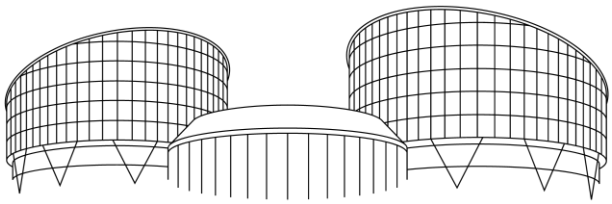

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ARİF ÇELEBİ AND OTHERS v. TURKEY

(Applications nos. 3076/05 and 26739/05)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arif Çelebi and Others v. Turkey**,**

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 3076/05 and 26739/05) 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") by six Turkish nationals, Mr Arif Çelebi, Ms Mukaddes Çelik, Ms Sultan Arıkan (Seçik), Mr Bayram Namaz, Mr Sedat Şenoğlu and Mr Necati Abay ("the applicants"), on 28 December 2004 and 29 April 2005 respectively.

2. The first applicant was represented by Mr M. Kırdök and Mrs M. Kırdök and the other applicants were represented by Ms G. Tuncer, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 28 January 2009 and 10 September 2008, respectively the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1963, 1954, 1971, 1963, 1975 and 1956 respectively and, according to their application forms, live in Istanbul.

A. The applicants' detention in police custody and the medical certificates concerning their alleged ill-treatment

1. The applicants' detention in police custody

5. Between 22 February and 6 March 1997 the applicants were detained in police custody at the Istanbul Security Headquarters on suspicion of membership of an illegal armed organisation, namely the MLKP (Marxist-Leninist Communist Party); they claimed that they were subjected to various forms of ill-treatment there. In particular the applicants complained in their application form of the following types of treatment.

a) Arif Çelebi

6. The applicant complained, in particular, that he had been blindfolded, forced to remain standing or sitting for a long time, deprived of sleep, forced to listen to loud music, suspended, squeezed in the testicles, beaten, stripped and made to lie in cold water.

b) Mukaddes Çelik

7. The applicant complained, in particular, that she had been blindfolded, forced to remain standing or sitting for a long time, left exposed to the circulation of cold air, sworn at, refused toilet breaks and sexually harassed.

c) Sultan Arıkan (Seçik)

8. The applicant complained, in particular, that she had been blindfolded, suspended, sexually harassed, raped by insertion of a finger, sworn at, beaten and forced to listen to loud music and remain sitting for a long time.

d) Bayram Namaz

9. The applicant complained, in particular, that he had been beaten, subjected to “Palestinian hanging”, forced to remain standing, hosed with cold water, squeezed in the testicles, deprived of sleep, threatened with death and sworn at.

e) Sedat Şenoğlu

10. The applicant complained, in particular, that he had been beaten, suspended, hosed with cold water, sworn at, threatened and deprived of sleep.

f) Necati Abay

11. The applicant complained, in particular, that he had been suspended several times, squeezed in the testicles, hosed with cold water, forced to listen to loud music, threatened and forced to remain standing or sitting for a long time.

2. The applicants' medical certificates

a) Arif Çelebi

12. On 26 February 1997 the applicant was examined by a doctor at a hospital, who noted that he had difficulty in moving his upper limbs.

13. On 4 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who found that he had pain and difficulty in moving his right arm and that the skin on his scrotum had peeled away.

14. On 6 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who noted that the previous findings remained valid.

15. On 15 October 1999 the Istanbul Forensic Medicine Institute, on the basis of the above-mentioned medical reports on the applicant, issued a final report in which it concluded that the injuries noted in those reports rendered him unfit for work for two days.

b) Mukaddes Çelik

16. On 27 February 1997 the applicant was examined by a doctor at a hospital, who noted that she complained of stomach pain and of FMF (Familial Mediterranean Fever), which she had suffered from for the past thirty-two years.

17. On 3 March 1997 the applicant was examined by a doctor at the Fatih Forensic Medicine Institute, who found no signs of ill-treatment on her body.

18. On 6 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who found no signs of ill-treatment on her body.

c) Sultan Arıkan (Seçik)

19. On 27 February 1997 the applicant was examined by a doctor at a hospital, who noted that she had suffered a loss of strength in both shoulders and the left wrist, and had a bruise of 10 cm on the front of her left arm and a bruise of 0.5 cm on her right arm.

20. On 4 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who found that she had an old bruise of 5 cm by 3 cm on the inner side of her right arm

and a slight graze on her elbow. The doctor also noted that the applicant had slight redness on the inner left arm, sensitivity and pain in the arms, numbness in the fingers, slight redness on the back of her shoulders and a headache.

21. On 6 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who noted that the previous findings remained valid and that the applicant had slight redness and pain in her right shoulder.

22. On 15 October 1999 the Istanbul Forensic Medicine Institute, on the basis of the above-mentioned medical reports on the applicant, issued a final report in which it concluded that the injuries noted in those reports rendered her unfit for work for two days.

23. According to the medical report issued by the Turkish Human Rights Association on 11 February 2008, the applicant had been examined by doctors at that association on various dates from 18 March 1997 onwards and found her to be suffering from a brachial plexus injury (nerve damage) which was consistent with her account of ill-treatment.

d) Bayram Namaz

24. On 26 February 1997 the applicant was examined by a doctor at a hospital, who noted that he suffered from pain during shoulder movements.

25. On 3 March 1997 the applicant was examined by a doctor at the Fatih Forensic Medicine Institute, who noted that he had pain starting from his right shoulder up to his right elbow, loss of feeling in his fingers and pain in the elbow, under both scapular regions and in his testicles. The doctor concluded that these injuries rendered the applicant unfit for work for three days.

26. On 6 March 1997 the applicant was examined by a doctor at Forensic Medicine Institute at the Istanbul State Security Court, who noted that he had pain in his left knee and on the right side of his back. He also found that he had pain and loss of strength in the right arm.

e) Sedat Şenoğlu

27. On 27 February 1997 the applicant was examined by a doctor at a hospital, who found no signs of ill-treatment on his body.

28. On 3 March 1997 the applicant was examined by a doctor at Fatih Forensic Medicine Institute, who noted that he had pain in the back of his neck and on the right scapula and had difficulties in moving his neck. The doctor concluded that these injuries rendered the applicant unfit for work for one day.

29. On 6 March 1997 the applicant was examined by a doctor at Forensic Medicine Institute at the Istanbul State Security Court, who noted that the previous findings remained valid.

f) Necati Abay

30. On 27 February 1997 the applicant was examined by a doctor at a hospital, who noted that he had a bruised region on his right elbow.

31. On 3 March 1997 the applicant was examined by a doctor at the Fatih Forensic Medicine Institute, who noted that he had slight swelling on the upper right elbow and a 1 cm by 1 cm bruised region, pain during arm movements, slight loss of feeling in the fifth finger of the right hand and the second finger of the left and pain in the scrotum. The doctor concluded that these injuries rendered the applicant unfit for work for three days.

32. On 6 March 1997 the applicant was examined by a doctor at the Forensic Medicine Institute at the Istanbul State Security Court, who noted that he had loss of strength and pain in his right arm and elbow and loss of feeling in his fingers.

B. Investigation instigated into the alleged ill-treatment and the ensuing criminal proceedings against police officers

33. On 6 March 1997 the applicants were brought before the public prosecutor at the Istanbul State Security Court, where they complained that they had been subjected to various forms of ill-treatment while being held in police custody.

34. Following the receipt of written complaints dated 10 and 11 March 1997 by some of the applicants that they had been subjected to ill-treatment in police custody, the Fatih public prosecutor instigated an investigation into these allegations. In this connection, he requested from the relevant authorities all documents concerning the complainants' detention in police custody.

35. On 8 May 1997 the Fatih public prosecutor heard evidence from all the police officers who had been on duty between 21 February 1997 and 6 March 1997. They denied that the applicants had been ill-treated as alleged.

36. On 23 June 1997 the Fatih public prosecutor drew up a report in which he recommended that the public prosecutor at the Istanbul Assize Court initiate criminal proceedings against eight police officers, pursuant to Article 243 of the Criminal Code, as in force at the time.

37. On 4 July 1997 the prosecutor at the Istanbul Assize Court filed a bill of indictment against eight police officers for the ill-treatment of fifteen detainees, including the applicants (hereinafter “the complainants”). The charges were brought under Article 243 of the Criminal Code.

38. On 14 July 1997 the criminal proceedings before the Istanbul Assize Court commenced.

39. In the meantime, on 17 July 1998, the Provincial Police Disciplinary Commission considered that there was no need to impose sanctions on the eight accused police officers on account of the lack of evidence.

40. In the course of the proceedings, the first-instance court heard evidence from all the applicants, other plaintiffs and the accused police officers. The applicants, except for Necati Abay, joined the proceedings as civil parties. At a hearing on 2 October 1998 one of the complainants identified someone in the audience as one of the police officers who had tortured her. Subsequently, the public prosecutor filed an additional indictment against that individual and the number of accused increased from eight to nine persons. A number of times the court had to postpone the confrontation procedure since the accused police officers were not present in court and one police officer failed to appear before the court for over two years before an arrest warrant had to be issued in respect of him. In the meantime, on 7 March 1999, one of the plaintiffs, Mr Yeter, who had been arrested again, died in police custody.[1]

41. During the proceedings the accused requested the court to hear evidence from witnesses attesting to the fact that a witness who had subsequently become a civil party had been pressured by the illegal armed organisation into fabricating claims of ill-treatment. Their requests were dismissed by the court. In protest, the legal representatives of the accused resigned. On 8 July 2002 the public prosecutor submitted his opinion on the merits of the case. After this date the applicants or their new legal representatives sought numerous extensions in order to file their final defence submissions. In response, one of the judges sitting on the bench entered a written objection against the decisions of the court to accord them on the ground that the accused were abusing their right of defence in order to prolong the proceedings with a view to ensuring that the prosecution became time-barred.

42. On 2 December 2002 the first-instance court, on the basis of the evidence in the case file, acquitted five of the accused police officers for lack of evidence. However, referring to the evidence in the case file, it found it established that the four remaining police officers from the anti-terrorism branch of the Istanbul Security Headquarters had intentionally ill-treated the complainants, in order to extract confessions from them. Accordingly, pursuant to Article 243 § 1 of the Criminal Code, the court sentenced each of them to one year and two months' imprisonment. It also made an order banning them from public service for three months and fifteen days. These sentences were subsequently reduced and later suspended on the grounds that the defendants had no prior criminal record and that the court was convinced that they would not reoffend.

43. On 1 April 2004 the Court of Cassation quashed the first-instance court's judgment in so far as it concerned the four convicted police officers on grounds of erroneous sentencing. It upheld the judgment in so far as it

1. An application concerning the circumstances surrounding Mr Yeter's death was examined by the Court in the case of *Yeter v. Turkey* (no. 33750/03, 13 January 2009).

concerned the acquittal of one police officer and discontinued the proceedings as regards the four other acquitted police officers on the ground that the statutory time-limit for the offence had expired in respect of them.

44. On 11 November 2004 the first-instance court discontinued the proceedings against the remaining accused police officers on the ground that the prosecution of the offences had become time-barred.

45. In the meantime, on 7 February 2005, the legal representatives of the complainants filed a complaint with the public prosecutor against the Ministry of the Interior, the Security Directorate and some police officers who had prepared a report, alleging that, throughout the proceedings before the Istanbul Assize Court, both the complainants and their lawyers had been subjected to threats, intimidation and defamatory incidents. In particular, they complained that the public prosecutor had questioned them in relation to an anonymous defamatory letter sent to the court and objected to the contents of a report that had been prepared by two police officers in respect of the ill-treatment allegations made by one of the plaintiffs.

46. On 29 November 2006 the Court of Cassation upheld the judgment of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. A description of the relevant domestic law at the material time can be found in *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, ECHR 2004-IV), and *Zeynep Özcan v. Turkey* (no. 45906/99, 20 February 2007).

THE LAW

I. JOINDER

48. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

49. The applicants complained under Articles 3 and 13 of the Convention about the treatment to which they had been subjected while they were held in police custody, and about the manner in which the investigation and the ensuing criminal proceedings concerning their allegations had been conducted by the authorities, resulting in impunity.

50. The Court considers that these complaints should be examined from the standpoint of Article 3 alone, which reads:

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

A. Admissibility

51. The Government asked the Court to dismiss the applications for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They argued that the applicants could have sought reparation for the harm they had allegedly suffered by instituting an action in the civil or administrative courts. In respect of the first applicant, the Government further claimed that he should have lodged his application within six months of the date on which the incident had occurred.

52. The applicants contested the Government's arguments.

53. The Court reiterates that it has already examined and rejected the same argument by the Government in previous cases (see, for example, *Orhan Kur v. Turkey*, no. 32577/02, § 36, 3 June 2008, and *Eser Ceylan v. Turkey*, no. 14166/02, § 23, 13 December 2007). It finds no particular circumstances in the present case which would require it to depart from that conclusion. Furthermore, reiterating that the six-month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies, the Court considers that the application lodged by the first applicant on 28 December 2004 was in conformity with that rule. Consequently, the Court dismisses the Government's preliminary objections.

54. Moreover, the Court finds that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

55. The Government maintained that the applicants' allegations were unsubstantiated. In this connection, in respect of application no. 26739/05, they submitted that the injuries noted in the applicants' medical reports were the result of force used by the police during their arrest and that those injuries, which had not attained the level of severity proscribed by Article 3, did not confirm the applicants' allegations. In addition, the Government

noted the absence of any physical findings in the medical reports concerning Mukaddes Çelik. Moreover, in respect of both applications nos. 3076/05 and 26739/05, referring to the various actions undertaken by the domestic authorities, they submitted that the investigation and the ensuing criminal proceedings had been adequate.

56. The applicants maintained their allegations.

2. The Court's assessment

57. The Court observes that in *Erdoğan Yılmaz and Others v. Turkey*, (no. 19374/03, §§ 48-51 and 57-59, 14 October 2008) where it examined the allegations of ill-treatment of applicants who were also party to the same criminal proceedings against the police officers as in the present case, it found that the treatment to which the applicants in that case had been subjected amounted to a violation of Article 3 of the Convention. It further held that the criminal proceedings brought against the accused police officers had been inadequate.

58. Having examined the documentary evidence submitted by the parties, the Court does not consider there to be any material difference between that case and the present one. In this connection, it observes that, after acquainting itself with the evidence and having had the benefit of seeing the various witnesses give their evidence and of evaluating their credibility, the Istanbul Assize Court, in its decision of 2 December 2002, found that all the complainants, including the applicants in the present case, had been ill-treated by four police officers from the anti-terrorism branch of the Istanbul Security Headquarters. In convicting these police officers under Article 243 of the Criminal Code, the court further found that the police officers had inflicted such treatment intentionally in order to extract confessions (see paragraph 42 above). That decision was quashed by the Court of Cassation on a sentencing technicality. However, the proceedings were subsequently discontinued for being time-barred. In the instant case no cogent evidence has been provided which could lead the Court to depart from the findings of fact of the first-instance court in this respect.

59. As to the seriousness of the treatment in question, the Court reiterates that, under its case-law in this sphere (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 96-97, ECHR 1999-V), in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In this connection, the Court considers that the treatment complained of was inflicted intentionally by the police officers for the purpose of extracting confessions. In these circumstances, the Court finds that it was particularly

serious and cruel and capable of causing severe pain and suffering. It therefore concludes that the ill-treatment involved in this case amounted to torture within the meaning of Article 3 of the Convention.

60. Moreover, the Turkish criminal-law system as applied in the instant case, namely the discontinuation of the prosecution for being time-barred following lengthy proceedings, has proved to be far from rigorous and would have had no dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicants (ibid., § 57).

61. Accordingly, there has been both a substantive and a procedural violation of Article 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. In the application form, the first applicant further complained under Articles 6 and 13 of the Convention that the authorities' failure to conduct an effective investigation into his complaints of ill-treatment had hindered his right to bring compensation proceedings against the persons responsible for his ill-treatment. The other applicants complained under Articles 6, 8 and 14 of the Convention that the first-instance court had lacked independence and impartiality, that the proceedings had been excessively lengthy and that, in the course of the criminal proceedings, they and their families had been subjected to threats and intimidation by the police and had been discriminated against.

63. The Court notes that these complaints are linked to the ones examined above and must likewise be declared admissible.

64. However, having regard to the facts of the case, the submissions of the parties and its finding of a violation of Article 3 above, the Court considers that it has examined the main legal question raised in the present applications. It concludes, therefore, that there is no need to give a separate ruling on the applicants' remaining complaints under the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *K.Ö. v. Turkey*, no. 71795/01, § 50, 11 December 2007; *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008; *Çelik v. Turkey (no. 1)*, no. 39324/02, § 44, 20 January 2009; and *Yananer v. Turkey*, no. 6291/05, § 47, 16 July 2009).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

66. The first applicant claimed 40,000 euros (EUR) and the other applicants each claimed EUR 80,000 in respect of non-pecuniary damage.

67. The Government contested the amounts.

68. The Court finds that the applicants must have suffered pain and distress. Having regard to the nature of the violation found in the present case and ruling on an equitable basis, the Court awards the applicants EUR 31, 2000 each in respect of non-pecuniary damage.

B. Costs and expenses

69. The first applicant claimed, in total, 7,340 Turkish liras (TRY) (approximately EUR 3,333) for the costs and expenses incurred before the Court. The other applicants claimed, in total, EUR 33,355 for similar costs and expenses. In support of their claims the applicants submitted a schedule of costs prepared by their lawyers. In addition, the first applicant submitted a receipt in respect of lawyers' fees.

70. The Government contested the amounts.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant, Mr Arif Çelebi, EUR 3,000 and to award the other applicants, jointly, the sum of EUR 3,000 for the proceedings before the Court.

C. Default interest

72. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs;

4. *Holds* that that there is no need to examine separately the complaints under Articles 6, 8, 13 and 14 of the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) to each applicant, EUR 31,200 (thirty one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to Mr Arif Çelebi, EUR 3,000 (three thousand euros) plus any tax that may be chargeable to him, in respect of costs and expenses;

(iii) to Ms Mukaddes Çelik, Ms Sultan Arıkan (Seçik), Mr Bayram Namaz, Mr Sedat Şenoğlu and Mr Necati Abay, jointly, EUR 3,000 (three thousand euros) plus any tax that may be chargeable to them, in respect of costs and expenses;

(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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President