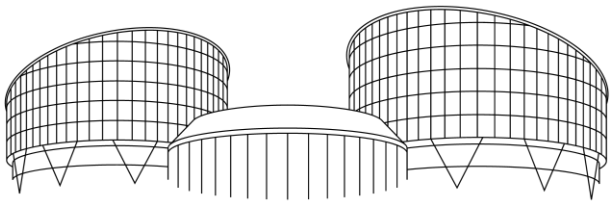

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF İBRAHİM ERGÜN v. TURKEY

(Application no. 238/06)

JUDGMENT

STRASBOURG

24 July 2012

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

In the case of İbrahim Ergün v. Turkey**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 238/06) 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, Mr İbrahim Ergün ("the applicant"), on 30 September 2005. The applicant was represented by Mr F. N. Ertekin, Mr K. Öztürk, Mr T. Ayçık and Ms F. Kılıçgün, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

2. On 11 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

3. The applicant, born in 1967, is a lawyer and lives in Istanbul.

A. The applicant's arrest during a press conference and alleged ill-treatment by the police

4. At approximately 12 noon on 16 September 2000, while attempting to participate in a demonstration in the form of "a press conference" held in Taksim, Istanbul, by members of the Contemporary Lawyers' Association, the applicant was arrested, with some fifty others. The applicant alleged that the large number of police officers on duty at the site of the demonstration, who were wearing special uniforms, had used disproportionate force to disperse the crowd and arrest the potential demonstrators. He claimed in particular that the police had kicked and punched him, beaten him with a stick, and sprayed tear gas in his face inside the police bus following his arrest. The Government, on the other hand, argued that the demonstrators had resisted the police and had refused to disperse despite numerous warnings.

5. The applicant was subsequently taken to the police station, along with the others who had been arrested, apparently for an identity check.

6. At 3.30 p.m. on the same day the applicant was taken to the Beyoğlu branch of the Forensic Medicine Institute for a medical examination. The doctor who examined the applicant reported bruising on his inner left knee, left ankle and inner left arm. He also noted that the injuries would render the applicant unfit for work for three days.

7. The applicant was released from police custody after the medical examination at the Forensic Medicine Institute.

8. On 18 September 2000 the applicant sought a medical examination at the Istanbul branch of the Human Rights Foundation of Turkey, in order to have the bruises which had developed on his body after his arrest recorded by an independent medical expert. The two doctors who examined the applicant noted the following on his body: a 4 x 6 cm yellow-green bruise on the left part of the chest, a 2 x 1 cm yellow-green bruise on the left buttock, a spotted haemorrhage measuring 1.5 x 10 cm behind the left knee, a bleeding yellow-green bruise accompanied by a spotted haemorrhage measuring 3 x 3 cm on the left calf, a 4 x 0.5 cm graze on the left ankle, a 0.3 x 0.6 cm graze behind the left ankle, a scabbed wound 0.5 cm in diameter, with an area of hyperaemia 0.5 cm in width around the wound, on the right ankle. The applicant stated to the doctors that he had been kicked and punched and beaten with sticks by the police and had had tear gas sprayed in his face. He further stated that he had been coughing and had a burning sensation in his throat on account of the tear gas. The doctors reported that the injuries on the applicant's body and his complaints regarding his throat matched his account of events, but they did not note any physical findings indicating if and how the applicant had been affected by the tear gas.

B. Criminal proceedings against the police officers

9. On 18 September 2000 twenty-seven members of the Contemporary Lawyers' Association, including the applicant, lodged a criminal complaint with the Beyoğlu public prosecutor against the Istanbul governor, the deputy chief of police of Istanbul and the police officers on duty at the time of their demonstration. They alleged that they had all been ill-treated by the police during their arrest, on the orders of the governor and the deputy chief of police.

10. It appears that on the same date the Beyoğlu public prosecutor took statements from only four of the complainants. The applicant was not summoned for a statement.

11. On 26 September 2000 the Beyoğlu public prosecutor requested the Ministry of the Interior to decide whether it would grant authorisation for prosecution of the governor and the deputy chief of police. There is no further information in the case file in relation to this request.

12. On an unspecified date the public prosecutor further requested the Istanbul governor to decide whether authorisation would be granted to prosecute the six police officers who had been identified from various photographs and video footage as having carried out the complainants' arrests. Only five of the lawyers who had lodged the criminal complaint on 18 September 2000 were indicated as complainants, not including the applicant.

13. On 21 December 2000 the Istanbul governor decided not to grant authorisation for the prosecution of the six police officers, due to lack of sufficient evidence in support of the allegations of ill-treatment. The governor indicated in his decision that despite warnings by the police the demonstrators, who had gathered illegally without obtaining permission, had refused to disperse, and the police had therefore been obliged to use some degree of force to disperse them and restore public order.

14. On an unspecified date two of the complainants objected to the decision of 21 December 2000.

15. On 17 April 2001 the Istanbul Regional Administrative Court upheld the objection, holding that the evidence in the case file was sufficiently strong to require an investigation. It therefore decided to grant authorisation for the prosecution of the relevant police officers.

16. On 11 May 2001 the Beyoğlu public prosecutor filed a bill of indictment with the Beyoğlu Criminal Court against the six police officers in question, charging them with ill-treatment under Article 245 of the former Criminal Code. Only five of the twenty-seven lawyers who had filed the complaint of 18 September 2000 were indicated as complainants in the bill of indictment, and they did not include the applicant.

17. On 14 January 2003 the applicant lodged a petition with the Beyoğlu public prosecutor's office requesting information as to the outcome of the investigation of his complaints.

18. The public prosecutor informed the applicant on the same date that criminal proceedings had been brought against four female and two male police officers (case no. 2001/1035 E.) following complaints by five lawyers from the Contemporary Lawyers' Association. The public prosecutor did not give any information as to why no action had been taken on his complaints.

19. On 4 February 2003 the applicant made an application to the Beyoğlu Criminal Court, requesting leave to join the criminal proceedings which were pending against the six police officers as a civil party, in the absence of any separate proceedings in connection with his complaints.

20. Also on 4 February 2003 the Beyoğlu Criminal Court dismissed the applicant's request to join the proceedings, as his name was not included in the bill of indictment as a victim.

21. On 6 March 2003 the Beyoğlu public prosecutor took a statement from the applicant for the first time, in relation to the complaints he had made on 18 September 2000. In his statement, the applicant complained that the relevant authorities had failed to take any action on his complaints for two and a half years, and requested the identification and punishment of the officers responsible for this delay.

22. On 10 March 2003 the Beyoğlu public prosecutor filed a further bill of indictment with the Beyoğlu Criminal Court against the same six police officers previously indicted under case no. 2001/1035 E., this time charging them with inflicting ill-treatment on the applicant. The public prosecutor relied on the findings in the medical reports of 16 and 18 September 2000 as evidence of ill-treatment.

23. On an unspecified date the applicant's case was joined to case no. 2001/1035 E.

24. At a hearing held on 1 July 2003 the applicant stated that he had not been given an opportunity by the public prosecutor to identify the police officers who had ill-treated him. He stated that none of the four female officers charged in respect of his complaints had used any force against him. He was not 100% sure about the remaining two male officers, no confrontation procedure having taken place with the latter or with any witnesses.

25. At the next hearing, held on 23 October 2003, only one of the defendant male officers was present, namely G.F.K. The applicant stated that G.F.K. resembled one of the police officers who had kicked him during the demonstration, but he could not be 100% certain after so much time had passed.

26. On 28 September 2004 the Beyoğlu Criminal Court acquitted the police officers of the charges of ill-treatment of the applicant, as the

applicant could not identify them as the perpetrators. The court held in relation to one of the male defendants, A.C., that he had been on leave on the date of the demonstration.

27. On 17 November 2004 the applicant appealed to the Court of Cassation. He stated that he had informed the first-instance court from the very beginning that the four female defendants had not used any force against him. Moreover, at the hearing held on 23 October 2003, he had been able to identify one of the male defendants, G.F.K., albeit with some doubts, which should nevertheless have been sufficient to convict G.F.K. when combined with other evidence. As regards the defendant A.C., he protested about how it could happen that a police officer initially identified by the authorities as having been on duty could later be found to have been on leave on the relevant day. Lastly, he complained that the public prosecutor had made no efforts to duly identify the officers who had ill-treated him, or to collect the relevant evidence in a timely manner, in order to bring about their punishment. The additional indictment prepared in his respect three years after the incident was, therefore, no more than a mere formality.

28. On 6 November 2006 the Court of Cassation upheld the judgment of 28 September 2004 in so far as it concerned the applicant, without responding to any of his objections.

C. Criminal charges against the applicant

29. In the meantime, on 17 November 2000, the Beyoğlu public prosecutor had brought charges against demonstrators who had been arrested on 16 September 2000, including the applicant, for violation of the Meetings and Demonstration Marches Act (Law no. 2911).

30. In a judgment dated 28 March 2001, the Beyoğlu Criminal Court acquitted the applicant and his co-accused of the above-mentioned charges, finding that the demonstrators had exercised their democratic rights without committing any offences. The first-instance court also noted that the police had learned in advance that the press conference was being planned and had therefore taken the necessary security measures.

D. Compensation claims by the applicant for unlawful detention

31. On 4 June 2001 the applicant brought a case before the Eyüp Assize Court seeking compensation under Law no. 466 on the payment of compensation to persons unlawfully arrested or detained, ("the Unlawful Detention (Compensation) Act") in relation to his arrest and detention for approximately five hours on 16 September 2000.

32. On 21 October 2002 the Eyüp Assize Court rejected the applicant's request. It held that the applicant had been taken to the police station merely to determine his identity, without being taken into detention, and that he had

been released as soon as he had had a medical examination. He was therefore not entitled to seek compensation under Law no. 466.

33. On 25 February 2005 the Court of Cassation upheld the judgment of the Eyüp Assize Court. The Court of Cassation's decision was served on the applicant on 11 April 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained under Article 3 of the Convention that the force used by the police against him during and immediately after his arrest had constituted ill-treatment. He further complained under Article 13 of the Convention that the authorities had failed to conduct an effective investigation of his complaints of ill-treatment.

35. The Court considers that these complaints should be examined from the standpoint of Article 3 alone.

A. Admissibility

36. The Court notes that this part of 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.

B. Merits

1. The responsibility of the respondent State in the light of the substantive aspect of Article 3 of the Convention

a. The parties' submissions

37. The Government argued that the applicant had not been ill-treated by police officers at the time of his arrest or afterwards. They submitted that according to the findings in the medical report of 18 September 2000 the bruises noted on the applicant's body were all yellow and green in colour, which indicated that they had occurred five to twelve days before the medical examination and thus preceded the demonstration.

38. The applicant claimed that the Government's allegations on the age of his bruises lacked any scientific basis. The two independent medical

experts who had examined him on 18 September 2000 had opined that the bruises noted on his body corresponded to the treatment he had claimed to have received on 16 September 2000. The silence of the earlier report of the Forensic Medicine Institute on issues such as the colour, timing or possible causes of the bruises could not be used to his detriment, as the quality of the Forensic Medicine Institute's reports was the responsibility of the State.

b. The Court's assessment

i. General principles

39. 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. 26772/95, § 119, ECHR 2000-IV).

40. The Court also 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*, cited above, § 121).

41. The Court considers in particular that medical reports obtained from public or privately owned or run medical establishments may be admitted in evidence by the Court in its examination of allegations of ill-treatment (see, *inter alia*, *Türkan v. Turkey*, no. 33086/04, § 44, 18 September 2008), unless they fall significantly short of the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (see, *inter alia*, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X), and the guidelines set out in the Istanbul Protocol (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §100, ECHR 2004-IV (extracts)).

42. In the presence of such evidence, the burden therefore rests on the Government to demonstrate by convincing arguments that the use of force during arrest was rendered strictly necessary by the applicant's own behaviour and that the force used by members of the security forces was not excessive (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007; *Biçici v. Turkey*, no. 30357/05, § 34, 27 May 2010; and *Gazioğlu and Others v. Turkey*, no. 29835/05, § 43, 17 May 2011). Furthermore, a mere presumption that the applicant could have been injured before his arrest, uncorroborated by any other evidence, cannot be considered a satisfactory and convincing explanation on the part of the Government (see *Mammadov v. Azerbaijan*, no. 34445/04, § 64, 11 January 2007).

ii. Application of these principles in the present case

– *Use of tear gas*

43. The Court observes that none of the medical reports in the case file noted any ill effects of the gas on the applicant, such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, thoracic pain, dermatitis or allergies. In short, there is no evidence whatsoever to substantiate his allegations that he had suffered because of the use of tear gas.

– *Other ill-treatment*

44. The Court notes that both medical reports obtained on 16 and 18 September 2000 indicate unambiguously that the applicant had received injuries to certain parts of his body, which, taken together, were sufficiently severe to exceed the minimum level of severity under Article 3 of the Convention. However, the Court further notes that the causes of the applicant's injuries are disputed between the parties, the applicant arguing that they occurred at the time of his arrest at the demonstration and the Government claiming that they pre-dated the demonstration. It therefore falls to the Court to determine whether the State bore responsibility for the injuries sustained by the applicant and whether the applicant's allegations of ill-treatment may thus be upheld in these circumstances.

45. The Court notes that, following his arrest on 16 September 2000, the applicant was taken for a medical examination at the Beyoğlu branch of the Forensic Medicine Institute, which revealed bruising on his inner left knee, left ankle and inner left arm. The Court observes that the medical report in question lacks details such as the extent and dimensions of the injuries and the applicants' own account of how the injuries had been caused. Nevertheless, despite its brevity, the report does establish that the applicant was subjected to some use of force, which rendered him unfit for work for three days. The Court, therefore, considers that the medical report in question can be relied on as evidence of ill-treatment.

46. The Court further notes that on 18 September 2000, that is two days after the incidents concerned, the applicant underwent another medical examination at the Istanbul branch of the Human Rights Foundation of Turkey, a private organisation, in order to have the injuries that developed on his body in the meantime fully recorded. The two medical experts who examined the applicant noted a number of yellow-green bruises, including some with spotted haemorrhage, and various grazes on his chest, left buttock, left knee, left calf and ankles, which they found to be consistent with the applicant's account of events.

47. The Court notes that both medical reports were used by the public prosecutor as evidence of the applicant's ill-treatment in the bill of

indictment dated 10 March 2003. Neither at the initial investigation stage nor during the subsequent proceedings before the Beyoğlu Criminal Court was there a dispute as to the causes or timing of the applicant's injuries, suggesting that the marks noted on his body could have dated from a period prior to his arrest or could have originated in a self-inflicted act by the applicant. Nor have the domestic authorities sought to challenge the accuracy and authenticity of the reports which the Government now dispute before the Court.

48. The Court also notes that the Government have failed to provide an explanation as to why, if the applicant's bruises identified in the second medical check were really five to twelve days old at the time, as they alleged, they were not all mentioned in the Forensic Medicine Institute's initial report, and why the second report referred to more injuries. In the absence of any explanations from the Government, the Court considers that the Forensic Medicine Institute's failure to identify some of the bruises later observed on the applicant's body may be due to the proximity in time of the alleged ill-treatment and the initial medical check, at which time not all bruises had developed and become visible. As an alternative, such an omission may be a result of the superficiality of the examination conducted by the Forensic Medicine Institute, for which the applicant may not be reproached.

49. In the light of the foregoing considerations, the Court concludes that the Government have failed to establish with any medical evidence that the applicant's injuries occurred prior to the time of his arrest on 16 September 2000. The Court has to determine next whether the circumstances of the case could justify recourse to such physical force by police officers.

50. The Court notes from the Beyoğlu Criminal Court's judgment of 28 March 2001 that the police had been informed about the demonstration and had had sufficient time to take the necessary measures at the scene of the demonstration (see paragraph 30 above). In other words, they were not called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). They should 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, as noted by the Beyoğlu Criminal Court in its judgment. The Government, similarly, did not claim that the applicant, or the demonstrators in general, had attacked the police officers, nor did they submit incident reports or other evidence that could suggest such disorderly behaviour. It thus appears that the police acted hastily and used disproportionate force, which resulted in injuries to some of the demonstrators, including the applicant.

51. In the light of the above findings, the Court considers that the Government have failed to furnish any information or documents which would provide a basis to explain or justify the degree of force used against

the applicant. As a result, it concludes that the injuries sustained by the applicant were the result of unjustified treatment for which the State bears responsibility.

52. It follows that there has been a violation of Article 3 under its substantive limb on account of the inhuman and degrading treatment to which the applicant was subjected at the time of his arrest by the police, who used disproportionate force against him.

2. The responsibility of the respondent State in the light of the procedural aspect of Article 3 of the Convention

a. The parties' submissions

53. The Government contended that the applicant's allegations had been subjected to effective examination, because an investigation of his complaints had been initiated, and criminal proceedings had been instituted against the implicated police officers. The criminal proceedings, however, had ended with the acquittal of the relevant police officers for lack of evidence that they had ill-treated the applicant.

54. The applicant maintained that the investigation of his complaints had been ineffective. He claimed in particular that the public prosecutor had taken no action on his complaints for two and a half years, and when he finally had, the investigation that followed was perfunctory and superficial, and did not constitute a serious attempt to find out what had happened to him on the day of the demonstration.

b. The Court's assessment

i. General principles

55. The Court reiterates that Article 3 of the Convention 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).

ii. Application of these principles in the present case

56. The Court observes that in the instant case the applicant lodged an official complaint of ill-treatment with the Beyoğlu public prosecutor on 18 September 2000, together with a number of other demonstrators. It was, however, not until 6 March 2003 that the public prosecutor summoned the applicant for a statement. Although the public prosecutor had taken some investigative steps in relation to the complaints of some other demonstrators relatively rapidly, the Court observes his complete inaction *vis-à-vis* the applicant's complaints for almost two and a half years. In the absence of any explanations from the Government to justify this long delay, the Court concludes that the investigation lacked promptness.

57. As to the quality of the investigation, the Court notes a number of serious shortcomings in the way the investigation and the ensuing criminal proceedings were conducted. The Court notes at the outset that the applicant was at no point given the opportunity to identify the police officers who he said had used disproportionate force against him, either by checking photographs or through an identification parade. There were, similarly, no other attempts on the part of the public prosecutor, such as examining photographs or video footage from the demonstration, to elucidate the identities of the relevant police officers or to collect any other evidence in connection with the applicant's complaints. The Court notes that the public prosecutor instead incorporated the applicant's complaints in the ongoing proceedings against the six police officers (case no. 2001/1035 E.), who had been charged with offences against other demonstrators, without consulting the applicant as to their identities or carrying out any further research into his complaints.

58. The Court further observes that the applicant had informed the Beyoğlu Criminal Court, as early as at the first hearing he attended on 1 July 2003, that he had never been asked by the public prosecutor to identify the perpetrators, but that he was nevertheless certain that none of the four female officers brought to trial in relation to his complaints had used any force against him. He had also stated that he did not know if the remaining two police officers, who were not present at the hearing on that day, had been involved in his ill-treatment, as he had not been confronted with them, or with any other police officers for that matter. Despite these clear statements by the applicant, which demonstrated the utter inadequacy of the investigation, the Court notes that the Beyoğlu Criminal Court did not request the public prosecutor to conduct an additional investigation of the applicant's complaints, with the aim of identifying and punishing the real perpetrators of the crimes committed against the applicant. Instead, the first-instance court acquitted the six police officers in respect of the applicant's complaints, on the ground that the applicant had failed to identify them as perpetrators, without acknowledging that the charges had been brought against the wrong officers to start with. The mistaken indictment of A.C.,

who had apparently been on leave on the day of the demonstration, similarly demonstrates the haphazard way in which the investigation was conducted from the beginning.

59. In the light of the foregoing, the Court finds that the investigation of the applicant's complaints of ill-treatment was inadequate and therefore in breach of the State's procedural obligations under Article 3 of the Convention. It follows that there has been a violation of Article 3 under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. The applicant complained under Article 5 §§ 1 and 5 and Articles 13 and 14 of the Convention that his arrest and detention had not been lawful, that he had not had any effective legal remedy whereby he could object to his detention and obtain compensation for it.

61. The Court considers at the outset that the complaint concerning the lack of an effective means of obtaining compensation for unlawful detention should be examined under Article 5 § 5 alone, which constitutes *lex specialis* in relation to the more general requirements of Article 13 (see *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 70, 26 July 2007).

62. As regards the complaint under Article 5 § 1 of the Convention, the Court notes that the applicant was released from detention on 16 September 2000. The application was not lodged however until 30 September 2005, more than six months later. The Court reiterates on this point that a compensation claim under Law no. 466 could not constitute a remedy to be used because of the court's lack of jurisdiction to order release if detention is unlawful or to award reparation for a breach of the Convention if the detention complies with domestic law (see, for example, *Öcalan v. Turkey* [GC], no. 46221/99, § 71, ECHR 2005-IV).

63. It follows that the complaint under Article 5 § 1 of the Convention was lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

64. In the light of the above finding under Article 5 § 1 of the Convention, the Court is of the opinion that no issues arise under Articles 5 § 5 and 14 of the Convention. It follows that the remaining complaints under Articles 5 § 5 and 14 must also be rejected under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

65. The applicant claimed 870 euros (EUR) in respect of pecuniary damage, for loss of income due to his injuries and medical expenses. He also claimed EUR 50,000 in respect of non-pecuniary damage.

66. The Government contested these claims as unsubstantiated and excessive.

67. The Court observes that the applicant did not submit any relevant documents to prove the existence and the amount or value of the alleged damage. It therefore rejects this claim. However, the Court considers it appropriate in equity to award the applicant EUR 19,500 in respect of non-pecuniary damage.

68. The applicant also claimed EUR 7,327 for costs and expenses incurred before the Court, including legal fees, translation and postal and stationery expenses, and EUR 200 for those incurred during the domestic proceedings. The applicant submitted a receipt of 3,540 Turkish liras (TRY) (approximately EUR 1,590) for the legal fees incurred before the Court, an invoice of TRY 1,534 (approximately EUR 690) in relation to his translation expenses and a number of postal receipts. He also submitted the Istanbul Bar Association's recommended fee list in respect of his claims for legal fees.

69. The Government contested these claims.

70. 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 are 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 sum of EUR 2,500 to cover costs under all heads (see *Société Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III).

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged ill-treatment of the applicant during his arrest and the failure of the authorities to conduct an effective investigation into this claim admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected during his arrest;

3. *Holds* that there has been a procedural violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation of the applicant's allegations of ill-treatment during his arrest;

4. *Holds*
   (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, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President