

**SUMMARY OF THE CASE OF  
TALAT TEPE v. TURKEY  
JUDGMENT OF THE EUROPEAN COURT OF HUMAN  
RIGHTS**

**Issued on 21 December 2004**

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**TALAT TEPE v. TURKEY**  
**JUDGMENT OF 21 DECEMBER 2004**

**NON OFFICIAL SUMMARY OF THE FACTS OF THE CASE**

**A. Background to the case**

Mr. Talat Tepe, a Turkish national of Kurdish origin, was born in 1961 and lives in Istanbul. On 6 August 1992, based on statements given by two members of the Kurdistan Workers Party (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 a terrorist organization. Several terrorist acts, including an attack on the Hersan Police Station, carried out by the PKK were mentioned in the order.

On 9 July 1995 the applicant was arrested at Istanbul Atatürk Airport on suspicion of aiding and abetting a terrorist organisation and was taken to the Gayrettepe Office for the Enforcement of Judgments in Istanbul. On 11 July 1995 the applicant was taken into custody at the Istanbul Security Directorate.

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.

On 18 July 1995 he was transferred to the Bitlis Security Directorate. On 20 July 1995 a judge at the Diyarbakır State Security Court ordered his release pending trial. On 24 November 1995 he was charged under Articles 31 and 169 of the Criminal Code and Article 5 of Law No. 3713 on the Prevention of Terrorism.

On 6 June 1996 the Diyarbakır State Security Court acquitted the applicant of the charges due to lack of evidence. The Applicant was kept in custody for twelve days. During his detention, Mr. Talat Tepe was seen by a doctor on two occasions and another doctor examined him on 23 July 1995, after his release. The following is an excerpt from the report of the doctor dated 15 August 1995.

“...In Bitlis, he [the applicant] 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. ... he was subjected to electric shocks six times in succession .... 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...”

The chronology of events and legal proceedings, which were held in the case of *Talat Tepe* are described in Table No. 1 below.

**Table .1**

<b>THE DOMESTIC JUDICIAL INVESTIGATION</b>	
<b>12 July 1995</b>	The applicant's lawyers filed petitions with the Ministry of Justice complaining about the excessive length of the applicant's detention in police custody.
<b>18 July 1995</b>	The Ministry of Interior requested the Istanbul Public Prosecutor to investigate the complaints made by the applicant's lawyers.

<b>17 August 1995</b>	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. He also gave details of the alleged ill-treatment in Bitlis Security Directorate and a description of the two police officers who were allegedly responsible for that treatment. 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 while 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. The Applicant did not have any evidence or witnesses to substantiate his allegations apart from the documents in the case file before the Diyarbakır State Security Court.
<b>8 September 1995</b>	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.
<b>14 September 1995</b>	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.
<b>8 January 1996</b>	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.
<b>18 April 1996</b>	The Provincial Administrative Council in Bitlis decided that charges should not be brought against the five police officers since 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 he had not been subjected to torture.
<b>18 March 1998</b>	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

### A. Criminal law and procedure

The Turkish Criminal Code (*Türk Ceza Kanunu*), as regards unlawful killings, has provisions dealing with unintentional homicide (Articles 452 and 459), intentional homicide (Article 448) and murder (Article 450).

Under Articles 151 and 153 of the Turkish Code of Criminal Procedure (*Türk Ceza Muhakemeleri Usulü Kanunu*; hereinafter "CCP"), complaints in respect of these offences may be lodged with the public prosecutor. The complaint may be made in writing or orally. In the latter case, such a complaint must be recorded in writing (Article 151 CCP). The public prosecutor and the police have a duty to investigate crimes reported to them (Article 153 CCP).

If there is evidence to suggest that death is not due to natural causes, police officers or other public officials who have been informed of that fact are required to advise the public prosecutor or a criminal court judge (Article 152 CCP). By Article 235 of the Criminal Code, any public official who fails to

report to the police or a public prosecutor's office an offence of which he has become aware in the exercise of his duties is liable to imprisonment.

A public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged to investigate the facts by conducting the necessary inquiries to identify the perpetrators (Article 153 CCP). The public prosecutor may institute criminal proceedings if he or she decides that the evidence justifies the indictment of a suspect (Article 163 CCP). If it appears that the evidence against a suspect is insufficient to justify the institution of criminal proceedings, the public prosecutor may close the investigation. However, the public prosecutor may decide not to prosecute if, and only if, the evidence is clearly insufficient.

In so far as a criminal complaint has been lodged, a complainant may file an appeal against the decision of the public prosecutor not to institute criminal proceedings. This appeal must be lodged within fifteen days after notification of this decision to the complainant (Article 165 CCP).

## **B. Constitutional provisions on administrative liability**

Article 125 §§ 1 and 7 of the Turkish Constitution provides as follows:

“All acts of decisions of the administration are subject to judicial review ...

The authorities shall be liable to make reparation for all damage caused by their acts or measures.”

This provision is not subject to any restriction even in a state of emergency or war. The second paragraph does not require proof of the existence of any fault on the part of the administration, whose responsibility is of an absolute, objective nature, based on a concept of collective liability and referred to as the theory of “social risk”. Thus, the administration may indemnify individuals who have suffered damage from acts committed by unknown or terrorist authors when the State may be said to have failed in its duty to maintain public order and safety, or in its duty to safeguard individual life and property.

...

## **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.”

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 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.

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.

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, § 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, § 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, 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. 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. 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.

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 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, § 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, 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 and 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, § 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.

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, § 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, § 93, 24 July 2003, and Kurt v. Turkey (dec.), no. 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.

...

### **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  
Registrar

J.-P. COSTA  
President