosecutor had only interrogated the other suspects about the official who, according to the applicant, had been particularly active in the reported ill-treatment. The public prosecutor had taken no further steps to identify the said official, even though the applicant had given his description.

37. The CC also noted that Ad.At. had been identified as the person in charge of the detention centre for persons in police custody at the time of the events. He

had been named by the applicant in his complaint. However, this officer had not been heard by the public prosecutor. It observed, however, that the investigation file showed that in 2005 Ad. At. had been transferred to the Çankırı gendarmerie, without any further investigation having been carried out in that regard.

38. The CC observed that the investigation file in this case did not show that any further evidence could be obtained to shed light on the allegations of ill-treatment made by the applicant. In short, an examination of the investigation, as a whole, led to the conclusion that it had not been conducted with all due diligence. Indeed, it considered that the investigation had not been sufficient to shed light on the facts at issue and to identify those who might have been responsible.

39. The CC concluded that there had been a violation of Article 3 of the Convention on account of the respondent State's failure to carry out an effective investigation into the ill-treatment to which the applicant claimed to have been subjected while in police custody. It sent a copy of its decision to the competent public prosecutor with a view to opening a new criminal investigation. It awarded the applicant TRL 5,000 (approximately EUR 1,556 at the material time) for non-pecuniary damage and TRL 1998.35 (approximately EUR 622 at the material time) for costs incurred in the proceedings. It stated that these sums were to be paid to the applicant within four months of the date on which the person concerned, following notification of the ruling in question, submitted a request to the Minister of Finance. It specified that in the event of late payment, statutory interest would be charged from the date of expiry of the said period until the date of payment.

RELEVANT INTERNAL LEGAL FRAMEWORK AND PRACTICE

I. PENAL CODE

40. The Criminal Code makes it an offence for a public official to subject someone to torture (article 243) or ill-treatment (article 245).

II. CODE OF CRIMINAL PROCEDURE

41. Article 160 § 1 of the Code of Criminal Procedure (entitled "Duty of public prosecutor informed of an offence") reads as follows:

> "As soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not. "

III. ACT NO. 6216 ESTABLISHING THE CONSTITUTIONAL COURT ("CC") AND ITS RULES OF PROCEDURE

42. Law no. 6216 on the CC and its rules of procedure was published in the

Official Journal on 3rd April 2011. It replaces the former law of 1983.

43. The provisions of Law no. 6125 relating to the right of individual appeal to the CC came into force on 23rd September 2012. They provide that any individual may, invoking the fundamental rights and freedoms protected by the Constitution and by the European Convention on Human Rights, lodge such an appeal against decisions which became final after 23rd September 2012 (*Uzun v. Turkey (* dec.), no. 10755/13, §§ 7-27, 30th April 2013).

44. Article 50 of law no. 6216 reads as follows:

Judgments Article 50

1) At the end of the examination on the merits, a decision is given on the violation or non-violation of a right of the applicant. If a decision of violation has been made, the measures to be taken to put an end to the violation and to erase its consequences are specified in the operative part. No review of the appropriateness of an administrative act may be carried out and no decision may be taken that could constitute such an act.

1) Where the violation is the result of a judicial decision, the case is referred back to the competent court to reopen the proceedings with a view to putting an end to the violation and erase its consequences. In cases where there is no legal interest in reopening the proceedings, the applicant may be awarded compensation or be invited to initiate proceedings before the competent courts. The court responsible for reopening the proceedings will hand down its ruling, insofar as this is possible on the basis of the case file, with a view to remedying the violation found by the Constitutional Court in its decision and erasing the consequences of that infringement.

2) Judgments handed down by the chambers are notified to the persons concerned and to the Ministry of Justice, and are published on the Constitutional Court's website. The criteria for publication in the Official Journal are set out in the rules.

3) Differences in jurisprudence between the committees are settled by the sections to which they belong; those between the sections are settled by the plenary assembly. The other provisions governing this matter are set out in the rules of the Constitutional Court.

4) In the event of a waiver, the appeal shall be struck off the list of cases."

IV. CC CASE LAW

45. It emerged from the relevant CC case law, as set out by the Government in its comments, that the Court awarded substantial compensation where it found a violation of Article 3 of the Convention and decided that there was no legal interest in a new trial, and less compensation where it found that a new trial should be held. According to the Government, this practice could be seen from the following summaries.

46. In its ruling on the *Cezmi Demir and Others* case (no. 2013/293, 17th July 2014), the CC found a violation of the substantive and procedural aspects of Article 3 of the Convention on account of acts of torture inflicted on the applicants while in

police custody. It awarded each of them TRL 40,000 (approximately EUR 13,909) for non-pecuniary damage and TRL 198.35 (approximately EUR 69) for the costs and expenses incurred in the proceedings in question and sent a copy of the decision to the competent court for information.

47. In its ruling on the *Deniz Yazıcı* case (no. 2013/6359, 10th July 2014), the CC found a violation of the substantive and procedural aspects of Article 3 of the Convention on account of acts of torture and inhuman treatment inflicted on the person concerned at the time of his arrest and while in police custody. It awarded him TRL 20,000 (approximately EUR 6,915) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 587) for costs and expenses incurred in the proceedings in question and sent a copy of the decision to the competent court for information.

48. In the *Şenol Gürkan* case (no. 2013/2438, 9th September 2015), the CC found a violation of the substantive limb of Article 3 of the Convention on account of acts of torture inflicted on the person concerned while in police custody. It held that there was no legal interest in requesting the reopening of the proceedings, since the facts were time-barred, and the collection of new evidence was compromised. It awarded the victim TRL 55,000 (approximately EUR 16,286) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 503) for costs and expenses incurred in the proceedings in question.

49. In its ruling on the *Zeki Bingöl* (2) case (no. 2013/6576, 18th November 2015), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention on account of the inhuman treatment inflicted on the person concerned while in police custody. It sent a copy of its decision to the competent public prosecutor for the purpose of opening a new criminal investigation. It awarded the victim TRL 4,000 (approximately EUR 1,307) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 555) for costs and expenses incurred in the proceedings in question.

50. In its ruling on the *Hamdiye Aslan* case (no. 2013/2015, 4th November 2015), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention on account of the ill-treatment inflicted on the person concerned while in police custody. It awarded him TRL 30,000 (approximately EUR 9,646) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 546) for costs and expenses incurred in the proceedings in question.

51. In its ruling on the *Feride Kaya* (2) case (no. 2016/13895, 9th June 2020), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention on account of acts of torture inflicted on the applicant while in police custody. It awarded the applicant TRL 90,000 (approximately EUR 11,737) for non-pecuniary damage and TRL 3,239.50 (approximately EUR 422) for costs and expenses incurred in the proceedings in question. Because the facts were time-barred, it ruled that there was no legal interest in ordering a new trial in this case. It sent a copy of its decision to the relevant Court of Assize for information.

52. In its ruling on the *Deniz Şah* (2) case (no. 2018/29836, 14th April 2022), the CC found a violation of the procedural limb of Article 3 of the Convention on

account of the ill-treatment suffered by the person concerned in the remand centre where he was being held. It sent a copy of its decision to the competent public prosecutor with a view to opening a new criminal investigation. It awarded the victim TRL 45,000 (approximately EUR 2,839) for non-pecuniary damage.

RELEVANT INTERNATIONAL TEXTS

UNITED NATIONS' ISTANBUL PROTOCOL

53. The "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" ("the Istanbul Protocol") was submitted to the United Nations High Commissioner for Human Rights (UNHCHR) on 9th August 1999, and the principles contained therein were subsequently supported by the United Nations through various resolutions of the Commission of Human Rights and the General Assembly. This manual is the first set of guidelines for the investigation and assessment of evidence in alleged cases of torture. It contains a set of practical instructions on how to examine persons who claim to have been victims of torture or ill-treatment, how to conduct an investigation into alleged cases of torture and how to notify the competent authorities of the conclusions drawn from these investigations. The principles relating to the means of effectively investigating and establishing the reality of alleged cases of torture or other cruel, inhuman or degrading treatment or punishment are summarised in Appendix 1 to the Manual (the relevant passages of this document are reproduced in the *Batı and Others v. Turkey judgement*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)).

AS TO THE LAW

I. PRELIMINARY OBSERVATIONS

54. The application concerned the ill-treatment to which the applicant claimed to have been subjected while in police custody on 30th and 31st May 2003. Examining the allegations solely from the standpoint of the procedural aspect of Article 3 of the Convention, the CC found a violation of that provision on account of the failure of the competent domestic authorities to fulfil their obligation to conduct an effective investigation into the ill-treatment to which the applicant claimed to have been subjected while in police custody. It sent a copy of its decision to the competent public prosecutor with a view to opening a new criminal investigation. It awarded the applicant TRL 5,000 for non-pecuniary damage (approximately EUR 1,556 at the material time) and TRL 1998.35 (approximately EUR 622 at the material time) for costs incurred in the proceedings.

55. The Court first of all noted that, in his observations, the applicant raised a new claim under Article 34 of the Convention that the public prosecutor had put pressure on him to discourage him from pursuing his application before the Court.

56. The Government disputed the applicant's allegation, arguing that he had

been unable to substantiate it.

57. The Court reiterated that, for the individual petition mechanism under Article 34 of the Convention to be effective, it was of the utmost importance that applicants, whether actual or potential, should be free to communicate with the Court, without the authorities putting pressure on them in any way to withdraw or amend their complaints (see, among many other examples, *Akdivar and Others v. Turkey*, 16th September 1996, § 105, *Reports of Judgements and Rulings* 1996-IV, *Aksoy v. Turkey*, 18th December 1996, § 105, *Reports* 1996 - VI, and *Ergi v. Turkey*, 28th July 1998, § 105, *Reports* 1998-IV). In this context, the word "pressure" is to be understood as meaning not only direct coercion and blatant acts of intimidation of applicants or potential applicants, their families, or their legal representatives, but also indirect and improper acts or contacts intended to dissuade them or discourage them from availing themselves of the remedy offered under the Convention. The Court observed that in determining whether contacts between the authorities and an applicant or potential applicant constitute unacceptable practices from the standpoint of Article 34, account must be taken of the particular circumstances of the case (*Kurt v. Turkey*, 25th May 1998, §§ 160 and 164, *Reports* 1998-III, and *Şarli v. Turkey*, no. 24490/94, § 84, 22nd May 2001).

58. In the present case, the Court noted that the applicant did not claim that the competent domestic authorities, in this case the public prosecutor, had questioned him about his pending application in order to maintain that the latter had put pressure on him to discourage him from pursuing his application. Moreover, he did not provide any factual information or even any summons to support such an allegation. Furthermore, the Court noted no threat of criminal proceedings being brought against the applicant or his lawyers on account of the application pending before it (see the comparison with *Şarli*, cited above, §§ 85-86). Furthermore, the applicant did not provide any details as to when such pressure had arisen. He did not rely on concrete evidence, such as a summons or a hearing, to prove that the aim of the public prosecutor conducting the investigation had been to put pressure on him in order to discourage him from pursuing his application before the Court (see the comparison with the *Colibaba v. Moldova case*, no. 29089/06, §§ 68-69, 23rd October 2007, reporting a threat by a public prosecutor to prosecute a member of the Bar who had submitted "false" human rights allegations to international organisations; *Lopata v. Russia*, no. 72250/01, §§ 156-159, 13th July 2010, reporting intimidation and pressure exerted on the applicant by the domestic authorities because of his application to the Court).

59. Accordingly, the Court did not find any interference by the respondent State with the applicant's exercise of his right of individual petition that was incompatible with Article 34 of the Convention. It followed that this complaint was clearly ill-founded and should be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

60. The Court then took due note of the various factual and legal developments that had occurred in domestic law after the CC's decision of 31st March 2016. In this regard, it recalled that when the application was communicated to the parties, it

rejected the applicant's complaint that the competent public prosecutor had not opened a new criminal investigation into the ill-treatment of which he complained, following the CC's decision, on the grounds that domestic remedies had not been exhausted.

61. In his observations, the applicant also raised a new claim on the basis that the compensation awarded to him by the CC had still not been paid to him by the competent domestic authorities. The Court noted, however, that the applicant did not include such a claim in his application to the Court, but only put it forward for the first time in his observations. It also noted that it was apparent from the documents in the case file that this complaint had not been raised before the competent domestic courts either in order to argue that the compensation awarded to him by the CC had not been paid.

62. However, it stressed in this connection that the rule of prior exhaustion of domestic remedies is an important aspect of the principle of subsidiarity, as enshrined in the Preamble to the Convention since Protocol No. 15 entered into force on 1st August 2021 (*M v. France (*dec.), no. 42821/18, § 73, 26th April 2022), according to which the safeguard mechanism established by the Convention is subsidiary to the national systems for guaranteeing human rights (*Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 Others, §§ 69-70, 25 March 2014). The applicant would have the opportunity to challenge before the CC his allegation that the compensation awarded to him by the CC was not paid to him by the competent domestic authorities.

63. This part of the application for failure to exhaust domestic remedies, within the meaning of Article 35 §§ 1 and 4 of the Convention, should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant claimed that the investigation carried out in the present case by the competent domestic authorities had failed to satisfy the requirements of Article 3 of the Convention. He cited Articles 3 and 13 of the Convention.

65. Having regard to the wording and substance of the applicant's complaints (*Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20th March 2018), the Court would examine them solely from the standpoint of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. *The government*

66. The Government argued that the applicant was not a victim. It pointed out that the CC had found a violation of Article 3 of the Convention on account of the failure of the competent domestic authorities to carry out an effective investigation into the ill-treatment to which the applicant claimed to have been subjected during police

custody. It had sent a copy of its decision to the competent public prosecutor with a view to opening a new criminal investigation. It had awarded the applicant TRL 5,000 for non-pecuniary damage (approximately EUR 1,556) and TRL 1998.35 (approximately EUR 622) for costs incurred in the proceedings.

67.Referring to Article 50 § 2 of Law no. 6216 establishing the CC and its procedural rules, the Government submitted that if the violation found was the result of a judicial decision, the case was referred to the competent court for the purpose of initiating a new trial capable of putting an end to the violation and erasing its consequences. If there were no legal interest in holding a new trial, compensation could be awarded to the applicant or proceedings could be instituted before the ordinary courts. The court responsible for holding a new trial would, if possible, rule on the case file with a view to remedying the violation found and erasing its consequences as set out by the CC in the decision concerned.

68. The Government explained that Article 50 of Law no. 6216 corresponded to Article 41 of the Convention. It referred to the ruling of the CC, sitting in plenary session, in the case of *Mehmet Doğan* (no. 2014/8875, §§ 54-60, 7th June 2018), in which the high court had set out the general principles governing the redress of a violation found in a case put before it. It explained that the CC awards compensation to the claimant for material and non-material damage. It is also possible that no compensation is awarded to the claimant if the consequences of the violation are entirely erased following a new trial by the competent court.

69. Referring to the case law of the CC set out above (paragraphs 45-52), the Government developed its argument by explaining that the High Court awarded substantial compensation when there was no legal interest in a new trial. It awarded less compensation when it decided that a new trial should be held.

70. With regard to the Court's case law on loss of victim status, the Government first referred to several cases concerning the length of proceedings under Article 6 of the Convention. In this connection, it explained that the Court accepted the award of less compensation for non-pecuniary damage than what it itself awarded in similar cases. Referring to the *Gäfgen v. Germany* judgement ([GC], no. 22978/05, §§ 115, 116 and 130, ECHR 2010), it stated that when the case concerned a violation of Article 3 of the Convention, compensation must be awarded to the applicant. In addition, the competent domestic authorities must, where appropriate, carry out an effective investigation that enables the perpetrators of the ill-treatment in question to be identified and brought to trial.

71. In order to determine whether the amount of compensation awarded by the CC was sufficient, the Government illustrated its point by giving three examples of Court rulings, summarised as follows.

72. In the *Daşlık v. Turkey* case (no. 38305/07, 13th June 2017), the Court found a violation of the procedural limb of Article 3 of the Convention, and awarded the applicant EUR 5,000 for non-pecuniary damage and EUR 2,000 for costs and expenses incurred in the proceedings in question. The case concerned allegations of ill-treatment suffered by the applicant while in police custody and the acquittal of

the police officers concerned.

73. In the *İltümür Ozan and Others v. Turkey* case (no. 38949/09, 16th February 2021), the Court found a violation of the procedural limb of Article 3 of the Convention. It awarded Ozan EUR 3,000 for non-pecuniary damage. The case concerned allegations of ill-treatment suffered by the applicant in this case during his arrest and detention.

74. In the *Alkaya v. Turkey* case ([Committee], no. 70932/10, 27th November 2018), the Court found a violation of the procedural limb of Article 3 of the Convention on the grounds that the prescription of the alleged ill-treatment of the police officers had resulted from the excessive length of the proceedings. It then held that the finding of a violation represented sufficient just satisfaction to make good any non-pecuniary damage suffered by the applicant. The case concerned allegations of ill-treatment suffered by the applicant during his arrest and detention. The Government concluded that the Court could not award the applicant compensation for non-pecuniary damage even if it found a violation of the procedural limb of Article 3 of the Convention, given that it considered that the finding of a violation was sufficient to repair the non-pecuniary damage suffered by the applicant.

2. The applicant

75. The applicant contested the Government's objection that he was not a victim within the meaning of Article 34 of the Convention. Referring to the *Gäfgen* case (cited above, §§ 115, 116 and 119), he explained that an investigation should be carried out to identify and punish the perpetrators of the ill-treatment. He stressed that the compensation awarded to the victim for non-pecuniary damage must be appropriate. None of these conditions had been met in the present case.

76. The applicant argued that, according to the Court's case-law resulting, for example, from the *Kopylov v. Russia* case (no. 3933/04, §§ 144 and 146, 29th July 2010) and the *Shestopalov v. Russia* case (no. 46248/07, § 62, 28th March 2017), the amount of compensation awarded to him by the CC was lower than that awarded by the Court in similar cases. In particular, he disputed the Government's argument in that regard in the above-mentioned *Alkaya* case. He explained that the facts in that case were different from those in his case because in the former the person had attacked a police officer and had refused to be examined by a doctor. On the other hand, he acknowledged that there was a similarity between his case and the two other cases cited by the Government.

77. The applicant indicated, however, that his case was quite comparable to the *Amine Güzel v. Turkey* case (no. 41844/09, §§ 40, 41 and 49, 17th September 2013). In that case, the Court found a violation of the procedural limb of Article 3 of the Convention and awarded the applicant EUR 12,500 for non-pecuniary damage. In any event, he maintained that the sum awarded to him by the CC for non-pecuniary damage was much lower than that awarded by the Court in the *Daşlık*, *İltümür Ozan and Others* and the A*mine Güzel* cases cited above.

3. *The Court's assessment*

a) Relevant general principles

78. The Court reiterated that it was primarily for the national authorities to redress an alleged violation of the Convention. In that regard, the question whether an applicant could claim to be the victim of the alleged violation arises at all stages of the proceedings under the Convention (see *Gäfgen*, § 115, cited above). A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities acknowledge, explicitly or in substance, and then provide reparation for the violation of the Convention (*Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts)). It is only when these two conditions are met that the subsidiary nature of the Convention's protection mechanism preclude an examination of the application (*Eckle v. Germany*, 15th July 1982, §§ 69 et seq., Series A no. 51, and *M. Özel and Others v. Turkey [GC],* no. *26828/06, § 259, ECHR 2012 (extracts)).*

79. As to the redress which is "appropriate" and "sufficient" to remedy the violation of a right guaranteed by the Convention at national level, the Court generally considers that it depends on all the circumstances of the case, having regard in particular to the nature of the violation of the Convention at issue (see *Gäfgen*, cited above, § 116, *Kurić and Others*, cited above, § 260, and *Jeronovičs v. Latvia* [GC], no. 44898/10, § 116, 5th July 2016).

b) Application of these principles to the present application

80. In the present case, it was for the Court to ascertain, firstly, whether there had been recognition by the national authorities, at least in substance, of a violation of a right protected by the Convention and, secondly, whether the redress could be regarded as having been appropriate and sufficient (see, among other authorities, *Gäfgen*, cited above, § 127, *Kopylov v. Russia*, no. 3933/04 §§ 144-146, 29th July 2010, *Tamuçu and Others v. Turkey* (dec.), no. 37930/09, § 41, 24th January 2017, and *Shmorgunov and Others v. Ukraine*, nos.15367/14 and 13 others, § 399, 21st January 2021, *mutatis mutandis Murat Aksoy v. Turkey*, no. 0/17, § 90, 13th April 2021, and *İlker Deniz Yücel v. Turkey*, 7684/17, § 72, 25th January 2022).

81. It pointed out that in the present case the applicant claimed a violation of a fundamental right of the Convention, namely Article 3. In particular, the applicant submitted that the investigation carried out by the domestic authorities - into the ill-treatment to which he claimed to have been subjected while in police custody on 30th and 31st May 2003 - did not satisfy the requirements of Article 3 of the Convention. Consequently, it would examine the Government's objection that the applicant was not a victim in the light of its case law on Article 3 of the Convention.

82. The Court noted that, in examining the applicant's allegations solely from the standpoint of the procedural aspect of Article 3 of the Convention, the CC found a violation of that provision on account of the failure of the competent domestic authorities to fulfil their obligation to conduct an effective investigation into the ill-

treatment to which the applicant claimed to have been subjected while in police custody. It sent a copy of its decision to the competent public prosecutor with a view to opening a new criminal investigation. It awarded the applicant TRL 5,000 for non-pecuniary damage (approximately EUR 1,556 at the material time).

83.With regard to the first condition, the Court observed that it was clear from the CC's decision of 31st March 2016 that it was the shortcomings identified by the CC in the investigation conducted by the competent public prosecutor that had led the high court to conclude that there had been a violation of the procedural aspect of Article 3 of the Convention. The CC thus recognised that there had been a violation of the procedural aspect of the right protected by Article 3 of the Convention.

84. It remained to be determined whether the redress granted to the applicant by the CC could be regarded as "appropriate" and "sufficient" (see, *mutatis mutandis*, *Otgon v. the Republic of Moldova*, no. 22743/07, § 16, 25th October 2016 and the cases cited therein, and *S.F.K. v. Russia*, no. 5578/12, § 72, 11th October 2022). In this connection, the Court observed that the CC awarded the applicant the sum of approximately EUR 1,556 for the non-pecuniary damage he had suffered. It took due note of the Government's explanations according to which the CC awards substantial compensation where there was no legal interest in a new trial and less compensation when it decided that a new trial should be held or that, as in the present case, the competent public prosecutor should open a new criminal investigation into the applicant's allegations under Article 3 of the Convention (see paragraph 44 above).

85. The Court noted that the Government referred in particular to its judgment in the above-mentioned *Alkaya* case, in which it found a violation of Article 3 of the Convention. In that case it considered that, given the specific circumstances in which the applicant had been arrested, the finding of a violation represented sufficient just satisfaction to repair any non-pecuniary damage suffered by the applicant under Article 41 of the Convention. The Government therefore used this case as an argument for concluding that in the present case the amount of non-pecuniary damage awarded to the applicant by the CC could not be regarded as unreasonable. The Court pointed out that, particularly in matters of just satisfaction for non-pecuniary damage, it is guided by the principle of equity, which implies a certain flexibility and an objective examination of what is fair, equitable and reasonable, taking into account all the circumstances of the case before it, that is to say not only the applicant's situation but also the general context in which the violation was committed. The awards it makes for non-pecuniary damage are intended to recognise the fact that non-pecuniary damage has resulted from the violation of a fundamental right and are quantified in such a way as to reflect approximately the seriousness of that damage (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 224, ECHR 2009, *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 224, ECHR 2011, and *Nagmetov v. Russia* [GC], no. 35589/08, § 73, 30th March 2017).

86. Moreover, with regard to a complaint under Article 3 of the Convention, it

is only in exceptional circumstances that the Court considers, as it did in the *Alkaya* case cited above, that the finding of a violation constitutes in itself sufficient just satisfaction. It adopts this approach in particular in cases where the violation found by the Court concerns only procedural limitations (*Hilal v. the United Kingdom*, no. 45276/99, § 83, ECHR 2001-II, *Wenner v. Germany*, no. 62303/13, § 86, 1st September 2016, and *Marcello Viola v. Italy (*no. *2)*, no. 77633/16, § 148, 13th June 2019). Furthermore, it does not award, by way of just satisfaction for non-pecuniary damage, compensation in excess of that claimed by the applicant (*Sonkaya v. Turkey*, no. 11261/03, §§ 33 and 35, 12th February 2008). It does not award anything when the applicant has not submitted a claim in that regard (*Dağabakan and Yıldırım v. Turkey*, no. 20562/07, § 68, 9th April 2013). That being so, even in the absence of an "application" properly made in accordance with its Rules of Court, the Court remains competent under certain conditions to award, in a reasonable and measured manner, just satisfaction for non-pecuniary damage arising from the exceptional circumstances of a particular case (see *Nagmetov*, cited above, §§ 76 and 77).

87. The Court reiterated that, where the national authorities have awarded an applicant compensation to remedy the violation found, it must examine the amount of compensation due. In doing so, it takes account of its own practice in similar cases. It considers, on the basis of the information available, what it would have awarded in a comparable situation, although this does not necessarily mean that the two amounts should be exactly the same. Moreover, it takes into account all the circumstances of the case, including the means of redress chosen and the speed with which the national authorities carried out the redress in question. It points out that it is for the competent national authorities to satisfy the overriding obligation to ensure respect for the rights and freedoms guaranteed by the Convention. That said, the sum awarded at national level must not be manifestly inadequate having regard to the circumstances of the case it is examining (see, among many other cases, *Kopylov*, cited above, § 146, *Shestopalov v. Russia*, no. 46248/07, § 62, 28th March 2017, and *Cestaro v. Italy*, no. 6884/11, § 231, 7th April 2015).

88. In the present case, the Court pointed out that, in comparable circumstances, it awarded the sum of EUR 8,000 for non-pecuniary damage to each of the applicants in the *Dönmüş and Kaplan v. Turkey* case (no. 9908/03, § 59, 31st January 2008); the sum of EUR 5,000 - corresponding to the amount claimed by the person concerned - to the applicant in the *Sonkaya* case (cited above, § 35); and the sum of EUR 9,750 to the applicant in the *Mimtaş v. Turkey* case (no. 23698/07, § 65, 19th March 2013). The Court considered that in the present case the sum of approximately EUR 1,556 awarded by the CC to the applicant as compensation for the non-pecuniary damage suffered was lower than the amount it generally awarded in cases in which it had found a violation of Article 3 of the Convention (*Darraj v. France*, no. 34588/07, § 50, 4th November 2010, and *Grecu v. the Republic of Moldova*, no. 51099/10, § 21, 30th May 2017). It considered that in the present case the sum of approximately EUR 1,556 awarded to the applicant by the CC did not constitute adequate and sufficient redress (*Milić and Nikezić v. Montenegro*, nos.

54999/10 and 10609/11, § 75, 28th April 2015, in which the Court held that the compensation of EUR 1,500 awarded to each applicant in respect of non-pecuniary damage could not be regarded as adequate reparation for the reported violation of Article 3; similarly, see also *İlker Deniz Yücel,* cited above, § 73, as well as the cases cited therein, concerning the inadequacy of the compensation offered by the CC for the duration of the applicant's pre-trial detention). Accordingly, the respondent State had not sufficiently remedied the treatment to which the applicant had been subjected in violation of Article 3 of the Convention.

89. It followed that the applicant could still claim to be the victim of a violation of Article 3 within the meaning of Article 34 of the Convention. The Court accordingly rejected the Government's objection that the applicant had lost his status as a victim.

90. Finding that the complaint was not manifestly ill-founded or inadmissible on any other grounds under Article 35 of the Convention, the Court declared it admissible.

a. Background

i. The applicant

91. While noting the CC's decision of 31st March 2016, the applicant persisted in claiming that the investigation carried out by the competent domestic authorities was not effective. He complained that the investigation had not been prompt enough. He explained that the public prosecutor should have initiated the investigation as soon as he had been made aware of the evidence of ill-treatment that had allegedly been inflicted on him, in other words even before his complaint had been lodged in March 2012.

92. He explained that the competent domestic authorities had not identified and interviewed all the alleged perpetrators of the ill-treatment to which he had been subjected. Thus, although he had named the gendarmes C.O., Ad.At. and N. (the gendarmerie commander), the public prosecutor had limited his investigations to interviewing C.O., Ad.At. and A.A. Moreover, he maintained that, apart from M.S., no other witness who had been held in police custody with him had been interviewed, nor indeed the nurse who had treated him for his injuries. He also criticised the public prosecutor for not investigating whether a medical report had been drawn up when he entered and left police custody. Nor did the public prosecutor ask whether he had been examined by a doctor during the investigation. He stated that he had not been able to take part in the investigation conducted by the public prosecutor because the latter had failed to inform him of the decision he had made in this case. He explained that he had not been heard by the competent internal authorities.

93. He added that the investigation had not been conducted independently. Referring to the arguments he had developed concerning the lack of effectiveness of the investigation, he maintained that the domestic authorities had not used independent means to interview the gendarmes alleged to have committed the ill-

treatment in question.

94. The applicant disputed the Government's argument that he had not acted with due diligence in lodging a complaint with the competent public prosecutor. He submitted that the competent domestic authorities had known or ought to have known that he had been ill-treated. Referring to the case of *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 274, ECHR 2014 (extracts)), he submitted that his complaint should be read in the light of the psychological effects on his person caused by the ill-treatment and torture to which he had been subjected while in police custody. According to him, it emerged from the medical report drawn up by the MVFT that he was suffering from post-traumatic stress and depression and that he was prey to suicidal thoughts, which were said to have subsided from around 2007. He recalled that he had explained that he had not been able to inform his family or his lawyers of the ill-treatment he had suffered, due to the presence of prison guards during the visits he received. He added that after his release, his lawyers had told him that it was fear that was leading them to refuse to get involved in his case.

95. Lastly, referring to the case of *Baranin and Vukčević v. Montenegro* (nos. 24655/18 and 24656/18, §§ 138-149, 11th March 2021), he disputed the Government's argument that an individual application to the CC was an effective domestic remedy.

2. *The government*

96.Referring to the *Uzun* case (cited above, §§ 52, 68, 69 and 70), in which the Court held that an individual application to the CC was an effective domestic remedy, the Government argued that the same was true in the present case. It drew the Court's attention to the fact that the CC, in its decision of 31st March 2016, had found a violation of the procedural aspect of Article 3 of the Convention.

97. Moreover, referring to the *Mocanu and Others* case (cited above, §§ 263 and 264), the Government explained that, in cases of ill-treatment, applicants were required to exercise a certain diligence and lodge complaints without delay. It maintained that this was an obligation which the applicant in the present case had not fulfilled. The applicant had remained inactive between May 2003 - the date on which he had been taken into police custody - and 9th March 2012, the date on which he had lodged a complaint with the public prosecutor. The Government added that the applicant had raised no such complaint either before the judge who had heard him in police custody or before the court which had heard his case. It observed that a long time had elapsed between 10th February 2004, the date on which the applicant had been granted refugee status in the United Kingdom, and 9th February 2010, the date on which he had been examined by the MVFT. According to the Government, the applicant could not explain why he had waited six years before lodging a complaint with the public prosecutor when he could have done so earlier. Lastly, the Government submitted that in the present case an effective investigation had been conducted by the competent domestic authorities.

3. *The Court's assessment*

a) **Relevant general principles**

98.The Court referred to the relevant general principles, which could be found in particular in the cases of *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-185, ECHR 2012), *Mocanu and Others* (cited above, §§ 316-326), and *Jeronovičs* (cited above, §§ 103-106).

99. It followed from these judgments that, for the general prohibition of torture and inhuman or degrading treatment or punishment to be effective in practice, particularly in relation to public officials, there must be a procedure for investigating allegations of ill-treatment of a person in their custody.

100. The main purpose of such an enquiry is to ensure the effective application of the laws prohibiting torture and inhuman or degrading treatment or punishment in cases where State agents or bodies are involved, and to guarantee that they are held to account for any ill-treatment that occurs under their responsibility.

101. Whatever the methods of the investigation, the authorities must act ex officio. Moreover, to be effective, the investigation must enable those responsible to be identified and punished. It must also be sufficiently wide-ranging to enable the responsible authorities to take into consideration not only the actions of the state agents who directly and illegally use force, but also all the circumstances surrounding them.

102. Although this is an obligation not of result but of means, any shortcoming in the investigation that weakens its ability to establish the circumstances of the case or the identity of those responsible risks leading to the conclusion that it does not meet the required standard of effectiveness.

103. Lastly, the investigation must be thorough, which means that the authorities must always make a serious effort to find out what happened and must not rely on hasty or ill-founded conclusions to close the investigation (*Bouyid v. Belgium* [GC], no. 23380/09, §§ 115-123, CEDH 2015).

b) **Application of the above-mentioned general principles to the case in point**

104. The Court then examined the investigation conducted by the Karakoçan public prosecutor following the complaint lodged by the applicant on 9th March 2012. It pointed out that it was not its task to examine the legal developments that occurred in domestic law subsequent to the CC's decision of 31st March 2016. In that connection, it pointed out that it rejected those legal developments for failure to exhaust domestic remedies within the meaning of Article 35 § 1 and 4 of the Convention (see paragraph 60 above and *Kušić and Others v. Croatia* (dec.), no. 71667/17, §§ 106-108, 10th December 2019). However, the Court endorsed the findings made by the CC in its decision of 31st March 2016 regarding the shortcomings of the investigation in question (see paragraphs 16-37 above)

105. However, in addition to the fact that the CC considered that the investigation in question had not been conducted with all due diligence and had not been sufficient

to identify those who might have been responsible, the Court highlighted other significant shortcomings in the manner in which the investigation had been conducted by the Karakoçan public prosecutor. For example, the latter had not carried out any investigation to determine whether the applicant had been examined by a doctor when he was taken into police custody or afterwards. The file on the criminal investigation conducted by the public prosecutor contained no medical report established on the applicant's behalf. The applicant did not therefore appear to have been examined by a doctor either when he was taken into custody or afterwards. Moreover, the Court noted that there was nothing in the file to indicate that the applicant had been subjected to a medical examination when he was taken into custody at Bingöl remand prison, where he remained until his release on 22nd July 2003. The Court also noted that the public prosecutor had heard witnesses and alleged perpetrators of the alleged ill-treatment without drawing any conclusions from those hearings as to the reality of the facts. Furthermore, the Court observed that the hearing of the nurse by whom the person concerned claimed to have been treated could have made it possible to determine whether such treatment was linked to any ill-treatment he may have suffered while in police custody. Moreover, the public prosecutor did not hear the applicant's family members or the people living in the same village as the applicant, with the exception of M.S. The Court considered that such hearings could have made it possible to confirm or refute the applicant's statement and allegations. Nor did the public prosecutor undertake to hear the applicant's lawyers in order to ascertain whether he was telling the truth when he claimed that the police had been present when he had spoken to his lawyer and his family. Lastly, the Court observed that the public prosecutor could have sought to ascertain why the applicant's lawyers had not lodged a complaint at the time - still close to the facts - of his release.

106. To sum up, in the light of the evidence submitted for its assessment, the Court noted that numerous acts of communication, notification, information and transmission of documents were carried out by the Karakoçan public prosecutor following the complaint lodged by the applicant on 9th March 2012 (initialled 12 above), by the various police authorities and by other judicial authorities (see paragraphs 18, 21- 26, and 35-37 above). These various acts made it possible to state that efforts were clearly made by the national authorities. However, the Court noted that these acts were not able to shed light on the applicant's allegations that he had been subjected to ill-treatment while in police custody (cf. *Bişkin v. Turkey*, no. 45403/99, § 70, 10th January 2006).

107. Having regard to the CC's conclusion in its ruling of 31st March 2016, with which the Court agreed, and in the light of the shortcomings identified above, the Court considered that the competent national authorities failed to fulfil their obligation to carry out an adequate and effective investigation under the procedural aspect of Article 3 of the Convention.

108. There was therefore a violation of the procedural aspect of Article 3 of the Convention.

III. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

109.Under the terms of Article 41 of the Convention:

> "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 allows only partial reparation to be made for the consequences of that violation, the Court shall, if necessary, afford just satisfaction to the injured party".

a. Compensation

110.The applicant requested 11,500 euros (EUR) for the non-pecuniary damage he considered he had suffered.

111. The Government considered this sum to be excessive. In its view, it was contrary to the Court's case law as set out in its observations.

112. The Court held that the sum awarded to the applicant by the Constitutional Court was lower than that awarded in similar circumstances. Moreover, it pointed out that when the violation claimed by the applicant had already, in the context of a domestic action, been recognised by the national courts and the applicant had obtained compensation from the latter, the amount awarded by the Court in respect of non-pecuniary damage could be lower than that emerging from its case-law (see *Darraj*, cited above, § 59, *Milić and Nikezić*, cited above, § 110, and *İlker Deniz Y*ücel, cited above, § 170). Having regard to the amount already awarded to the applicant by the Constitutional Court, the Court therefore considered it appropriate to award the applicant EUR 10,000 for non-pecuniary damage, plus any amount that could be due as tax on that sum.

b. Costs and expenses

113. The applicant did not claim anything for the costs and expenses incurred in the proceedings before the Court.

114. As a result, the Government proposed that no sum should be granted to him.

115. Noting that the applicant made no claim in this regard, the Court awarded him no sum for costs and expenses.

c. Other adjustment

116. The applicant's lawyer invited the Court, under the scope of Article 46 § 1 of the Convention, to make a number of statements and issue a number of instructions to the Committee of Ministers. In particular, he asked the Court to enjoin the Government: (a) to apologise and acknowledge the shortcomings of the investigation into his client's allegations; (b) order the respondent State to conduct a prompt, effective and thorough investigation. He also requested that Türkiye be ordered to make a public apology for the violations found in this case (see *McMichael v. United Kingdom*, 24th February 1995, § 105, Series A no. 307-B,

Kavala v. Türkiye(Action for failure to fulfil obligations) [GC], no. 28749/18, § 175, 11th July 2022).

117. Although the Court may in certain cases indicate the precise measure, compensatory or otherwise, that the respondent State should take, it is for the Committee of Ministers, under Article 46 § 2 of the Convention, to assess the implementation of such measures (*Ilgar Mammadov* v. *Azerbaijan* (action for failure to fulfil obligations) [GC], no. 15172/13, §§ 154 and 155, 29th May 2019, together with the references cited).

118. In the present case, it found a violation of the procedural aspect of Article 3 of the Convention. However, the Convention did not empower the Court to issue the injunctions and declarations requested by the applicant's lawyer (see McMichael, cited above, § 106, and compare with *Moreira Ferreira v. Portugal (*no. *2)* [GC], no. 19867/12, § 102, 11th July 2017 and *Bochan v. Ukraine* (no. *2)* [GC], no. 22251/08, § 33, ECHR 2015).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible as regards the complaint under Article 3 of the Convention concerning the effectiveness of the criminal investigation and inadmissible as to the remainder;

2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

3. *Holds*
   a) that the respondent State is to pay to the applicant, within three months of the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any amount that might be due by way of tax on that sum, for non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable on the date of the settlement;
   b) that from the expiry of the said period until payment, this amount should be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during that period, increased by three percentage points;

4. *Dismisses* the remainder of the claim for just satisfaction.

Executed in French, then communicated in writing on 17th October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Procedure.

Hasan Bakırcı	Arnfinn Bårdsen
Court Clerk	Presiding Judge