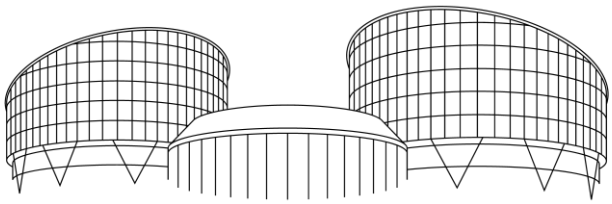

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SAÇILIK AND OTHERS v. TURKEY

(*Applications nos. 43044/05 and 45001/05*)

JUDGMENT
(Final merits and partial just satisfaction)

STRASBOURG

5 July 2011

FINAL

05/10/2011

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

In the case of Saçılık and Others v. Turkey**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 43044/05 and 45001/05) 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 25 Turkish nationals ("the applicants") on 30 November 2005.

2. The 24 applicants in application no. 43044/05, whose particulars are set out in the attached table, are Turkish nationals. The applicants Ali Rıza Dermanlı, Birsen Dermanlı and Gönül Aslan were represented before the Court by Ms Meral Hanbayat, Mr Mehmet Ali Kırdök and Ms Mihriban Kırdök, lawyers practising in Istanbul. The applicants Barış Gönülşen, Hüsne Davran and Mürüvet Küçük were represented by Mr Kazım Bayraktar, a lawyer practising in Ankara. The remaining applicants were represented by Ms Akça Yüksel and Ms Rahşan Aytaç Sala, lawyers practising in Gaziantep and Istanbul respectively. One of these remaining applicants, namely, Mr Cavit Temürkürkan, informed the Court on 24 May 2011 that he had appointed Ms Ursula Metzger Junco, a lawyer practising in Switzerland, to take over from Ms Akça Yüksel and Ms Rahşan Aytaç Sala as his representative.

3. The applicant in application no. 45001/05, Mr Emre Güneş, who was granted legal aid, is a Turkish national who was born in 1976 and lives in Antalya. He was represented before the Court by Ms Akça Yüksel, a lawyer practising in Gaziantep. The Turkish Government ("the Government") were represented by their Agent.

4. The applicants alleged that, in the course of a security operation conducted in their prison in 2000, they had been subjected to ill-treatment

within the meaning of Article 3 of the Convention and that their allegations had not been adequately examined by the national authorities.

5. On 9 June 2009 the Court joined the applications, declared them partly inadmissible and decided to communicate the complaint under Article 3 of the Convention concerning the alleged ill-treatment to the Government. It also decided to examine the merits of the applications at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. Introduction

6. On 5 July 2000 the applicants were in detention in Burdur Prison when a large-scale security operation was conducted there by 415 members of the security forces consisting mainly of gendarmes and soldiers. As the remaining facts of the case are in dispute between the parties, they will be set out separately. The facts as presented by the applicants are set out in Section B below (paragraphs 7-12). The Government's submissions concerning the facts are summarised in Section C below (paragraphs 13-21). The documentary evidence submitted by the applicants and the Government is summarised in Section D (paragraphs 22-60).

B. The applicants' submissions on the facts

7. On 4 April 2000 a number of remand prisoners in Burdur Prison were beaten by gendarmes on their way back from a court hearing. On 4 July 2000 eleven detainees, including nine of the applicants, informed the prison administration that, unless steps were taken to guarantee their safety, they would not be appearing at a hearing in the Burdur Assize Court scheduled for the following day. Neither the prison authorities nor the prosecutors responded to their calls.

8. At around 8.30 a.m. on 5 July 2000, members of the security forces arrived at the prison in large numbers. Using the furniture in their dormitories the inmates unsuccessfully tried to block the doors to stop the soldiers from coming in. The soldiers locked the windows to the prison cells, set fire to the cell doors and tried to confine the inmates in one part of the prison, measuring 25-30 square metres. The applicants Yunis Aydemir and Cemil Aksu suffered burns in the fire. When the inmates were confined

in the same 25-30 square metres the soldiers used tear gas and various other chemical gases on them.

9. A hole was opened in the walls of this room with a digger. When the digger went through the hole and into the room the applicant Mr Saçılık waved his arm at the operator of the machinery, trying to tell him to withdraw the digger. The operator saw Mr Saçılık but proceeded, tearing off Mr Saçılık's left arm from above his elbow. The severed arm was not collected by the authorities with a view to preserving and reattaching it, but was left there in the rubble. It was later taken from the mouth of a stray dog which had snatched it from the rubble.

10. Furthermore, a gas bomb detonated nearby seriously damaged the applicant Şahin Geçit's right hand and eardrum.

11. The soldiers then started beating the inmates, dragging them on the floor, sexually assaulting female detainees and threatening them with rape. The detainees were then handcuffed, with their hands behind their backs, and were kept in that position for a period of 15 hours. The beatings continued even after the detainees were handcuffed. The soldiers attempted to insert a truncheon and a fluorescent light stick into the anuses and vaginas of the applicants Azime Arzu Torun and Mürüvet Küçük and started raiding the detainees' personal belongings.

12. The injured detainees, some with life-threatening injuries, were subsequently taken to hospital. However, it was too late for Veli Şaçılık's arm to be stitched back on, so he permanently lost his arm. The health of a number of other applicants also worsened because of the delays. Moreover, the soldiers prevented some of the detainees from receiving medical assistance at the hospital and took them back to the prison before their treatment had been completed.

C. The Government's submissions on the facts

13. On 4 July 2000 eleven detainees, including nine of the applicants, refused to obey the prison authorities and attend a hearing at the Burdur Assize Court. The Burdur Gendarmerie Headquarters requested assistance from a number of other military headquarters in an operation to be carried out in the prison.

14. The applicants and a number of other detainees began rioting in the prison. At around 10.00 a.m. on 5 July 2000, members of the security forces entered the prison in order to restore safety and security. They warned the prisoners and asked them to stop rioting. Ten prisoners complied with the soldiers' instructions, but the remaining ones, including the applicants, continued to riot. They barricaded themselves in, opened fire, set fire to the dormitories and corridors, attacked members of the security forces with hand-made harpoons and iron bars and threw various explosive and

corrosive chemicals at them. Seventeen gendarmes were injured as a result of the attacks.

15. As soon as members of the security forces managed to pass the barricades, the prisoners moved to the next dormitory after setting fire to the one they had been in. At that point the soldiers opened holes in the ceilings of the dormitory where the prisoners had gathered, and threw in tear gas canisters with a view to stopping the riots and minimising further damage.

16. A total of two holes were opened. The applicant Veli Saçılık was injured when a machine was opening the holes.

17. At the end of the operation a search was carried out. A number of documents belonging to an illegal organisation, 81 iron bars, 25 wooden bars, 52 hand-made objects used for cutting and digging holes, two saws, 20 pairs of scissors and three hammers were found during the search.

18. Apart from the severe damage caused to the prison building, ten security force personnel, six prison guards, one civilian and sixteen prisoners were wounded during the operation. The sixteen wounded prisoners were taken to hospitals. When 45 other prisoners refused to go to hospital for medical checks, three doctors were taken to the prison to provide medical assistance to them.

19. Although the applicant Azime Arzu Torun alleged that she had been raped with a truncheon, the medical reports pertaining to her examination revealed that her hymen was intact.

20. In the course of the investigation prosecutors questioned the applicants and members of the security forces, and examined the medical reports. On 30 March 2005 the Burdur prosecutor concluded that the soldiers' actions had become unavoidable as a result of the prisoners' behaviour, and decided not to prosecute any members of the security forces.

21. The applicant Veli Saçılık successfully filed a civil suit for his injuries, claiming 100,000 Turkish liras (TRL) in respect of pecuniary damage and TRL 50,000 in respect of non-pecuniary damage. On 31 March 2005 the sum of TRL 244,150 (approximately 140,000 euros (EUR) at the time), which included accrued interest, was paid to Mr Saçılık.

D. Documentary evidence submitted by the parties

22. The following information emerges from the documents submitted by the parties.

1. Documents pertaining to the operation and the subsequent criminal investigations

23. On 21 June 2000 the president of the Burdur Assize Court sent a letter to the Burdur prosecutor and stated that eleven inmates at the prison had failed to attend a hearing scheduled for that day. The president urged

the prosecutor to ensure the inmates' attendance at the next hearing scheduled for 5 July 2000, "if necessary by forceful means so that judicial functions could be performed and the authority of the State would not be undermined".

24. In his letter of 4 July 2000 the governor of Burdur Prison informed the Burdur prosecutor's office about the Burdur Assize Court president's letter. In the opinion of the prison governor, force would need to be used to uphold the "State's authority" but there was an insufficient number of prison guards at the prison to handle such an intervention.

25. On 4 July 2000 the Burdur public prosecutor asked the Burdur Gendarmerie Headquarters to ensure the attendance of the eleven detainees at the hearing, if necessary by forceful means. The same day the Burdur Gendarmerie Headquarters asked a number of other military headquarters, including the special forces at the Antalya and Konya Commando Headquarters, to assist them in an operation to be carried out in Burdur Prison the following day.

26. According to incident reports drawn up by soldiers on 5 July 2000, the soldiers went to the prison in the early hours and asked the eleven detainees to leave the prison and go to the hearing. When this request met with the inmates' refusal, the soldiers entered the prison and saw that the inmates had barricaded themselves in their dormitories using their bunk-beds, tables, lockers and other furniture. When the inmates were all confined in one room, the walls of the room were demolished and the soldiers threw in gas canisters. However, the inmates covered their heads with wet fabrics to protect themselves from the effects of the gas, before proceeding to throw the gas canisters back at the soldiers. The inmates then started throwing cleaning products containing acid and bleach at the soldiers and hitting them with metal rods made from window bars. When the soldiers finally gained control of the prison, sixteen of their number had either been beaten up by the inmates or intoxicated by the tear gas. When the operation ended at around 10.00 p.m. the injured inmates were taken to hospitals.

27. The applicants were all examined by doctors on a number of occasions. Details of their injuries, as noted in the medical reports, are as follows:

Veli Saçılık: Mr Saçılık was taken to hospital on 5 July 2000 and was discharged again on 27 July 2000. It was not possible to stitch his arm back on and his injury was deemed to be life-threatening by the doctors. His injury prevented him from working for 60 days.

Hüseyin Tiraki: Examined by three doctors. Various injuries to the face, arms and legs. Unable to work for a period of between one and seven days.

Halil Tiryaki: Examined by three doctors. Various injuries, some infected, and bruising on the torso, arms and legs, requiring a ten-day healing period. Unable to work for a period of between five and seven days.

Yunis Aydemir: Examined by two doctors. Various injuries and bruising on the head and on the back of his body, legs and ankles. Unable to work for a period of between five and seven days.

Yusuf Demir: Examined by one doctor. His injury prevented him from working for a period of two days.

İbrahim Bozay: Examined by three doctors. Various injuries and bruising on the shoulders and arms. Unable to work for a period of between three and seven days.

Hakan Baran: Examined by three doctors. Various injuries, some infected, and bruising on the shoulders and the back of the body, arms and legs. Unable to work for a period of between three and seven days.

Kazım Ceylan: After the operation Mr Ceylan was taken to a hospital suffering from gas intoxication and his condition was deemed to be life-threatening by doctors who also observed various injuries and bruises on the left ear, head, arms and legs. Unable to work for a period of between two and seven days.

Hüseyin Bulut: Examined by three doctors. Various injuries and bruises on the back of the body, ribs, arms and legs. Unable to work for ten days.

Cemil Aksu: Examined by two doctors. Various injuries and bruises on the head and round the eyes and extensive injuries to the shoulders, the back of the body and the arms, wrists and fingers. Unable to work for a period of between seven and eight days.

Necla Çomak: Ms Çomak was examined by two doctors. Various injuries and bruises on various parts of the body including the head and the eyes. Unable to work for a period of between five and seven days.

Şahin Geçit: Examined by two doctors one of whom was an ear, nose and throat consultant. Various infected injuries on the right hand. Various injuries and bruises on the head, face, eyes, ears, shoulders, arms and legs. Perforated ear drum and hearing loss. Unable to work for a period of between ten and fifteen days.

Hayrullah Kar: Examined by two doctors. Various injuries and bruises on the head and the right shoulder blade. Unable to work for a period of between seven and eight days.

Mehmet Leylek: After the operation Mr Leylek was taken to a hospital suffering from gas intoxication and his condition was deemed to be life-threatening by doctors. He was discharged from the hospital the following day. The doctors also observed various injuries and bruises on the ribs, knees, legs and torso, which prevented him from working for a period of between two and seven days.

Birsen Dermanlı: After the operation Ms Dermanlı was taken to a hospital suffering from gas intoxication and her condition was deemed to be life-threatening by doctors, who also observed extensive injuries and bruising on her face and legs. Unable to work for a period of between two and seven days.

Veysel Yağan: Examined by two doctors. Extensive injuries and bruising on the back of the body, arms, hands, legs and feet. Unable to work for a period of seven days.

Fikret Lüle: Examined by three doctors and taken into hospital for a head trauma. Various injuries and bruises around the eyes, nose, face, ears, lips, shoulders, arms and knees and a nose fracture. Unable to work for ten days.

Ali Rıza Dermanlı: Examined by two doctors. Various injuries and bruises on the face, chest and back of the body, arms and legs. Unable to work for a period of between seven and thirteen days.

Cavit Temürtürkan: Examined by three doctors. Extensive injuries and bruising on the head, face, back of the body and legs. Unable to work for a period of between five and seven days.

Azime Arzu Torun: Examined by three doctors. Extensive injuries and bruising on the head, knees, lumbar region, sternum, arms and legs. On 10 July 2000 Ms Torun was also examined by a doctor in relation to her allegations of sexual attacks and it was established that her hymen was intact. Her various injuries rendered her unfit for work for a period of between five and seven days.

Gönül Aslan: Examined by two doctors. Various injuries and bruises on the face, back of the body, lumbar region and legs. Unable to work for a period of between two and seven days.

Barış Gönülşen: After the operation Mr Gönülşen was taken to a hospital suffering from gas intoxication and his condition was deemed to be life-threatening by doctors, who also observed extensive injuries and bruising on his head, ears, chest, back of his body, arms, legs and feet. His injuries prevented him from working for a period of between two and seven days.

Hüsne Davran: Examined by three doctors, who observed various injuries and bruises on her back, arms, and legs, which prevented her from working for a period of between one and five days.

Mürüvet Küçük: Examined by a doctor who observed various injuries and bruises on her head, eyes, neck, shoulders and legs. Her injuries rendered her unfit to work for a period of between five and twelve days.

Emre Güneş: Examined by three doctors. Various injuries and bruises on the head, face, chest, back of the body, arms and legs. Unable to work for a period of between five and seven days.

28. On 6 and 7 July 2000 the applicants were questioned by public prosecutors. They told the prosecutors that they had been subjected to various forms of ill-treatment.

29. Between 8 July and 19 July 2000 the applicants submitted nineteen separate complaint petitions to prosecutors and asked for the security personnel responsible for their injuries to be prosecuted.

30. On 21 July 2000 lawyers representing the applicants, as well as twenty-nine other detainees, submitted a joint and detailed complaint to the

office of the Burdur public prosecutor and asked for prosecutions to be brought against those responsible for the ill-treatment and injuries.

31. In his letter of 24 July 2000 the Burdur Governor Kaya Uyar informed the relevant ministerial authorities that the force used by the soldiers had remained within the permissible limits of the applicable legislation. The soldiers had been particularly cautious in not using their weapons and careful not to infringe the inmates' human rights; they had never attacked the inmates and had not caused any injury to any of them. The inmates who had been intoxicated by the gas used by the soldiers, as well as Mr Saçılık, who had been "injured while throwing bricks at the driver of the digger", had "promptly" been taken to hospital. In his letter the governor also stated that "20 of the 61 inmates had been taken to hospitals in ambulances after the operation had ended at around 9.30 p.m. and 10.00 p.m. and the remaining inmates had been held in the prison".

32. On 2 August 2000 the soldiers who took part in the operation were questioned by an army officer. Between 4 and 10 August 2000 they were further questioned by prosecutors. They all denied having ill-treated the applicants, and maintained that respect for human rights had been paramount during the operation. A number of prison guards who had been on duty at the prison that day stated that they had not seen or heard anything.

33. In the meantime, on 7 August 2000 the applicant Azime Arzu Torun submitted a separate complaint to the Burdur prosecutor and gave details of the sexual assault to which she claimed she had been subjected during the operation. According to Ms Torun, the soldiers had forced a truncheon into her vagina and the doctor who examined her had refused to establish whether her hymen had been torn. She asked the prosecutor to refer her to a hospital specialising in post-traumatic stress disorders and to carry out an investigation "in compliance with the European Convention on Human Rights".

34. On 7 August 2000 the Burdur gendarmerie commander Ali Erduran drew up his preliminary investigation report in which he concluded that the soldiers had not ill-treated any of the inmates. The inmates had made the allegations of ill-treatment in order to damage the reputation of the armed forces.

35. Acting on officer Erduran's advice, on 8 August 2000 the Burdur Governor Kaya Uyar declined to grant the necessary authorisation to the prosecutors to investigate a number of gendarme officers. The Burdur Prosecutor Tahsin Uyav lodged an objection against that decision on 18 August 2000.

36. On 14 August 2000 Prosecutor Uyav asked for permission to prosecute three officers implicated in the allegations.

37. In his letter of 24 August 2000 Prosecutor Uyav informed the Ministry of Justice that "a number of inmates had been injured in the course

of an operation which had been necessary to quell a large-scale riot against the prison administration". In a similarly worded letter addressed to the Gendarmerie General Command in Ankara on 13 October 2000, Prosecutor Uyav stated that "during forceful resistance by terrorists, security forces had to use force and a number of security personnel and terror convicts were injured".

38. On 1 November 2000 Prosecutor Uyav brought prosecutions against the applicants and a number of other inmates for "having caused a riot".

39. The same day Prosecutor Uyav requested permission from the Burdur governor to investigate the actions of 404 members of the security forces who had taken part in the operation. The Burdur governor appointed his deputy Mr Azizoğlu to carry out a preliminary investigation

40. In its decision of 2 November 2000 the Antalya Regional Court upheld the prosecutor's objection of 18 August 2000, and held that the preliminary investigation should have been conducted by the Ministry of the Interior.

41. In its decision of 8 January 2001 the Ministry of the Interior appointed gendarmerie colonel Adnan Kandemir to examine the allegations with a view to advising as to whether a prosecution should be brought against the soldiers.

42. In his report of 19 February 2001 Colonel Kandemir recommended the Ministry of the Interior to refuse the authorisation sought by the Burdur prosecutor to prosecute the 404 members of the security forces. It appears from this report that a total of 389 of the 404 security personnel had been questioned by Colonel Kandemir and they had all denied the allegations against them. Colonel Kandemir concluded that the operation had been a success, the uprising had been halted and the authority of the State had been restored. Other than their abstract allegations, there was no evidence to support the applicants' "ill-intentioned allegations".

43. Acting on Colonel Kandemir's advice, on 23 February 2001 the Burdur governor declined the authorisation sought by the Burdur prosecutor.

44. On 27 March 2001 Burdur prosecutor Uyav lodged an objection against the Burdur governor's decision of 23 February 2001.

45. In his decision of 11 October 2002 the Burdur governor refused to grant authorisation for the prosecution of a further eleven gendarme officers.

46. On 23 January 2003 Antalya Regional Administrative Court upheld the Burdur prosecutor's objection and the file was forwarded to that prosecutor's office for a judicial investigation to be opened.

47. In the course of the investigation the prosecutors questioned the applicants and examined the medical reports detailing their injuries.

48. On 12 January 2005 a colonel at the Gendarmerie General Headquarters in Ankara wrote to the Burdur public prosecutor informing

him that exorbitant sums of compensation were being awarded to the inmates by administrative courts despite the absence of a court decision placing criminal responsibility on the administration and despite the fact that the operation in question had been conducted with a view to protecting the right to life and quelling riots staged by prisoners acting under orders from illegal organisations. The colonel added that there was a need for the investigation to be concluded as soon as possible so that it could be established whether or not the administration was at fault. He asked the prosecutor to provide him with information about the investigation.

49. In his decision of 30 March 2005 the Burdur public prosecutor decided not to prosecute any members of the security forces. The prosecutor noted that the driver of the digger which had severed Veli Saçılık's arm had subsequently been tried for, and acquitted of, the offence of causing bodily injury by recklessness. The prosecutor also noted that a number of doctors and nurses working at the hospital where Mr Saçılık had been treated had also been tried for neglecting their duties, but had been acquitted. Criminal proceedings brought against the inmates for causing a riot, on the other hand, were still pending.

50. The prosecutor considered that the soldiers' intervention had become unavoidable as a result of the actions of inmates who had refused to surrender but had instead gone on to set fire to the objects in their dormitories and to attack the soldiers with wooden sticks and iron bars. Veli Saçılık's arm had been severed when he had tried to throw bricks at the soldiers through the hole in the prison wall opened by the digger.

51. The prosecutor observed that, according to the medical reports, all applicants had suffered various injuries, preventing them from working for different periods. Although Azime Arzu Torun had alleged that she had been raped with a truncheon, the medical reports showed that her hymen was intact. There was no medical evidence of any sexual assault of the other female detainees and, as such, their allegations of sexual abuse were unfounded.

52. In the prosecutor's opinion, the soldiers had had to resort to the use of force in order to quell the prisoners' riot, and the amount of force used had been "no more than absolutely necessary" within the meaning of Article 2 § 2 of the Convention.

53. An objection lodged against the prosecutor's decision was rejected on 30 May 2005 by the Isparta Assize Court, which considered that the prosecutor's decision was in accordance with the applicable legislation and procedure.

54. Furthermore, on 12 February 2008 the Burdur Assize Court terminated the criminal proceedings against the applicants for causing a riot, as the statutory time-limit for such proceedings had been reached.

2. Documents pertaining to the compensation claim brought by the applicant Veli Saçılık

55. In 2002 Mr Saçılık brought proceedings against the Ministry of Justice and the Ministry of the Interior, claiming TRL 100,000 for pecuniary damage and TRL 50,000 for non-pecuniary damage.

56. On 31 March 2005 the Antalya Administrative Court concluded that the use of heavy machinery in a prison had been unusual. Even assuming that its use had been necessary, Mr Saçılık had at that time been intoxicated by the gases used by the soldiers and had been trying to get fresh air through the hole opened by the digger. It had not been alleged that he was posing any threat to the soldiers or to the driver of the digger; indeed that would have been most improbable given his state of health at the time. It was also clear that the driver of the digger had seen Mr Saçılık but had carried on regardless. The Ministries were therefore responsible for his injury caused by the use of disproportionate force. It thus awarded Mr Saçılık the sums claimed by him in full, plus statutory interest.

57. The Ministries appealed. According to the applicable procedure, appeal proceedings do not affect the execution of first-instance court decisions. Thus, the total sum of TRL 244,150 was paid to Mr Saçılık before the appeal was decided.

58. The appeal lodged by the Ministries was upheld by the Supreme Administrative Court on 15 February 2008 and the decision awarding Mr Saçılık the compensation was quashed. The applicant's request for a rectification of that decision was rejected by the Supreme Administrative Court on 25 February 2009.

59. Proceedings were restarted before the Isparta Administrative Court, which decided on 24 June 2010 to reject the applicant's claim for compensation. According to the Isparta Administrative Court, the applicant had contributed to the incidents in the prison and members of the security forces had had to restore discipline in the prison. The applicant's actions had thus severed the link of causation between the actions of the security forces and the ensuing damage.

60. On 20 August 2010 the judgment was served on the applicant, who lodged an appeal through the Isparta Administrative Court. The latter failed to transfer the applicant's appeal to the Supreme Administrative Court within the statutory time-limit. Following the applicant's challenge and, having noted this administrative error, the Supreme Administrative Court granted the appeal on 9 December 2010. In the meantime, in his observations the Chief Prosecutor at the Supreme Administrative Court opined that the applicant's appeal should be dismissed. The proceedings are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

61. The applicants complained that the treatment to which they had been subjected in the prison amounted to ill-treatment within the meaning of Article 3 of the Convention. They also complained that no effective investigations had been carried out into their allegations at the national level. Article 3 of the Convention reads as follows:

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

62. The Government contested that argument.

A. Admissibility

63. The Government argued that the applicants had failed to exhaust the domestic remedies available to them, within the meaning of Article 35 § 1 of the Convention. In this connection they submitted, firstly, that the applicants had failed to raise their complaints before the domestic courts. Secondly, the Government argued that the applicants had failed to bring an administrative action and claim compensation in accordance with the principle of "objective responsibility of the State". Finally, the Government submitted that the applicant Veli Saçılık had applied for, and been paid, compensation. Thus Mr Saçılık's complaints should be declared inadmissible.

64. The applicants maintained that they had brought their complaints to the attention of the national authorities on a number of occasions and lodged objections against decisions closing the investigations.

65. As to the Government's reference to the administrative remedy, the applicants referred to a number of judgments adopted by the Court, and submitted that domestic remedies leading solely to awards of compensation could not be regarded as effective remedies in the context of Article 3 of the Convention.

66. Finally, Mr Saçılık submitted that, although he had been paid compensation, the decision awarding him that compensation had subsequently been quashed and the proceedings were still continuing. Thus, there was a risk that those proceedings might result in a rejection of his compensation claim. He would then be ordered to repay the sum paid to him.

67. Regarding the Government's first objection, the Court observes that on many occasions the applicants brought their complaints to the attention of the national authorities who had the power to bring criminal

prosecutions. In some instances they informed the relevant prosecutors orally and in others they submitted written applications (see paragraphs 28-30 above). In some of those complaints the applicants also referred to their rights under the Convention (see paragraph 33 above). Moreover, they lodged an objection against the prosecutor's decision not to prosecute the members of the security forces who they alleged had been responsible for their injuries.

68. Concerning the Government's reference to the administrative remedy, and assuming that reference to be an argument to the effect that payment of compensation would constitute adequate redress, the Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Atalay v. Turkey*, no. 1249/03, § 29, 18 September 2008; *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It reiterates that the remedy referred to by the Government cannot be regarded as sufficient for a Contracting State's obligations under Article 3 of the Convention as it is aimed at awarding damages rather than identifying and punishing those responsible. The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases. It therefore rejects the Government's objection.

69. As for the Government's reference to the compensation paid to the applicant Mr Saçılık, the Court observes that the decision awarding Mr Saçılık the compensation was quashed and the proceedings which started subsequently ended in the rejection of his claims by the first instance court. The appeal proceedings against that decision are still pending (see paragraphs 59-60 above). In any event the Court considers that, regardless of the outcome of the administrative proceedings currently pending, the sum of compensation received by the applicant Mr Veli Saçılık, though it may have a bearing on his claim for just satisfaction (see paragraphs 111-112 below), cannot remedy his victim status. In that connection the Court reiterates that, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007). The Court reiterates that, for complaints about treatment suffered in police custody, criminal proceedings are the proper means of obtaining redress (*Okkalı v. Turkey*, no. 52067/99, § 58, ECHR 2006-XII (extracts)).

70. In the light of the foregoing the Court rejects the Government's preliminary objections. The Court notes that the complaint is not manifestly

ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

71. The applicants maintained their complaints of ill-treatment, and argued that the inmates' refusal to attend the hearing because of the authorities' failure to ensure their personal safety had been used by the soldiers as a pretext to carry out the operation. Up until the arrival of the soldiers there had been no problems or uprisings in the prison. Thus, the Government's submission that the soldiers had entered the prison in order to restore security was baseless.

72. When the soldiers had confined the inmates in one part of the prison, measuring 25-30 square metres, the walls of that part had been demolished by heavy machinery and tens of gas canisters had been thrown in. This had been completely unnecessary because at that stage there was nowhere the inmates could go; the soldiers could simply have waited for them to surrender. Indeed, the Government had not sought to argue that alternatives to forceful means had been considered by the security forces.

73. Instead, the security forces, which included soldiers and prison guards, had subjected the applicants to systematic, disproportionate and unjustified violence. The applicants referred to the medical reports detailed above (see paragraph 27 above) and submitted that their injuries, some of which had been life-threatening, were serious enough to amount to ill-treatment within the meaning of Article 3 of the Convention. They argued that the Government had failed to provide plausible explanations for their injuries.

74. The applicant Azime Arzu Torun also submitted that her gynaecological examinations had been carried out some six days after the sexual attacks and that crucial evidence had thus been destroyed with the passage of the time.

75. The applicants accepted that an investigation had been carried out into their allegations, but alleged that it had only been done for the sake of appearances. They argued that the prosecutor who conducted the investigation had been unduly influenced by the administrative authorities. For example, the letter of 24 August 2000 (see paragraph 37 above) illustrated that the Burdur prosecutor Uyav had already made up his mind, without having carried out any investigations and some four and a half years before he closed the investigation, that the inmates had caused a "riot" and that the soldiers' intervention had been "necessary". This, in the opinion of the applicants, showed that the subsequent steps taken by that prosecutor had been mere procedural formalities.

76. The applicants also criticised the fact that the initial investigations had been conducted by members of the same security forces who had been involved in the events.

77. The Government denied that the applicants had been subjected to ill-treatment within the meaning of Article 3 of the Convention. In the Government's opinion the applicants and other inmates had caused a riot, opened fire at the soldiers, set fire to their dormitories and corridors and attacked the soldiers by throwing stones at them and hitting them with sticks. It had not been possible to provide medical assistance to the applicants until after the riot was over, because they had continued rioting even after they were injured.

78. The Government also argued that the medical reports showed that the applicants Azime Arzu Torun and Mürüvet Küçük had not been sexually assaulted.

79. Finally, the Government considered that the national authorities had carried out all necessary examinations and investigations concerning the operation.

80. The applicants responded to the Government's arguments by submitting that the reason why some of the detainees in the prison had refused to go to the hearing on 6 July 2000 was because of the authorities' failure to respond to their calls to ensure their safety on their way to and from the courthouse.

81. The applicants confirmed that they had set up barricades when the soldiers entered the prison, but submitted that they had only done so in order to protect themselves from the soldiers' attacks. Only a year previously a number of inmates had been killed in another prison by soldiers[1]. In such circumstances, their attempts at protecting themselves from the soldiers' attacks could not be categorised as a riot, as suggested by the Government. Also, the fact that the Government's allegations were baseless was further supported by the fact that the criminal proceedings brought against the inmates for rioting had been dropped under the statute of limitations.

82. The applicants challenged the Government's allegations that the inmates had opened fire on the soldiers and had used hand-made harpoons and iron bars, injuring a total of seventeen members of the security forces. They drew the Court's attention to the absence of medical reports to prove that the soldiers had been treated by doctors for any physical injury. Indeed, other than arguing that the soldiers had been injured by the inmates, the Government had not even attempted to detail those alleged injuries or to support them with any evidence. The applicants also pointed out that no

1. For details of the incidents at Ulucanlar Prison referred to by the applicants, see *Kavaklıoğlu and 73 others v. Turkey* (dec.), no. 15397/02, 5 January 2010.

firearms belonging to the inmates had been found in the prison during the searches carried out after the operation.

83. The applicants also challenged the accuracy of the assertion that objects such as iron and wooden bars, hammers and harpoons had been used by them to attack the soldiers. They submitted that such items, if they existed, would have been discovered during the regular searches which the prison authorities had carried out in the prison prior to the operation.

84. Challenging the Government's assertion that they had refused to accept medical treatment after the operation, the applicants alleged that they had been beaten up by the soldiers even when they were being taken to hospital many hours after the operation. Veli Saçılık argued that he lost his arm because no precautions had been taken to preserve it, and he had been made to wait for hours at the prison after his arm had been severed by the machine.

85. The Court reiterates at the outset that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/75/ § 119, ECHR 2000-IV).

86. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

87. The Court has examined the reports pertaining to the applicants' medical examinations. It considers that the injuries, some of which were life-threatening, were sufficiently severe to exceed the minimum level of severity (see paragraph 27 above). The Court further observes that the conclusions reached by the doctors in their reports were not contested by the respondent Government, which nevertheless maintained that the applicants had not been ill-treated.

88. In this regard, the Court observes that it is not disputed by the Government that the applicants' injuries were caused while they were detained in a prison. According to the Court's established case-law, States bear the burden of providing plausible explanations for injuries sustained in custody, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Satık and Others v.Turkey*, no. 31866/96, § 54, 10 October2000). The underlying reason for this is that persons in custody are in a vulnerable position and the authorities are under a duty to protect them.

89. Moreover, regard must also be had to the investigation carried out by the national authorities and the conclusions reached by them. The Court reiterates here that, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State

unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

90. It must be stressed, however, that the obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

91. The Court will examine whether the investigation carried out by the domestic authorities in the present case was capable of establishing the true facts surrounding the applicants' injuries and whether the Government have thus satisfactorily discharged their burden of explaining them (see, *mutatis mutandis*, *Beker v. Turkey*, no. 27866/03, § 53, 24 March 2009, and *Özcan and Others v. Turkey*, no. 18893/05, § 73, 20 April 2010).

92. Before proceeding to examine the investigation, the Court notes that, according to the applicants – some of whom were among the eleven inmates in question –, the inmates' refusal to attend the hearing was based on their concern for their safety. They claimed that they had informed the authorities that if their safety was guaranteed on the way to and from the courthouse they would attend the hearing. The Court notes that the veracity of the applicants' claims in this respect was not disputed by the Government. However, no attempt appears to have been made by the national authorities to question those inmates about their concerns and, if necessary, to ensure their safety.

93. Similarly, the Court has not been provided with any documents or information to show that alternative, non-life-threatening methods of ensuring the inmates' attendance at the hearing were considered by the national authorities. On the contrary, according to the documents referred to above, the president of the Burdur Assize Court, the governor of Burdur Prison and the local prosecutor were convinced that the situation could only be solved by forceful means, and requested a large number of soldiers to intervene (see paragraphs 23-25 above).

94. Furthermore, the letters sent by the above-mentioned president, governor and prosecutor sit ill with the Government's submissions that the inmates had already been rioting before the arrival of the soldiers and that the soldiers had had to intervene to stop the riots. It is clear from those letters that there had been no riots in the prison prior to the arrival of the soldiers. Indeed, the fact that the incidents at the prison started with the

arrival of the soldiers is further evidenced by the reports drawn up by the soldiers themselves (see paragraph 26 above).

95. As for the events that unfolded following the soldiers' arrival, the Court finds the applicants' version of the events, namely that they had barricaded themselves from the soldiers' attacks, entirely credible. Indeed, contrary to what was suggested by the Government, there is no evidence to suggest that the applicants used force against the soldiers.

96. Moreover, contrary to what was suggested by the Government, there is no information or documentation to suggest that the inmates opened fire on the soldiers. In fact, no such allegation against the applicants has ever been made at the national level. None of the documents in which the specifics of the military operation were set out mentions any firearms having been used. The Court thus disregards the Government's allegations concerning the use of firearms by the inmates.

97. In the light of the above, the Court considers that the Government failed to prove that the applicants' injuries were caused as a result of their own actions. As to the actual cause of those injuries, the Court will now examine the steps taken during the investigation conducted into the applicants' allegations of ill-treatment.

98. The Court notes that the initial investigations were conducted by governors and military officers all of whom were hierarchical superiors of the soldiers allegedly responsible for the ill-treatment to which the applicants were subjected. It reiterates that investigations conducted by such persons cannot meet the independence and impartiality requirement of an effective investigation within the meaning of the Convention, and the Court thus cannot attach any importance to them (see, *mutatis mutandis*, *Ümit Gül v. Turkey*, no. 7880/02, §§ 53-57, 29 September 2009).

99. The Court must nevertheless express its regret that the initial stage of the investigation was conducted by the military, with the result that the judicial authorities' access to the evidence at the early and crucial stages was irretrievably delayed.

100. The Court must also express its doubts about the independence and impartiality of the civilian prosecutors who conducted the subsequent investigations. Firstly, as pointed out by the applicants, even before any meaningful investigation was conducted by him, the Burdur prosecutor wrote to the Ministry of Justice and expressed his opinion that the soldiers' intervention had been "necessary to quell a large-scale riot against the prison administration". In a similarly worded letter addressed to the Gendarmerie General Command in Ankara on 13 October 2000, the same prosecutor stated that "during forceful resistance by terrorists, security forces had to use force and a number of security personnel and terror convicts were injured" (see paragraph 37 above). The Court considers, as it has done in its previous judgments concerning similar operations in prisons in Turkey, that the prosecutor's statements were entirely inconsistent with

the duties and functions of a public prosecutor at a time when an investigation was being conducted into the involvement of gendarmes in the incident (see, *inter alia*, *Satık and Others v. Turkey*, no. 31866/96, § 59, 10 October 2000).

101. Secondly, the Court notes the letter sent to the investigating prosecutor by an army colonel some two and a half months before the prosecutor closed his investigation, urging the prosecutor to bring the investigation to an end because those injured during the soldiers' intervention were being awarded exorbitant sums of compensation by administrative courts. In the Court's opinion the colonel's intervention tainted the independence and impartiality of the entire investigation (see paragraph 48 above). The Court observes that although it specifically requested the respondent Government to deal in their observations with the issue of the colonel's letter, they did not do so.

102. In the light of the foregoing the Court considers that the entire investigation into the applicants' allegations was devoid of one of the most important elements of an effective investigation within the meaning of its case-law on Article 3 of the Convention, namely independence and impartiality.

103. As for the steps taken during the prosecutor's investigation, the Court notes the Government's submission that their authorities had conducted all necessary examinations and investigations. The Court disagrees with that submission for the following reasons.

104. Firstly, no documents or information have been submitted to the Court to show that the nature and extent of the applicants' injuries were adequately examined or that their allegations – which they maintained consistently throughout the domestic proceedings – were taken seriously by the investigating authorities. Instead, the applicants and other inmates injured during the soldiers' intervention were repeatedly referred to as "terrorists", and their allegations were deemed to be "ill-intentioned" and aimed at tainting the reputation of the security forces (see paragraphs 34, 37 and 42 above).

105. The Court observes that every single member of the security forces denied using force against the inmates. Similarly, both the Burdur governor (see paragraph 31 above) and the Burdur gendarmerie commander (see paragraph 34 above) confirmed that the applicants' injuries had not been caused by the soldiers. However, the prosecutor concluded in his decision closing the investigation that "the soldiers had had to resort to the use of force in order to quell the prisoners' riot", and that the amount of force used had been "no more than absolutely necessary" within the meaning of Article 2 § 2 of the Convention" (see paragraph 52 above). In the absence of documents or information showing that any examination was made by the national authorities of the nature and extent of the force used, and having regard to the denials of all those involved in the operation, the Court is

unable to comprehend exactly what evidence or information formed the basis of the prosecutor's conclusion.

106. Secondly, the Court considers that the applicants' injuries are unlikely to have been caused accidentally. Moreover, on account of their nature and location they cannot be regarded as consequential to the use of force necessitated by the applicants' own actions. Nevertheless, in deciding to close the investigation the prosecutor seems to have disregarded those injuries entirely, and relied solely on the official account of what happened on the day in question.

107. In the light of the foregoing the Court considers that the documents in its possession indicate that the investigation was carried out without meeting the requirements of an effective investigation within the meaning of the Convention. Owing to the defects identified above, the investigation was not capable of establishing the true circumstances surrounding the applicants' ill-treatment. Thus, the Court considers that the Government failed to discharge its burden of providing a plausible explanation as to how the applicants suffered their injuries while detained in the prison.

108. There has accordingly been a violation of Article 3 of the Convention, under both the substantial and the procedural limbs, regarding the 25 applicants (see paragraph 27 above).

109. Concerning the alleged sexual attacks on Mrs Azime Arzu Torun and Mrs Mürüvet Küçük, the Court, in the absence of conclusive medical evidence or any other relevant strong, clear and concordant inferences in this respect, considers that no separate issue arises on this ground.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The first applicant Mr Saçılık claimed 250,000 euros (EUR) in respect of pecuniary damage and EUR 60,000 in respect of non-pecuniary damage. He submitted that the sum claimed by him in respect of pecuniary damage was based on his claim for compensation at the national level, that is TRL 100,000 (see paragraph 55 above) and the interest payable thereon up to 25 November 2009, that is the date of submission to the Court of his claims for just satisfaction. He argued that, were the outcome of the administrative proceedings pending in Turkey to be the rejection of his

claim, he would have to pay back the compensation already paid to him by the two Ministries (see paragraph 57 above).

112. The Court observes that Mr Saçılık brought an administrative action and claimed compensation from the two Ministries in respect of the pecuniary and non-pecuniary damage sustained. In its decision of 31 March 2005 the Antalya Administrative Court awarded him the full amounts claimed. Those amounts and the statutory interest on them, which amounted to a total of approximately EUR 140,000, have already been paid to Mr Saçılık before the completion of the administrative proceedings. However, if the proceedings were to culminate in a decision in favour of the two Ministries, Mr Saçılık would be required to repay the sum. The Court thus considers that the question of the application of Article 41 of the Convention, in so far as it concerns the claims made by Mr Saçılık for pecuniary and non-pecuniary damage, is premature and not ready for decision. Therefore, the Court reserves the said question.

113. The applicant Mr Şahin Geçit claimed the sum of EUR 20,000 in respect of pecuniary damage as a result of his loss of hearing. He claimed that the hearing loss was affecting his working life.

114. The Court observes that Mr Geçit has failed to substantiate his claim for pecuniary damage with adequate documentation showing the extent to which his hearing loss problem was preventing him from pursuing his professional activities. It thus rejects his claim.

115. The remaining 23 applicants argued that even though they had all suffered financial damage, they were unable to substantiate it with documentary evidence. They thus did not make a claim in respect of pecuniary damage.

116. In respect of non-pecuniary damage the 24 applicants – that is all the applicants with the exception of Mr Veli Saçılık, whose claims were set out separately above – claimed the following sums:

– Hüseyin Tiraki: EUR 20,000
– Halil Tiryaki: EUR 20,000
– Yunis Aydemir: EUR 20,000
– Yusuf Demir: EUR 20,000
– İbrahim Bozay: EUR 20,000
– Hakan Baran: EUR 20,000
– Kazım Ceylan: EUR 25,000
– Hüseyin Bulut: EUR 20,000
– Cemil Aksu: EUR 20,000
– Necla Çomak: EUR 20,000
– Şahin Geçit: EUR 30,000
– Hayrullah Kar: EUR 20,000
– Mehmet Leylek: EUR 25,000
– Birsen Dermanlı: EUR 25,000
– Veysel Yağan: EUR 20,000

– Fikret Lüle: EUR 25,000
– Ali Rıza Dermanlı: EUR 20,000
– Cavit Temürtürkan: EUR 20,000
– Azime Arzu Torun: EUR 30,000
– Gönül Aslan: EUR 20,000
– Barış Gönülşen: EUR 20,000
– Hüsne Davran: EUR 20,000
– Mürüvet Küçük: EUR 25,000
– Emre Güneş: EUR 20,000

117. The Government did not deal with the above-mentioned claims separately, but submitted that the "different amounts" claimed by the applicants were excessive, highly fictitious and unsupported by documentary evidence. In the opinion of the Government, an award for just satisfaction should not lead to unjust enrichment.

118. Having regard to the consequences of the ill-treatment detailed above (see paragraph 27 above) and to the applicants' suffering on account on the deep feelings of anxiety at the time of the events when faced with violence from which they could not have known whether, and to what extent, they would escape, the Court considers that they sustained personal injury for which the finding of a violation in this judgment does not afford sufficient satisfaction. Thus, making its assessment on an equitable basis as required by Article 41, the Court awards each of the 24 applicants (paragraph 116 above) EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

119. Ali Rıza Dermanlı, Birsen Dermanlı and Gönül Aslan claimed TRL 10,320 (approximately EUR 4,600) for the costs and expenses incurred before the Court. Approximately EUR 4,500 of this sum was claimed in respect of the fees of their legal representatives. In support of this claim the applicants submitted official bills from their legal representatives, showing that these amounts have already been paid. In respect of the remaining EUR 100 the applicants submitted a breakdown showing that that sum was spent for various expenses such as stationery, postage and translation.

120. Each of the applicants Barış Gönülşen, Hüsne Davran and Mürüvet Küçük claimed the sum of EUR 2,000 for the fees of their legal representatives to represent them before the domestic courts and subsequently before the Court. In support of their claims the applicants stated that they would subsequently submit to the Court a fee agreement but they have failed to do so. However as further support for their claims these applicants submitted to the Court a breakdown of the hours spent by their legal representatives on the case before the Court. These three applicants also claimed the total sum of TRL 280 (approximately EUR 125) in respect

of various expenses such as stationery, postage and translation, for which they submitted a bill from their legal representatives.

121. The applicant Veli Saçılık claimed the sum of EUR 7,000 for the fees of his legal representatives to represent him before the domestic courts and subsequently before the Court. In support of his claims the applicant submitted to the Court a fee agreement and a breakdown of the hours spent by his legal representatives on the case. He also claimed the sum of TRL 1,000 (approximately EUR 450) in respect of various expenses such as stationery, postage and translation, for which he submitted a bill from his legal representatives.

122. Each of the remaining 18 applicants, namely Hüseyin Tiraki, Halil Tiryaki, Yunis Aydemir, Yusuf Demir, İbrahim Bozay, Hakan Baran, Kazım Ceylan, Hüseyin Bulut, Cemil Aksu, Necla Çomak, Şahin Geçit, Hayrullah Kar, Mehmet Leylek, Veysel Yağan, Fikret Lüle, Cavit Temürtürkan, Azime Arzu Torun and Emre Güneş claimed the sum of EUR 2,000 in respect of the fees of their legal representatives to represent them before the domestic courts and subsequently before the Court. In support of their claims 13 of these applicants submitted to the Court fee agreements with their legal representatives. The remaining applicants İbrahim Bozay, Hakan Baran, Kazım Ceylan, Mehmet Leylek and Cavit Temürtürkan did not submit any fee agreements. As further support for their claims the applicants submitted to the Court a breakdown of the hours spent by their legal representatives on the case.

123. The 18 applicants also claimed the sum of TRL 1,100 (approximately EUR 500) in respect of various expenses such as stationery, postage and translation, for which they submitted a bill from their legal representatives.

124. The Government were of the opinion that the documents submitted to the Court by the applicants in support of their claims were "irrelevant". They invited the Court to take into account the recommended fees proposed by the Turkish Bar Association which had a binding effect on the domestic courts.

125. 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 following sums to the applicants, covering costs under all heads:

(a) EUR 3,500 jointly to Ali Rıza Dermanlı, Birsen Dermanlı and Gönül Aslan;
(b) EUR 3,500 jointly to Barış Gönülşen, Hüsne Davran and Mürüvet Küçük;
(c) EUR 2,000 to the applicant Veli Saçılık;

(d) EUR 12,000 jointly to the remaining 18 applicants, Hüseyin Tiraki, Halil Tiryaki, Yunis Aydemir, Yusuf Demir, İbrahim Bozay, Hakan Baran, Kazım Ceylan, Hüseyin Bulut, Cemil Aksu, Necla Çomak, Şahin Geçit, Hayrullah Kar, Mehmet Leylek, Veysel Yağan, Fikret Lüle, Cavit Temürtürkan, Azime Arzu Torun and Emre Güneş. From this sum should be deducted the EUR 850 granted to the applicant Emre Güneş by way of legal aid under the Council of Europe's legal aid scheme (see paragraph 3 above).

C. Default interest

126. 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* unanimously the remainder of the applications admissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention, under both the substantial and the procedural limbs, regarding the 25 applicants;

3. *Holds* by five votes to two that the respondent State is to pay each of the 24 applicants (see paragraph 116 above) – that is all the applicants with the exception of Mr Veli Saçılık (see paragraph 112 above), within three months from 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 non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;

4. *Holds* unanimously
(a) that the question of the application of Article 41 of the Convention should be reserved in so far as it concerns the claims made by Mr Veli Saçılık for pecuniary and non-pecuniary damage. It thus reserves the procedure in this respect and delegates to the President of the Chamber the power to fix the same;
(b) that the respondent State is to pay the applicants, within the said three-month period the following sums in respect of costs and expenses, to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants:

– EUR 3,500 (three thousand five hundred euros) jointly to Ali Rıza Dermanlı, Birsen Dermanlı and Gönül Aslan;
– EUR 3,500 (three thousand five hundred euros) jointly to Barış Gönülşen, Hüsne Davran and Mürüvet Küçük;
– EUR 2,000 (two thousand euros) to the applicant Veli Saçılık; and
– EUR 12,000 (twelve thousand euros), less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid to Emre Güneş, jointly to the remaining 18 applicants, Hüseyin Tiraki, Halil Tiryaki, Yunis Aydemir, Yusuf Demir, İbrahim Bozay, Hakan Baran, Kazım Ceylan, Hüseyin Bulut, Cemil Aksu, Necla Çomak, Şahin Geçit, Hayrullah Kar, Mehmet Leylek, Veysel Yağan, Fikret Lüle, Cavit Temürtürkan, Azime Arzu Torun and Emre Güneş;

(c) 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;

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

Done in English, and notified in writing on 5 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint concurring opinion of Judges Sajó and Popović is annexed to this judgment.

F.T.
F.E.P.

ANNEX

List of applicants in application no. 43044/05

	Name	Date of birth	Place of residence
1	Mr Veli Saçılık	1977	Ankara
2	Mr Hüseyin Tiraki	1977	Adana
3	Mr Halil Tiryaki	1959	Vevey, Switzerland
4	Mr Yunis Aydemir	1971	Ankara
5	Mr Yusuf Demir	1957	Istanbul
6	Mr İbrahim Bozay	1956	Malatya
7	Mr Hakan Baran	1971	Ankara
8	Mr Kazım Ceylan	1969	Delémont, Switzerland
9	Mr Hüseyin Bulut	1952	Istanbul
10	Mr Cemil Aksu	1977	Artvin
11	Ms Necla Çomak	1975	Ankara
12	Mr Şahin Geçit	1968	İzmir
13	Mr Hayrullah Kar	1955	Antalya
14	Mr Mehmet Leylek	1959	Malatya
15	Ms Birsen Dermanlı	1971	Austria
16	Mr Veysel Yağan	1967	Germany
17	Mr Fikret Lüle	1972	Ankara
18	Mr Ali Rıza Dermanlı	1969	Greece
19	Mr Cavit Temürtürkan	1974	Basel, Switzerland
20	Ms Azime Arzu Torun	1975	Istanbul

	Name	Date of birth	Place of residence
21	Ms Gönül Aslan	1976	Ankara
22	Mr Barış Gönülşen	1974	İzmir
23	Ms Hüsne Davran	1960	Adana
24	Ms Mürüvet Küçük	1970	Tunceli

JOINT CONCURRING OPINION OF JUDGES POPOVIĆ AND SAJÓ

We agree with the majority's findings, as well as with the operative provisions in this case, except on one point: the amounts of money awarded to the applicants in just satisfaction.

The amount awarded to each applicant in just satisfaction in part 3 of the Operative Part of the judgment is EUR 20.000. The sums thus awarded take into account neither the gravity of the injuries suffered by each applicant nor the respective periods for which they were unable to work. It is true that the sums awarded are intended to repair the violations of their human rights, in the sense that they are meant to cover non-pecuniary damage. However, we find it indispensable to consider the amount of suffering inflicted on the applicants when awarding just satisfaction, especially in a situation such as the present one, where the only information available relating to the inhuman and degrading treatment (including, for example, the anxiety and helplessness the prisoners must have felt) concerns the gravity of the injuries. Those who suffered less should be awarded a smaller sum than those who suffered more.

We are aware that the Court's practice when applying Article 41 of the Convention has so far been averse to such distinctions, but at the same time we find it appropriate to draw the attention of our colleagues to this particular matter, which we feel calls for future reflection.