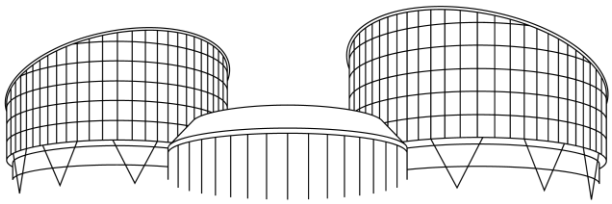

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BİÇİCİ v. TURKEY

(Application no. 30357/05)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

22/11/2010

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

In the case of Biçici v. Turkey**,**

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

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

Having deliberated in private on 4 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 30357/05) 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 a Turkish national, Ms Kiraz Biçici ("the applicant"), on 6 August 2005.

2. The applicant was represented by Ms K. Doğru, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that police officers had used excessive force in order to disperse participants in a press conference and inflicted ill-treatment on her during her arrest, thus violating her rights protected under Articles 3, 6 § 1, 11 and 13 of the Convention.

4. On 4 March 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Istanbul.

A. The applicant's arrest and alleged ill-treatment by the police during a demonstration in Istanbul

6. On 29 October 2003, while attempting to participate in a demonstration in the form of "a press conference" held on Istiklal Street in the Beyoğlu district of Istanbul, the applicant was arrested, together with some 50 to 60 other participants, by police officers at approximately 4.10 p.m. The applicant alleged that the police officers had used disproportionate force to disperse the crowd and to arrest the demonstrators, whereas the Government claimed that the demonstrators had resisted the police and had refused to disperse.

7. Following her arrest the applicant was taken to hospital for a medical examination. The doctor who examined her reported that there were no signs of injury on the applicant's body. The doctor noted, however, that the applicant complained of pain in her right upper arm.

8. On the same date, at 7.30 p.m., the applicant was questioned by the Beyoğlu public prosecutor. The applicant informed the public prosecutor that she had been subjected to ill-treatment by the police, who had used disproportionate force during her arrest. She claimed that she had attended the meeting, organised by a group called "the Peace Mothers' Initiative", as the President of the Istanbul Human Rights Association, and that she had been arrested by the police for no reason. She stated that she had merely exercised her legal rights and that she had not breached the Meetings and Demonstration Marches Act (Law no. 2911).

9. The applicant was released from police custody on the same day, after being questioned by the Beyoğlu public prosecutor.

B. Criminal proceedings against the police officers

10. On 6 November 2003 the applicant lodged a complaint with the Beyoğlu public prosecutor against the police officers who had been involved in the incident and had arrested her. She complained, *inter alia*, of the unlawfulness of her arrest and the excessive use of force by the police during the arrest.

11. On the same date the applicant was referred to the Istanbul branch of the Forensic Medical Institute by the Beyoğlu public prosecutor. The doctor who examined the applicant noted a 2 x 6 cm ecchymosis on the back of her left leg and concluded that the injury rendered the applicant unfit for work for five days. The doctor further noted that the applicant was suffering from pain in her right shoulder and right arm.

12. On 12 November 2004 the Beyoğlu public prosecutor issued a decision not to prosecute the police officers who had been on duty at the press conference of 29 October 2003. Relying on the incident report prepared by the police officers, the public prosecutor noted that, despite

warnings by the police, the demonstrators, who had gathered illegally without obtaining permission and had disturbed public order by blocking the pedestrian zone and tramway, had refused to disperse and the police had therefore been obliged to use some degree of force to disperse them and restore public order. The public prosecutor considered that the force used by the security forces had been in line with section 24 of the Meetings and Demonstration Marches Act and had been justified in the circumstances. In the public prosecutor's opinion, the applicant's injuries were the result of a proportionate use of force which did not amount to ill-treatment or abuse of authority.

13. On 23 December 2004 the applicant lodged an appeal with the Istanbul Assize Court against the above-mentioned decision of the public prosecutor. She claimed that on 29 October 2003 police officers had beaten her during her arrest, causing injuries rendering her unfit for work for five days, as corroborated by the medical report from the hospital. She further alleged that the participants had not blocked the tramway or pedestrian traffic. She therefore asked the Assize Court to order the prosecuting authorities to bring charges against the police officers.

14. On 30 December 2004, having regard to the content of the file and the reasons given by the Beyoğlu public prosecutor, the Istanbul Assize Court dismissed the applicant's appeal.

15. The Istanbul Assize Court's decision was served on the applicant on 16 February 2005.

C. Criminal proceedings against the applicant

16. In the meantime, on 7 November 2003, the Beyoğlu public prosecutor had brought charges against thirteen demonstrators, including the applicant, for violation of the Meetings and Demonstration Marches Act. In her defence submissions before the court, the applicant claimed that, in participating in the demonstration, she had merely been exercising her democratic rights.

17. In a judgment dated 19 December 2006, the Beyoğlu Assize Court acquitted the applicant and her co-accused of the above-mentioned charges. The court held as follows:

> "[It] was alleged that the accused had breached the Meetings and Demonstration Marches Act on the day of the incident. Having regard to the content of the case file, there is no convincing evidence indicating with sufficient certainty that the accused committed the alleged offence. It appears from the incident report that the security forces took measures following an intelligence report that the Peace Mothers' Initiative, Gök-Der, Tuad and Yakay-Der associations were to hold a demonstration in front of the post office in the Galatasaray district. After the gathering of the group (demonstrators), the chair of the association Yakay-Der stated that they would stage a sit-in in front of the Galatasaray post office. Following a police warning [that the meeting was unlawful], the demonstrators told the police that they would make a press

statement and then disperse. However, the police teams did not release the group and continued to keep them within a circle; they then arrested them without giving a proper warning that could be heard by everyone (no evidence was provided to substantiate the assertion that a warning was given). For these reasons, no evidence was adduced to indicate that the accused committed the alleged offence in contravention of the said Act and that [their action] went beyond the exercise of their democratic rights. It is thus considered that the actions of the accused were merely an exercise of their democratic rights [to freedom of assembly]. The [accused] are therefore acquitted of the charges brought against them..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law can be found in the case of *Nurettin Aldemir and Others v. Turkey* (nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, §§ 20-23, 18 December 2007).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

19. The Government submitted that the applicant had failed to comply with the requirements of Article 35 § 1 of the Convention since she had not exhausted all available domestic remedies in respect of her complaints and had not filed her application with the Court within the six-month time-limit. In the Government's opinion, the applicant could have availed herself of the remedies provided for by civil and administrative law in respect of her complaints of ill-treatment. Furthermore, she should have raised her complaint under Article 11 before the domestic authorities. Moreover, she should have lodged her application within six months of the alleged ill-treatment.

20. The Government also maintained that the applicant could no longer claim to be the victim of a violation of Articles 3 and 11 of the Convention, given that she had not been ill-treated and that she had been acquitted of the charges brought against her.

21. The applicant maintained her allegations.

22. Regarding the Government's reference to civil and administrative remedies, the Court reiterates that it has already examined and rejected similar preliminary objections made in other cases (see, in particular, *Atalay v. Turkey*, no. 1249/03, § 28, 18 September 2008 and the case cited therein). The Court reaffirms its earlier conclusions that the remedies referred to by the Government cannot be regarded as sufficient where a Contracting State's

obligations under Article 3 of the Convention are concerned, as their purpose is the award of damages rather than the identification and punishment of those responsible. The Court finds no particular circumstances in the instant case which would require it to depart from its established case-law. It therefore rejects the Government's preliminary objection in respect of civil and administrative remedies.

23. As to the alleged failure to raise the complaint under Article 11 of the Convention before the domestic authorities, the Court observes that the applicant can be considered to have raised the substance of this complaint when questioned by the public prosecutor and during the proceedings before the Beyoğlu Assize Court, where she referred to the exercise of her legal and democratic rights (see paragraphs 8 and 16).

24. As regards the applicant's alleged failure to observe the six-month time-limit in respect of her complaint of ill-treatment, the Court reiterates that, where an applicant is entitled to be served with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V). In the instant case, the final domestic decision in respect of the allegations of ill-treatment was served on the applicant on 16 February 2005 and the application was submitted to the Court on 6 August 2005; this is clearly within the six-month time-limit. Accordingly, this objection must also be dismissed.

25. As to the objection concerning the applicant's alleged lack of victim status, the Court considers that it raises a question which is closely linked to the merits of the complaints under Articles 3 and 11. It therefore joins the Government's preliminary objection to the merits (see *Bączkowski and Others v. Poland*, no. 1543/06, §§ 45-48, 3 May 2007).

26. In view of the above, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

27. The applicant complained that she had been subjected to ill-treatment during her arrest and that the national authorities had failed to conduct an effective investigation into her complaints, in violation of Articles 3, 6 and 13 of the Convention.

Article 3 reads:

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

Article 6 § 1 provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13 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."

28. The Government submitted that the applicant had failed to adduce concrete evidence capable of proving that she had been subjected to ill-treatment, as alleged. In their view, the force used by the police officers against the demonstrators had been proportionate to the aim pursued.

A. Alleged ill-treatment of the applicant

29. As the Court has underlined on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies; it makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

30. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Furthermore, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

31. The Court notes that, following her arrest on 29 October 2003, the applicant underwent a medical examination which revealed no trace of ill-treatment on her body. However, on the same day, when taken to the Beyoğlu public prosecutor's office, she stated that she had been subjected to ill-treatment by the police during her arrest and lodged a formal complaint against the police officers involved (see paragraphs 7 and 8).

32. On 6 November 2003, eight days after her release, the applicant lodged another formal complaint with the Beyoğlu public prosecutor against the police officers who had allegedly used excessive force or otherwise ill-treated her when arresting her on 29 October 2003. The public prosecutor in turn referred the applicant to the Istanbul branch of the Forensic Medical Institute, where the medical expert who examined her noted a 2 x 6 cm

ecchymosis on the back of her left leg which rendered her unfit for work for five days (see paragraphs 10 and 11 above).

33. The Court notes that although this second medical report was issued eight days after the applicant's release from custody, the public prosecutor did not hesitate to accept it as evidence of the applicant's allegations and did not question the causal link between the ecchymosis identified in the report and the alleged ill-treatment. Nor did the public prosecutor refer to the discrepancy between the two medical reports.

34. In these circumstances, the Court considers that the medical report issued on 6 November 2003 appears to have evidentiary value and may thus be used as evidence for the purpose of an examination of the applicant's allegations under Article 3 of the Convention. It therefore considers that the burden rests on the Government to demonstrate by convincing arguments that the use of force was not excessive.

35. This being so, the Court notes that the Beyoğlu Assize Court established that the police had been informed about the planned demonstration and had taken the necessary measures at the scene of the incident (see paragraph 17 above). Thus, in the particular circumstances of the present case, it cannot be said that the police were called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). They may therefore have been expected to show a degree of patience and tolerance before attempting to disperse a crowd which did not present a danger to public order and was not engaging in acts of violence.

36. In this connection, the Court had regard to the Beyoğlu Assize Court's judgment, which found that the police officers had proceeded to arrest the demonstrators without giving a proper warning (ibid.). It thus appears that the hasty response of the police to the peaceful gathering of the demonstrators resulted in mayhem, and the ensuing use of disproportionate force by the police officers resulted in the injury of some of the demonstrators, including the applicant.

37. In the light of the above findings, the Court considers that the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant, whose injuries are corroborated by a medical report. As a result, it concludes that the injuries sustained by the applicant were the result of treatment for which the State bears responsibility.

38. It follows that there has been a violation of Article 3 under its substantive limb.

B. Alleged failure to conduct an effective investigation

39. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are

"arguable" and "raise a reasonable suspicion" (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). The minimum standards of effectiveness defined by the Court's case-law include the requirements that the investigation be independent, impartial and subject to public scrutiny. Moreover, the competent authorities must act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004). In addition, the Court reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical or illusory. Therefore, in such cases, an effective investigation must be able to lead to the identification and punishment of those responsible (see *Orhan Kur v. Turkey*, no. 32577/02, § 46, 3 June 2008).

40. The Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by the applicant. An effective investigation was therefore required.

41. In the instant case, the Court observes that an investigation into the applicant's allegations was initiated by the Beyoğlu public prosecutor's office (see paragraphs 10-12 above). The investigation ended on 30 December 2004 when the Assize Court upheld the decision of the public prosecutor not to prosecute the police officers for ill-treatment. The Court, having examined the documents contained in the case file, considers that there were serious shortcomings in the way the investigation was conducted by the public prosecutor which had repercussions on its effectiveness.

42. Firstly, it appears that in the course of the investigation the public prosecutor never sought to obtain evidence from the accused police officers. Rather, he relied solely on the incident report prepared by the police officers in concluding that the force used by them had been proportionate. Secondly, the Court notes that there was no serious attempt on the part of the public prosecutor to elucidate the identities of the police officers who were on duty. In this connection, it appears that the applicant was never requested to identify the police officers who she claimed had ill-treated her during arrest, either by checking police photographs or through an identification parade. Thirdly, the prosecutor also appears to have failed to secure the testimonies of potential eyewitnesses, such as the persons arrested together with the applicant on the day of the events.

43. In the light of the above, the Court concludes that the national authorities failed to carry out an effective and independent investigation into the applicant's allegations of ill-treatment.

44. There has accordingly been a procedural violation of Article 3 of the Convention.

45. In view of the foregoing factors and conclusions, the Court dismisses the Government's objection that the applicant lacked victim status (see paragraph 25 above).

46. In the circumstances, the Court considers that no separate issue arises under Articles 6 and 13 of the Convention (see *Saya and Others v. Turkey*, no. 4327/02, § 30, 7 October 2008).

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

47. The applicant alleged that the intervention of the police at the meeting constituted a violation of her right to freedom of assembly protected by Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, ...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

1. Whether there was an interference with the exercise of the freedom of peaceful assembly

48. The Government maintained that there had been no interference with the applicant's rights under Article 11 of the Convention.

49. The Court considers that the intervention of the police which led to the subsequent arrest of the applicant for participating in the meeting constituted, in itself, an interference with the applicant's rights under Article 11.

2. Whether the interference was justified

50. The Government stated that the meeting in issue had been organised unlawfully. They pointed out that the second paragraph of Article 11 imposes limits on the right of peaceful assembly in order to prevent disorder.

51. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aim under paragraph 2 of that provision and is "necessary in a democratic society" for the achievement of those aims.

52. In this connection, it is noted that the interference in the present case had a legal basis, namely section 22 of the Meetings and Demonstration Marches Act, and was thus "prescribed by law" within the meaning of Article 11 § 2 of the Convention. As regards a legitimate aim, the Government submitted that the interference pursued the legitimate aim of preventing public disorder, and the Court finds no reason to differ.

53. Turning to the question of whether the interference was "necessary in a democratic society, the Court refers, firstly, to the fundamental

principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III, and *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Balçık and Others*, cited above, § 46, and *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-XIII).

54. The Court notes that States must not only safeguard the right to assemble peacefully, but also refrain from imposing unreasonable indirect restrictions on that right. Finally, it considers that although the essential aim of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of those rights (see *Djavit An*, cited above, § 57; *Oya Ataman*, cited above, § 36; and *Balçık and Others*, cited above, § 47).

55. In the instant case, the police officers arrested the applicant, together with a number of other people taking part in the demonstration, on the ground that she had breached the Meetings and Demonstration Marches Act. However, having regard to the findings of the Beyoğlu Assize Court, the Court observes that the applicant and the other demonstrators did not breach this law, contrary to the allegations of the Government (see paragraph 17 above). The Assize Court found that, while the participants had been gathering at a public place in order to make a press statement on issues of public interest, the police officers had stopped them, kept them in a circle and used force to disperse the group, without issuing a prior warning (ibid.). It considered that the acts of the demonstrators, including the applicant, should be seen as an exercise of their democratic right to freedom of assembly, and it therefore acquitted them.

56. It can also be seen from the judgment of the Beyoğlu Assize Court that the group did not present a danger to public order, or engage in acts of violence. In this connection, the Court reiterates its earlier considerations that where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007).

57. In the light of the foregoing, the Court agrees with the conclusions reached by the domestic courts and considers that, in the circumstances of the present case, the forceful intervention of the police officers was disproportionate and unnecessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

58. There has accordingly been a violation of Article 11 of the Convention.

59. In view of the above finding, the Court again dismisses the Government's objection that the applicant lacked victim status (see paragraph 25 above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 for non-pecuniary damage.

62. The Government contended that these claims were excessive and unjustified.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, in view of the violation found under Articles 3 and 11 of the Convention, it considers that the applicant may be taken to have suffered a certain amount of distress. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 4,500 for the costs and expenses incurred before the Court.

65. The Government submitted that the amount claimed was unsubstantiated.

66. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant did no more than refer to the Istanbul Bar Association's scale of fees in respect of her legal representative's claims and failed to submit any supporting documents. The Court therefore makes no award under this head (see *Balçık and Others*, cited above, § 65).

C. Default interest

67. 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

1. *Declares* the application admissible unanimously;

2. *Holds*, by four votes to three, that there has been a substantive violation of Article 3 of the Convention;

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

4. *Holds* unanimously that there has been a violation of Article 11 of the Convention;

5. *Holds* unanimously that there is no need to examine separately the complaints under Articles 6 and 13 of the Convention;

6. *Holds*, by four votes to three,
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into Turkish liras at the rate applicable on the date of settlement:
   (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;

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

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges D. Jočiené, N. Tsotsoria and I. Karakaş is annexed to this judgment.

F.T.
S.D.

JOINT PARTLY DISSENTING OPINION OF JUDGES JOČIENĖ, TSOTSORIA AND KARAKAŞ

We do not share the majority's opinion that there was a violation of Article 3 of the Convention under its substantive limb in the present case.

As the majority point out in paragraph 30 of the judgment, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (*Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, in order to fall within the scope of Article 3 of the Convention, the alleged ill-treatment must attain a minimum level of severity (*ibid*., § 162).

In our view, in the present case, first of all, proof of the applicant's ill-treatment did not follow from the coexistence of sufficiently strong, clear and concordant inferences (see, for example, *Labita v. Italy* [GC], § 121, ECHR 2000-IV), and, secondly, the treatment of which the applicant complained did not attain the minimum level of severity for Article 3 of the Convention to be applicable.

Following the applicant's arrest on 29 October 2003, she had a medical examination in the hospital (resulting in two reports), which revealed no trace of ill-treatment on her body. She complained only of pain in her right upper arm. On the same day, she was released from police custody, after being questioned by the public prosecutor.

Eight days after she was arrested and released, the applicant underwent a further medical examination on 6 November 2003. The report drawn up on that occasion indicated "a 2 x 6 cm ecchymosis on the back of her leg". Although the medical reports issued when she was arrested did not indicate any sign of ill-treatment, the public prosecutor initiated an investigation but decided not to prosecute. With regard to her allegations of ill-treatment during the demonstration, we consider that the applicant has not made an arguable claim.

Even assuming that the acceptance of the second report, which should be of no evidentiary value, by the prosecutor in order to examine the applicant's allegations of ill-treatment placed the burden of proof on the Government, we consider that in this case the Court has forgotten to apply the principle of "minimum level of severity". The very limited injury sustained by the applicant after a demonstration – a small bruise on the leg eight days after her release – should not be sufficient for the Court to find a substantive violation of Article 3.

This explains why we also voted against the Court's award in respect of non-pecuniary damage.