SECOND SECTION CASE AVCIOĞLU v. TÜRKİYE (Application no. 59564/16) JUDGMENT Art 3 (procedural) • Failure of the national authorities to carry out an adequate and effective investigation into the applicant's allegations of having been the victim of ill-treatment during his police custody STRASBOURG October 17, 2023 This judgment will become final under the conditions defined in Article 44 § 2 of the Convention.

It may undergo formal alterations. AVCIOĞLU v. TÜRKİYE JUDGMENT 1 In the case of Avcıoğlu v. Türkiye, The European Court of Human Rights (second section), sitting in a Chamber composed of: Arnfinn Bårdsen, President, Jovan Ilievski, Pauliine Koskelo, Saadet Yüksel, Lorraine Schembri Orland, Frédéric Krenc, Davor Derenčinović, judges, and Hasan Bakırcı, section clerk, Having regard to the application (no. 59564/16) directed against the Republic of Türkiye and of which a national of this State, Mr.

Mustafa Avcıoğlu ("the applicant"), applied to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 September 2016, Having regard to the decision of bring to the attention of the Turkish Government ("the Government") the complaint based on the applicant's status as a victim, within the meaning of Article 34 of the Convention, as well as the complaint based on the alleged inadequacy of the investigation carried out by the domestic authorities in relation to the ill-treatment he says he suffered while in police custody on 30 and 31 May 2003 in the premises of the Yayladere gendarmerie, within the meaning of Article 3 of the Convention, Having regard to the decision to declare inadmissible for non-exhaustion of domestic remedies the applicant's complaint that the public prosecutor had not opened an investigation, following the decision rendered on March 31, 2016 by the Constitutional Court, Having regard to the observations of the parties, Having deliberated in private on September 26, 2023, Issues the following judgment, adopted on that date: INTRODUCTION 1.

The application concerns allegations according to which the investigation carried out in this case by the competent domestic authorities concerning the allegations of ill-treatment – suffered by the applicant during his police custody on May 30 and 31, 2003 in the premises of the gendarmerie of Yayladere – did not meet the requirements of Article 3 of the Convention.

IN FACTS 2. The applicant was born in 1972 and lives in London. He was represented by Mr C.Esdaile. AVCIOĞLU JUDGMENT v. TÜRKİYE 2 3. The Government was represented by its agent, Mr Hacı Ali Açıkgül, head of the human rights department of the Ministry of Justice.I.ARREST OF THE APPLICANT 4.On May 30, 2003, suspected of aiding and belonging to an armed terrorist organization, the applicant was placed in police custody.

5. On May 31, 2003, he was placed in pre-trial detention. 6. On an unspecified date, the Yayladere public prosecutor opened proceedings before the Diyarbakır State Security Court, on the basis of article 169 of the old penal code, a criminal action against the applicant for aiding and belonging to an illegal terrorist organization.

7.On 22 July 2003, the Diyarbakır State Security Court ordered the applicant's release. 8.On 30 September 2003, the Diyarbakır State Security Court acquitted the applicant of the charges against him. It noted that members of the PKK terrorist organization had seized food from his home of the applicant by threatening him with a weapon and that the person concerned had brought the event to the attention of the police.

It concluded that the applicant had not helped the terrorist organization of his own free will and that there was no evidence confirming that he had helped the organization in question.9.It appears from the statements of the applicant that he obtained asylum in the United Kingdom on February 10, 2004, then British citizenship on March 10, 2004.

II. THE APPLICANT'S COMPLAINT FOR ILL-TREATMENT 10. On March 9, 2012, the applicant filed a criminal complaint against Ad.At., CO and AA, gendarmes on the date of the facts, for acts of torture that he alleged to have suffered during his in police custody on May 30 and 31, 2003 in Yayladere. He claimed that he had been threatened with death with a weapon.

He was allegedly beaten violently. He suffered falaka (blows on the soles of his feet) and received electric shocks. 11. It appears from the observations of the parties and the establishment of the facts by the Constitutional Court that the applicant was not not examined by a doctor during his placement and at the end of his police custody.

12.On January 11, 2013, the Karakoçan public prosecutor issued a decision not to prosecute. In the grounds of the decision, the prosecutor indicated that: – CO had declared during his hearing on July 18, 2012 that the applicant's allegations were unrealistic and claimed that he had not inflicted ill-treatment on her, AVCIOĞLU JUDGMENT v.

TÜRKİYE 3 – Ahad contested during his hearing on July 27, 2012 the allegations of torture made by the applicant, – MS, who lived in the same village as the applicant and had been arrested with him, had not done so during his hearing on December 4, 2012 of statements capable of confirming the allegations of the person concerned.

13.The public prosecutor concluded that there was no evidence, apart from the allegations and abstract statements of the applicant, which could lead to the initiation of criminal action against the alleged perpetrators of the alleged acts.14.The 11th June 2013, the Malatya Assize Court confirmed the dismissal of the case.

III. INDIVIDUAL APPEAL BEFORE THE CONSTITUTIONAL COURT 15. On August 28, 2013, the applicant filed an individual appeal before the Constitutional Court (“CC”). He claimed that he had been the victim of acts of psychological and physical torture during his in police custody and claimed 150,000 Turkish liras (TRL), the equivalent of approximately 56,594 euros (EUR), for moral damage.

16. A panel of five judges of the CC examined the applicant's individual appeal and rendered its decision on March 31, 2016. The CC established the facts as follows. 17. It thus appears from the said decision that the applicant, after his release, went first to Istanbul, then to the United Kingdom where he obtained refugee status on February 10, 2004.

Six years later, on February 9, 2010, he was examined by the Medical Foundation for the care of victims of torture (“MFVT”). The medical report, drawn up on this occasion , noted in the applicant the slipping of a disc

lumbar intervertebral as well as approximately seven wounds located in the front of both legs and consistent with irregular trauma resulting from blows given by means of a blunt object.

The medical report noted pain and sensitivity in the soft tissues of both heels. All these findings were considered consistent with acts of torture as reported by the applicant. As for his psychological state, the report medical report reported post-traumatic stress disorder and emotional dysregulation.

18.Also according to the decision of the CC, the applicant filed on March 9, 2012 before the public prosecutor of Bingöl, through his lawyer, a complaint directed against the following gendarmerie officials: CO, who had signed the statement made by the applicant during police custody; Ad.At., the person in charge of the premises in which his police custody took place; the officials who had signed the report of his arrest; members of the gendarmerie and JITEM ("Jandarma İstihbarat Terörle Mücadele" – Intelligence service and AVCIOĞLU JUDGMENT v.

TÜRKİYE 4 of the gendarmerie's anti-terrorist fight) in office on the date of the events and present at the scene of the events; finally another official whose description he then gave. 19.The applicant explained in his complaint – as mentioned by the CC in the aforementioned decision – that from 2000 to 2003 he was a minibus driver and lived in the village of Zeynelli (Bingöl).

According to him, the soldiers then regularly carried out operations in this village. He declared in particular that on May 28, 2003 around 4 p.m., while he was sitting in front of the door of his house, around forty gendarmerie vehicles had surrounded the village. Three officials in uniform allegedly approached him, one of whom he declared he knew personally (it would have been Commander N.) and the other two by sight, and two officials in civilian clothes unknown to him and who were according to him JITEM agents.

One of them allegedly hit him violently on the lumbar vertebrae with the bottom of his boot. He fell to the ground in acute pain. He was then put into a vehicle; he would have been taken with MS, another resident of the village, to the Yayladere gendarmerie, where he would have been placed in a cell after having threatened to kill him with a weapon.

He was reportedly questioned by five officials, two of whom were in civilian clothes; he would have been violently beaten and would have suffered falaka and received electric shocks. Finally, he would have signed a pre-written statement of twelve pages. The applicant added that he had been heard by the public prosecutor then by the judge who ordered his placement in detention.

He declared that the officials whom he accused of acts of torture were present at the time, and he had not been able to explain to the prosecutor or the judge that he had suffered ill-treatment at their hands. Nor had he been able to inform his lawyers of this fact. following his transfer to Bingöl remand center.

According to him, the guards of the remand center were present in the room where he spoke with the said lawyers. He indicated that after his release he had gone to the United Kingdom where he had

requested asylum. According to the applicant, as part of this request, the legal organization Redress had it examined by the MFVT.

He explained that fear had prevented him from going to Türkiye until 2011. On that date he had returned there on the advice of Redress, after having started medical treatment at the MFVT. He finally asked that those responsible for the acts of torture that he alleged to have suffered were identified and punished.

20. According to the decision of the CC, on March 21, 2013, the public prosecutor of Bingöl declared himself incompetent ratione loci in favor of his counterpart of Karakoçan.21. The same document shows that at the request of the public prosecutor Republic of Karakoçan, the addresses of CO and AA (but not that of Ad.At.) were determined and these two officials were heard.

22.As for AA, it appears from the decision of the CC that he was heard on July 27, 2012 on letters rogatory by the prosecutor of the AVCIOĞLU JUDGMENT v. TÜRKİYE 5 Republic of Hopa. In his testimony, he declared that in 2003 he had, following a denunciation from a member of the terrorist organization previously arrested, arrested residents of the village before taking them to the gendarmerie for a hearing.

He did not know whether the applicant was among the people placed in police custody. He affirmed that these people had not suffered ill-treatment.23. As for CO, he was – again according to the decision of the CC – heard on July 18, 2012 on letter rogatory by the public prosecutor of Kartal (Istanbul).

In his statement, he stated that on the date of the facts in dispute the applicant was working as a minibus driver. He had been arrested on suspicion of supplying food supplies to the aforementioned terrorist organization. CO would have added that the applicant had not been tortured and had not suffered ill-treatment.

24.The same document indicates that on an unspecified date, MS was also interviewed by letter rogatory by the security directorate of Ümraniye (Istanbul). He declared that from 2000 to 2003, the applicant and himself lived in the village above.The gendarmes went to the village from time to time to ask them for help and information about the above-mentioned terrorist organization.

Following a denunciation, the applicant, himself and other residents of the village were placed in police custody by the gendarmes. They gave a statement. After being heard by the public prosecutor and the judge, they had were placed in detention at the remand center. MS – a resident of the same village as the applicant – stated that he had not been ill-treated or tortured.

He knew nothing about the applicant's allegations.25.It also appears from the CC's establishment of the facts that at the request of the Karakoçan public prosecutor, the command of the Yayladere gendarmerie indicated that it did not There was no police custody register for the period from May 28 to June 1, 2003.

26. It still appears from the CC's establishment of the facts that on January 11, 2013, the Karakoçan public prosecutor issued a decision not to prosecute. He reasoned by arguing that CO and AA had contested the applicant's allegations. and that MS had not made any statements capable of confirming the said allegations.

It concludes that the investigation did not provide any evidence capable of confirming the applicant's allegations; these remained abstract and did not justify initiating public action against the alleged perpetrators of alleged ill-treatment.27.On June 11, 2013, according to the same document, the Malatya Assize Court confirmed the decision of the public prosecutor of Karakoçan.

28. Turning to the examination of the facts thus established, the CC noted in its decision of March 31, 2016 that neither the file presented by the applicant in his individual appeal nor the file of the investigation carried out by the public prosecutor contained sufficient evidence to lead to AVCIOĞLU JUDGMENT v.

TÜRKİYE 6 to examine the applicant's allegations from the angle of the substantive aspect of Article 3 of the Convention. It concluded that it could only examine them from the angle of the procedural aspect of Article 3, c that is to say, by setting itself the task of determining whether the respondent State had carried out an effective investigation in the present case.

29.In the reasons for its decision, the CC noted that the applicant had, in 2012, filed a complaint for acts of torture allegedly perpetrated during his placement in police custody in 2003; that an investigation was opened immediately; that as part of the investigation, two officials on duty at the time of the events at the police station where the applicant had been placed in police custody had been interviewed, as well as the individual who had been placed in police custody with the person concerned ; that finally the competent public prosecutor had rendered in this case a decision not to prosecute.

30.The CC noted that the applicant acknowledged that he had not made any statement to the various public authorities to which he had been presented after his police custody relating to the ill-treatment he had allegedly suffered. It specified that he had not had not alleged during his various hearings that he had suffered ill-treatment.

It observed that it had also not been established that the applicant's body had shown, when he was questioned by different authorities during the criminal proceedings brought against him, any marks such as bruises which could suggest that he had been subjected to torture or ill-treatment.

31.The CC noted that the acts of torture that the applicant alleged to have suffered had, assuming they were proven, occurred on a date well before that on which he had filed his complaint. While admitting that difficulties relating to the establishment of facts could arise during an investigation, the CC recalled that in order to determine whether the respondent State had satisfied its obligation to carry out an effective investigation, it was necessary to verify whether the competent domestic authorities had taken all necessary measures to confirm

or to refute the applicant's allegations.

32.The CC had obtained a copy of the statements of suspects CO and AA as well as the statement of witness MS. It had requested communication of the police custody register for the period during which the applicant had been placed in police custody, but in vain, such register no no longer exists.33.For his part, the applicant, to support his allegations that he had been tortured and had suffered ill-treatment while in police custody, had included in the investigation file a medical report drawn up by the MFVT.

34.The CC observed that the findings made in the medical report that the MFVT, based in the United Kingdom, had been established at a date well after that of the facts in dispute. To verify whether these findings were likely to confirm the allegations of poor treatment of the applicant, it emphasized that the competent authorities should have investigated whether the applicant had been examined by a doctor on entering and leaving police custody.

However, the CC noted, no investigative action had been carried out in this regard. The applicant had not been examined by an official health establishment at the material time. It emphasized that in his decision not to prosecute, the public prosecutor did not comment on the medical report presented by the applicant.

35.The CC noted that the file of the investigation which had been carried out in the case demonstrated that it had been limited to the hearing of the two individuals indicated by the applicant and of another public official whose signature appeared in the statement of testimony. However, it noted that no research had been carried out to identify the public officials who were on duty when the applicant was placed in police custody and interviewed.

36.The CC clarified that the public prosecutor had contented himself with questioning the other suspects about the official who, according to the applicant, had been particularly active during the ill-treatment that the person concerned had declared having suffered. The prosecutor had not taken any other initiative to identify the said official, even though the applicant had given his description.

37.The CC also noted that Ad.At.had been identified as having been, at the material time, the person in charge of the detention center for persons held in police custody.He had been named by the applicant in his complaint.Or , this agent had not been interviewed by the public prosecutor.

It nevertheless observed that it appeared from the investigation file that in 2005 Ad.At. had been transferred to the Çankırı gendarmerie, without the investigation having been carried out further in this regard.38.The CC observed that the investigation file in this case did not demonstrate that it was possible to obtain other evidence capable of shedding light on the allegations of ill-treatment made by the applicant.

In short, an examination of the entire investigation in question made it possible to conclude that it had not been carried out with all the required diligence. Indeed, it considered that the investigation had not been sufficient to allow to shed light on the disputed facts and to identify possible

responsible.

39.The CC concludes that there has been a violation of Article 3 of the Convention due to the failure of the respondent State to fulfill its obligation to carry out an effective investigation into the ill-treatment that the applicant claimed to have suffered while in police custody. sent a copy of its decision to the competent public prosecutor for the purpose of opening a new criminal investigation.

It awarded the applicant 5,000 TRL (i.e. approximately 1,556 EUR, at the material time) for non-pecuniary damage and 1998.35 TRL (i.e. approximately 622 EUR, at the material time) for costs incurred in within the framework of the procedure carried out before it. It indicated that these sums had to be paid to the applicant within four months from the date on which the person concerned, following the notification which would have been made to him of the decision in question, would make a request to the Minister of Finance.

It specified that in the event of late payment, legal interest would be applied AVCIOĞLU v. TÜRKİYE JUDGMENT 8 from the date of expiry of the said deadline and until the date of payment.THE RELEVANT LEGAL FRAMEWORK AND INTERNAL PRACTICE I.THE PENAL CODE 40.The penal code punishes the act of a public official subjecting someone to torture (article 243) or ill-treatment (article 245).

II.THE CODE OF CRIMINAL PROCEDURE 41.Article 160 § 1 of the Code of Criminal Procedure (entitled “Duties of the public prosecutor having been informed of the commission of an offense”) is worded as follows: “As soon as the public prosecutor of the Republic is informed, by denunciation or by any other means, that an offense appears to have been committed, he must immediately open an investigation to find out whether such an offense has actually been committed or not in order to decide whether to take public action on this subject.

» III. LAW NO. 6216 ESTABLISHING THE CONSTITUTIONAL COURT (“CC”) AND ITS RULES OF PROCEDURE 42. Law No. 6216 on the CC and its rules of procedure was published in the Official Gazette on April 3, 2011. It replaces the former law of 1983.43.The provisions of Law No. 6125 relating to the right of individual appeal to the CC entered into force on September 23, 2012.

They provide that any individual may, invoking the fundamental rights and freedoms protected by the Constitution and the European Convention on Human Rights, lodge such an appeal against decisions which became final after September 23, 2012 (Uzun v. Turkey (dec.), no. 10755/13, §§ 7-27, April 30, 2013).

44. Article 50 of Law No. 6216 reads as follows: Decisions Article 50 “1) At the end of the examination on the merits, a decision is rendered on the violation or non-violation of a right of the author of the appeal. If a decision of violation has been rendered, the measures to be taken to put an end to the violation and erase the consequences are specified in the system.

An examination of the appropriateness of an administrative act cannot be carried out and a decision likely to constitute such an act cannot be rendered.2) When the violation noted results from a judicial decision, the case is referred to the court competent for a reopening of the

procedure to bring AVCIOĞLU JUDGMENT v.

TÜRKİYE 9 end the violation and erase its consequences. In cases where there is no legal interest in reopening the procedure, the author of the appeal may be awarded compensation or invited to initiate a procedure before the competent courts. The court responsible for reopening the procedure renders its decision, as far as possible on the record, with a view to remedying the violation noted by the Constitutional Court in its decision and erasing the consequences of said violation.

3) The decisions rendered by the chambers are notified to the persons concerned and to the Ministry of Justice, and are published on the website of the Constitutional Court. The criteria for publication in the Official Journal are set out in the regulations. 4) Divergences of jurisprudence between the commissions are decided by the sections to which they are attached; those between sections are decided by the plenary assembly.

The other provisions governing this issue are set out in the regulations of the Constitutional Court. 5) In the event of waiver, the appeal is removed from the list." IV.THE CC JURISPRUDENCE 45.It appears from the relevant CC case law on the matter, as presented by the Government in its observations, that this court awards significant compensation when it finds a violation of Article 3 of the Convention and decides that there is no legal interest in holding a new trial, and compensation of a lesser amount when it judges that a new trial must be held.

This practice is apparent, according to the Government, from the summaries below.46.In its decision Cezmi Demir and others (no. 2013/293, July 17, 2014), the CC concluded that there was a violation of the substantive and procedural aspects of Article 3 of the Convention due to acts of torture inflicted on the applicants while in police custody.

It awarded each of them TRL 40,000 (approximately EUR 13,909) for non-pecuniary damage as well as TRL 198.35 (approximately EUR 69) for costs and expenses incurred in the proceedings in question, and it sent a copy of the decision to the competent court for information.47.In its decision Deniz Yazıcı (no. 2013/6359, July 10, 2014), the CC found a violation of the substantive and procedural aspects of Article 3 of the Convention due to acts of torture and inhuman treatment inflicted on the person concerned during his arrest and while in police custody.

It awarded him TRL 20,000 (approximately EUR 6,915) for non-pecuniary damage as well as TRL 1,698.35 (approximately EUR 587) for costs and expenses incurred in the proceedings in question, and sent a copy of the the decision to the competent court for information.48.In its decision Şenol Gürkan (no. 2013/2438, September 9, 2015), the CC found a violation of the substantive part of Article 3 of the Convention due to acts of torture inflicted on the person concerned while in police custody.

She ruled that there was no legal interest in requesting the reopening of the proceedings, the facts being prescribed and the collection of new evidence being compromised. She granted the victim 55,000 TRL (approximately 16,286 EUR) for non-pecuniary damage and 1,698.35 TRL (approximately 503 EUR) for costs and expenses incurred in the

framework of the procedure in question.

49.In its decision Zeki Bingöl (2) (no. 2013/6576, November 18, 2015), the CC found a violation of the substantive and procedural aspects of Article 3 of the Convention due to the inhuman treatment inflicted on the concerned while in police custody. She sent a copy of her decision to the competent public prosecutor for the purpose of opening a new criminal investigation.

It awarded the victim TRL 4,000 (approximately EUR 1,307) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 555) for costs and expenses incurred in the proceedings in question.50.In its decision Hamdiye Aslan (no. 2013/2015, November 4, 2015), the CC concluded that there had been a violation of the substantive and procedural aspects of Article 3 of the Convention due to the ill-treatment inflicted on the person concerned while in police custody.

It awarded him TRL 30,000 (approximately EUR 9,646) for non-pecuniary damage and TRL 1,698.35 (approximately EUR 546) for costs and expenses incurred in the proceedings in question. 51.In its decision Feride Kaya (2) (no. 2016/13895, June 9, 2020), the CC found a violation of the substantive and procedural aspects of Article 3 of the Convention due to acts of torture inflicted on the applicant while in police custody.

It awarded the applicant 90,000 TRL (approximately 11,737 EUR) for non-pecuniary damage and 3,239.50 TRL (approximately 422 EUR) for costs and expenses incurred in the proceedings in question.Due to the prescription of the facts, it ruled that there was no legal interest in ordering a new trial in the case.

She sent a copy of her decision to the competent assize court for information.52.In its decision Deniz Şah (2) (no. 2018/29836, April 14, 2022), the CC concluded that there was a violation of the procedural aspect of the Article 3 of the Convention on account of ill-treatment suffered by the person concerned in the remand center where he was detained.

She sent a copy of her decision to the competent public prosecutor for the purpose of opening a new criminal investigation. She awarded the victim 45,000 TRL (approximately 2,839 EUR) for moral damage. RELEVANT INTERNATIONAL TEXTS PROTOCOL D UNITED NATIONS ISTANBUL 53.The “Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (“the Istanbul Protocol”) was submitted to the United Nations High Commissioner for Human Rights (OHCHR) on August 9, 1999, and the principles set out therein AVCIOĞLU JUDGMENT v.

TÜRKİYE 11 subsequently received the support of the United Nations through various resolutions of the Commission on Human Rights and the General Assembly. This manual constitutes the first set of guidelines relating to the investigation and assessment of evidence in alleged cases of torture.

It contains a set of practical instructions on how to examine persons who claim to have been victims of torture or ill-treatment, to conduct an investigation into suspected cases of torture and to notify the competent authorities of the conclusions drawn from these investigations .

The principles relating to the means of effectively investigating alleged cases of torture or other cruel, inhuman or degrading treatment or punishment and establishing the reality of such facts are summarized in Annex 1 of the manual (the relevant passages of this document are reproduced in the Batı and Others v.

Turkey, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). IN LAW I. PRELIMINARY OBSERVATIONS 54. The application concerns the ill-treatment which the applicant claims to have suffered while in police custody on 30 and May 31, 2003. Examining these allegations solely from the angle of the procedural aspect of Article 3 of the Convention, the CC concluded that there had been a violation of this provision due to the failure of the competent domestic authorities to fulfill their obligation to carry out an effective investigation. on the ill-treatment that the applicant claimed to have suffered while in police custody.

She sent a copy of her decision to the competent public prosecutor for the purposes of opening a new criminal investigation. She awarded the applicant 5,000 TRL for non-pecuniary damage (i.e. approximately 1,556 EUR, at the material time) and TRL 1998.35 (i.e. approximately EUR 622 at the material time) for costs incurred in the proceedings before her.

55.The Court first notes that the applicant raises, in his observations, a new complaint based on Article 34 of the Convention due to the fact that the public prosecutor allegedly put pressure on him to discourage him from pursuing his application. before the Court.56.The Government combats this allegation made by the applicant, arguing that it was not able to substantiate it.

57.The Court recalls that for the individual appeal mechanism established in Article 34 of the Convention to be effective, it is of the utmost importance that applicants, declared or potential, are free to communicate with the Court, without the authorities pressure them in no way to withdraw or modify their grievances (see, among many others, Akdivar and others v.

Turkey, September 16, 1996, § 105, Reports of judgments and decisions 1996-IV, Aksoy v. Turkey, December 18, 1996, § 105, Reports 1996- AVCIOĞLU v. TÜRKİYE 12 VI JUDGMENT, and Ergi v. Turkey, July 28, 1998 , § 105, Reports 1998-IV).In this context, by the word “press[r]”, we must understand not only direct coercion and blatant acts of intimidation of declared or potential applicants, their families or their legal representative, but also indirect and improper acts or contacts tending to dissuade them or discourage them from availing themselves of the remedy offered by the Convention.

The Court observes that in determining whether contacts between the authorities and a declared or potential applicant constitute unacceptable practices from the point of view of Article 34, account must be taken of the particular circumstances of the case (Kurt v. Turkey, 25 May 1998, §§ 160 and 164, Reports 1998-III, and Şarli v.

Turkey, no. 24490/94, § 84, 22 May 2001).58.In the present case, the Court notes that the applicant does not claim that the competent domestic authorities, in this case the competent public prosecutor, would have questioned him about his request pending before her to maintain that he

allegedly put pressure on him to discourage him from pursuing his request before her.

Moreover, he does not provide any factual information or even any summons to support such an allegation. Furthermore, the Court does not note any threat of criminal prosecution made against the applicant or his lawyers due to the application pending before she (compare with Şarli, cited above, §§ 85-86).

Furthermore, the applicant does not provide any details on the date of the occurrence of such pressure. He does not rely on concrete evidence such as a summons or a hearing proving that the aim of the public prosecutor responsible to conduct the investigation was to put pressure on him to discourage him from pursuing his application before the Court (compare with Colibaba v.

Moldova, no. 29089/06, §§ 68-69, October 23, 2007, threatens by a prosecutor general to initiate proceedings against a member of the bar who submitted “false” allegations in matters of human rights to international organizations; Lopata v. Russia, no. 72250/01, §§ 156-159, July 13, 2010, intimidation and pressure exerted on the applicant by the domestic authorities due to his application before the Court).

59.Therefore, the Court does not note the existence of any interference, incompatible with Article 34 of the Convention, on the part of the respondent State in the exercise by the applicant of his right of individual petition. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 a) and 4 of the Convention.

60. Next, the Court took due note of the various factual and legal developments that occurred in domestic law after the CC's decision of March 31, 2016. In this regard, it recalls that when communicating the application to the parties, it dismissed for non-exhaustion of domestic remedies the applicant's complaint that the competent public prosecutor had not opened a new criminal investigation into the ill-treatment of which he complained, following the decision rendered by the CC .

AVCIOĞLU v. TÜRKİYE JUDGMENT 13 61. The applicant also raises, in his observations, a new complaint based on the fact that the compensation awarded to him by the CC has still not been paid to him by the competent domestic authorities. , the Court notes that the applicant did not set out in the application he submitted to it such a complaint which he formulated for the first time in his observations.

She further notes that it appears from the documents placed in the case file that this complaint was also not raised before the competent domestic courts to argue that the compensation awarded to her by the CC did not would not have been paid.62.However, it emphasizes in this regard that the rule of prior exhaustion of domestic remedies constitutes an important aspect of the principle of subsidiarity, as enshrined in the Preamble of the Convention since the entry in force on August 1, 2021 of Protocol No. 15 (M v.

France (dec.), no. 42821/18, § 73, April 26, 2022), according to which the safeguard mechanism established by the Convention has a subsidiary character in relation to the national protection systems.

guarantee of human rights (Vučković and others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, March 25, 2014).

The applicant will have the opportunity to contest before the CC his allegation that the compensation granted to him by it was not paid to him by the competent domestic authorities.63. This part of the application must be rejected for non-exhaustion of domestic remedies, within the meaning of Article 35 §§ 1 and 4 of the Convention.

II.ON THE ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION 64.The applicant alleges that the investigation carried out in the case by the competent domestic authorities did not meet the requirements of Article 3 of the Convention.He invokes Articles 3 and 13 of the Convention.65.Having regard to the wording and substance of the complaints presented by the applicant (Radomilja and Others v.

Croatia [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court will examine them only from the angle of Article 3 of the Convention, which is worded as follows: “No one may be subjected to torture or to inhuman or degrading treatment or punishment.” A.On admissibility 1.The Government 66.

The Government argues that the applicant lacks victim status. It recalls that the CC found a violation of Article 3 of the Convention due to the failure of the competent domestic authorities to fulfill their obligation to carry out an effective investigation into the ill-treatment that the AVCIOĞLU v. JUDGMENT

TÜRKİYE 14 applicant declared that he had suffered during his custody. She sent a copy of her decision to the competent public prosecutor for the purposes of opening a new criminal investigation. She awarded the applicant 5,000 TRL for non-pecuniary damage (i.e. approximately EUR 1,556) and TRL 1,998.35 (i.e. approximately EUR 622) for costs incurred in the proceedings before it.

67. Referring to article 50 § 2 of Law No. 6216 establishing the CC and its procedural rules, the Government argues that if the violation observed results from a court decision, the file is referred to the competent court for the purposes opening of a new trial capable of putting an end to the said violation and erasing its consequences.

In the event that there is no legal interest in holding a new trial, compensation may be awarded to the applicant or proceedings may be initiated in the ordinary courts. The court responsible for holding a new trial shall decide, if possible , on file with a view to remedying the violation noted and erasing its consequences as set out by the CC in the decision concerned.

68.The Government explains that Article 50 of Law No. 6216 corresponds to Article 41 of the Convention. It refers to the decision rendered by the CC in plenary session in the Mehmet Doğan case (No. 2014/8875 , §§ 54-60, June 7, 2018), in which the high court set out the general principles governing the remedy of a violation noted by it in a case submitted to its assessment.

He explains that the CC grants compensation to the requesting party for material and moral damage. It is also possible that no compensation will be granted to the requesting party if the consequences of the violation are entirely erased following the holding a new trial by the competent court.

69. Referring to the case law of the CC set out above (paragraphs 45-52), the Government develops its argument by explaining that the high court awards significant compensation when there is no legal interest to be taken a new trial. It grants compensation of a lesser amount when it decides that a new trial must be held.

70.As for the Court's jurisprudence relating to the loss of victim status, the Government first refers to several cases concerning the duration of the procedure with regard to Article 6 of the Convention. In this respect, he explains that the Court accepts the granting of less significant compensation for non-pecuniary damage than that which it itself grants in similar cases.

Referring then to the Gäfgen v. Germany judgment ([GC], no. 22978/05, §§ 115, 116 and 130, ECHR 2010), he indicates that when it is a case which concerns a violation of Article 3 of the Convention, compensation must be granted to the applicant. Furthermore, the competent domestic authorities must, where appropriate, carry out an effective investigation capable of enabling the perpetrators of the ill-treatment in question to be identified and judged.

AVCIOĞLU v. TÜRKİYE JUDGMENT 15 71.To determine whether the amount of compensation awarded by the CC is sufficient, the Government illustrates its point by giving three examples of Court judgments which can be summarized as follows.72. In the case of Daşlık v. Turkey (no. 38305/07, 13 June 2017), the Court found a violation of the procedural aspect of Article 3 of the Convention, and awarded the applicant EUR 5,000 for non-pecuniary damage and EUR 2,000 for costs and expenses incurred in the proceedings in question.

This case concerned allegations of ill-treatment suffered by the applicant while in police custody and the acquittal of the police officers concerned.73.In the case of İltümür Ozan and Others v. Turkey (no. 38949/09, February 16, 2021), the Court found a violation of the procedural aspect of Article 3 of the Convention.

It awarded the applicant EUR 3,000 for non-pecuniary damage. This case concerned allegations of ill-treatment suffered by the applicant in this case during his arrest and custody 74. In the case of Alkaya v. Turkey ([committee], no. 70932/10, 27 November 2018), the Court concluded that there had been a violation of the procedural aspect of Article 3 of the Convention on the grounds that the limitation period for the ill-treatment alleged against the police officers had resulted from the duration excessive of the procedure.

It then ruled that the finding of a violation represented sufficient just satisfaction to compensate for any non-pecuniary damage suffered by the applicant. This case concerned allegations of ill-treatment suffered by the applicant during his arrest and custody.

view.

The Government concludes from this that the Court may not award the applicant compensation for non-pecuniary damage even if it finds a violation of the procedural aspect of Article 3 of the Convention, when it considers that the finding of a violation is sufficient to repair the moral damage suffered by the applicant.

2. The applicant 75. The applicant contests the objection of lack of victim status, within the meaning of Article 34 of the Convention, raised against him by the Government. Referring to the Gäfgen case (cited above, §§ 115, 116 and 119), he explains that an investigation capable of allowing the identification and punishment of the perpetrators of the ill-treatment must be carried out.

He emphasizes that the compensation awarded to the victim for non-pecuniary damage must be appropriate. However, he maintains, none of these conditions is met in the present case.76. The applicant argues that according to the Court's case law as it results for example from the cases of Kopylov v. Russia, (no. 3933/04, §§ 144 and 146, July 29, 2010) and Shestopalov v.

Russia, (no. 46248/07, § 62, March 28, 2017), the amount of compensation awarded to him by the CC is lower than that awarded by the Court in similar cases. He contests in particular the argument drawn in this regard by the Government from the aforementioned Alkaya case. It explains that the facts of this case are different from those of its case AVCIOĞLU JUDGMENT v.

TÜRKİYE 16 because the person concerned had attacked a police officer and had refused to be examined by a doctor. On the other hand, he acknowledges that a similarity exists between his case and the two other cases cited by the Government.77. The applicant, however, indicates that his case is rather comparable to the case of Amine Güzel v.

Turkey (no. 41844/09, §§ 40, 41 and 49, September 17, 2013). In this case, the Court found a violation of the procedural aspect of Article 3 of the Convention and awarded the applicant 12,500 EUR for non-pecuniary damage. In any event, he argues that the sum awarded to him by the CC for non-pecuniary damage is much lower than that awarded by the Court in the Daşlık, İltümür Ozan and others cases, and Amine Güzel, cited above.

3. Assessment of the Court a) Relevant general principles 78. The Court recalls that it is primarily for the national authorities to remedy an alleged violation of the Convention. In this regard, the question of whether an applicant can claim to be a victim of the alleged violation arises at all stages of the procedure under the Convention (Gäfgen, cited above, § 115).

A decision or measure favorable to the applicant is not sufficient in principle to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities recognize, explicitly or in substance, and then remedy the violation of the Convention (Kurić and Others v.

Slovenia [GC], no. 26828/06, § 259, ECHR 2012 (extracts)). It is only when these two conditions are satisfied that the subsidiary nature of the protection mechanism of the Convention

opposes an examination of the application (Eckle v. Germany, July 15, 1982, §§ 69 et seq., Series A no. 51, and M.

Özel and Others v. Turkey, nos. 14350/05, 15245/05 and 16051/05, § 157, 17 November 2015).79. Regarding the “appropriate” and “sufficient” remedy to remedy the internal level of the violation of a right guaranteed by the Convention, the Court generally considers that it depends on all the circumstances of the case, having regard in particular to the nature of the violation of the Convention which is at stake (Gäfgen, cited above , § 116, Kurić and others, cited above, § 260, and Jeronovičs v.

Latvia [GC], no. 44898/10, § 116, July 5, 2016).b) Application of these principles to the present application 80.In the present case, it is for the Court to verify, on the one hand, whether there has been recognition by the national authorities, at least in substance, of a violation of a right protected by the Convention and, secondly, whether the reparation can be considered to have been appropriate and sufficient (see, inter alia others, Gäfgen, cited above, § 127, Kopylov v.

Russia, no. 3933/04, §§ 144-146, July 29, 2010, Tamuçu and others v. Turkey (dec.), no. 37930/09, § 41, AVCIOĞLU v. TÜRKİYE 17 JUDGMENT, January 24, 2017, and Shmorgunov and others v. Ukraine, nos. 15367/14 and 13 others, § 399, January 21, 2021, mutatis mutandis Murat Aksoy v. Turkey, no. 0/17, § 90, April 13, 2021, and İlker Deniz Yücel v.

Turkey, no. 27684/17, § 72, 25 January 2022).81.It recalls that in the present case the applicant alleges a violation of a fundamental right of the Convention, namely Article 3 of the Convention.In particular , the applicant maintains that the investigation carried out by the domestic authorities – concerning the ill-treatment he says he suffered while in police custody on 30 and 31 May 2003
– did not meet the requirements of Article 3 of the Convention.

Consequently, it is in the light of its case law relating to Article 3 of the Convention that it will examine the Government's objection to the applicant's lack of victim status.82.The Court notes that by examining the applicant's allegations solely from the angle of the procedural aspect of Article 3 of the Convention, the CC concluded that there had been a violation of this provision due to the failure of the competent domestic authorities to fulfill their obligation to carry out an effective investigation into the ill-treatment that the applicant claimed to have suffered while in police custody.

She sent a copy of her decision to the competent public prosecutor for the purposes of opening a new criminal investigation. She awarded the applicant 5,000 TRL in respect of non-pecuniary damage (i.e. approximately 1,556 EUR, at the time of the facts).83.With regard to the first condition, the Court observes that it appears from the decision of March 31, 2016 of the CC that these are the shortcomings noted by it in the investigation carried out by the prosecutor of the competent Republic which led the high court to conclude that there had been a violation of the procedural aspect of Article 3 of the Convention.

The CC thus recognized the lack of recognition of the procedural aspect of the right protected by Article 3 of the Convention. 84. It remains to be determined whether the compensation granted to the applicant by the CC can be considered “appropriate” and “sufficient” (see , mutatis mutandis, Otgon v. Republic of Moldova, no. 22743/07, § 16, October 25, 2016 as well as the cases cited therein, and SFK

v. Russia, no. 5578/12, § 72, October 11, 2022). In this regard, the Court observes that the CC awarded the applicant the sum of approximately EUR 1,556 for the non-pecuniary damage he had suffered. It took note of the Government's explanations that the CC grants significant compensation when there is no legal interest in holding a new trial.

And it grants compensation of a lesser amount when it decides that a new trial must be held or that, as in this case, the competent public prosecutor must open a new criminal investigation, concerning the allegations made by the applicant under Article 3 of the Convention (paragraph 44 above).

AVCIOĞLU v. TÜRKİYE JUDGMENT 18 85.The Court notes that the Government refers in particular to its judgment in the aforementioned Alkaya case, where it found a violation of Article 3 of the Convention. In this case, it considered that given the specific circumstances in which the applicant had been arrested, the finding of a violation represented sufficient just satisfaction to compensate for any non-pecuniary damage suffered by the applicant, under Article 41 of the Convention.

Also, the Government draws argument from this case to conclude that in the present case the amount of moral damage awarded to the applicant by the CC cannot be considered unreasonable. The Court recalls that particularly in matters of just satisfaction for moral damage, it is guided by the principle of fairness, which implies a certain flexibility and an objective examination of what is just, equitable and reasonable taking into account all the circumstances of the case before it, i.e. -say not only the applicant's situation, but also the general context in which the violation was committed.

The compensation it awards for moral damage is intended to recognize the fact that moral damage resulted from the violation of a fundamental right and is quantified in such a way as to approximately reflect the seriousness of this damage (Varnava and others c .Turkey [GC], nos. 16064/90 and 8 others, § 224, ECHR 2009, Al-Jedda v.

United Kingdom [GC], no. 27021/08, § 224, ECHR 2011, and Nagmetov v. Russia [GC], no. 35589/08, § 73, 30 March 2017). complaint based on Article 3 of the Convention, it is only in exceptional circumstances that the Court considers, as it did in the aforementioned Alkaya case, that the finding of a violation constitutes in itself satisfaction fair enough.

It adopts this approach in particular in cases where the violation found by the Court concerns only procedural failures (Hilal v. United Kingdom, no. 45276/99, § 83, ECHR 2001-II, Wenner v. Germany, no. 62303 /13, § 86, September 1, 2016, and Marcello Viola v. Italy (no. 2), no. 77633/16, § 148, June 13, 2019).

Furthermore, it does not award, in terms of just satisfaction for non-pecuniary damage, compensation greater than that claimed by the applicant (Sonkaya v. Turkey, no. 11261/03, §§ 33 and 35, February 12, 2008) .It does not grant any when the applicant has not submitted a request in this regard (Dağabakan and Yıldırım v.

Turkey, no. 20562/07, § 68, April 9, 2013). However, even in the absence of a “request” formed in an appropriate manner in compliance with its rules, the Court remains competent under certain conditions to grant, in a reasonable and measured manner, just satisfaction for moral damage arising from the exceptional circumstances of a given case (Nagmetov, cited above, §§ 76 and 77).

87.The Court recalls that, when national authorities have awarded an applicant compensation for the violation found, it must examine the amount. To do so, it takes into account its own practice in similar cases. .She wonders, on the basis of the AVCIOĞLU JUDGMENT v.

TÜRKİYE 19 elements available to it, what it would have granted in a comparable situation, which does not mean that the two amounts must necessarily correspond. In addition, it takes into account all the circumstances of the case, including the means of recovery chosen and the speed with which the national authorities carried out the recovery in question.

It recalls that it is the responsibility of the competent national authorities to meet the primary obligation to ensure respect for the rights and freedoms guaranteed by the Convention. That said, the amount granted at the national level must not be manifestly insufficient having regard to the circumstances. of the case it is examining (see, among many others, Kopylov, cited above, § 146, Shestopalov v.

Russia, no. 46248/07, § 62, March 28, 2017, and Cestaro v. Italy, no. 6884/11, § 231, April 7, 2015). 88.In the present case, the Court recalls that it has, in comparable circumstances, awarded in respect of non-pecuniary damage the sum of EUR 8,000 respectively to each applicant in the Dönmüş and Kaplan v. Turkey cases (no. 9908/ 03, § 59, January 31, 2008); the sum of EUR 5,000 – corresponding to the amount claimed by the person concerned – to the applicant in the Sonkaya case (cited above, § 35); and the sum of EUR 9,750 to the applicant in the case of Mimtaş v.

Turkey (no. 23698/07, § 65, March 19, 2013). The Court considers that in the present case the sum of approximately EUR 1,556 awarded by the CC to the applicant in compensation for the moral damage suffered is lower than the amount generally awarded by it in cases where it found a violation of Article 3 of the Convention (Darraj v.

France, no. 34588/07, § 50, 4 November 2010, and Grecu v. Republic of Moldova, no. 51099/10, § 21, 30 May 2017). It estimates that in this case the sum of approximately EUR 1,556 granted to the applicant by the CC does not constitute adequate and sufficient relief (Milić and Nikezić v. Montenegro, nos. 54999/10 and 10609/11, § 75, April 28, 2015, in which the Court held that the compensation of 1 500 EUR awarded to each applicant in respect of non-pecuniary damage could not be considered as appropriate compensation for the alleged violation of Article 3; for a similar approach see also İlker Deniz Yücel, cited above, § 73 as well as the cases therein cited, concerning the insufficiency of the compensation offered by the CC for the duration of the pre-trial detention suffered by the applicant).

Consequently, the respondent State has not sufficiently redressed the treatment contrary to Article 3 of the Convention that the applicant suffered.89.It follows that the applicant can still claim to be the victim of a violation of the Article 3 within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objection based on the applicant's loss of victim status.

90. Noting that this complaint is not manifestly ill-founded or inadmissible for any other reason referred to in Article 35 of the Convention, the Court declares it admissible. AVCIOĞLU v. TÜRKİYE JUDGMENT 20 B. On the merits 1. The applicant 91.While taking note of the CC's decision of March 31, 2016, the applicant continues to say that the investigation carried out by the competent domestic authorities was not effective.

He complains of a lack of promptness in the said investigation. He explains that the public prosecutor should have initiated it as soon as evidence relating to the mistreatment allegedly inflicted on him was brought to his attention, that is to say even before the filing of his complaint in March 2012.

92.He explains that the competent internal authorities did not identify and interview all the alleged perpetrators of the ill-treatment he suffered. Thus, although he had designated the gendarmes CO, Ad.At.and N.(the commander of the gendarmerie), the public prosecutor limited his investigations to the hearing of CO, Ad.At.

and AAMoreover, he maintains that apart from MS, no other witness placed in police custody with him was heard, nor was the nurse who had treated him for his injuries. He reproaches by elsewhere to the public prosecutor for not having investigated whether a medical report had been drawn up when he entered and left police custody.

The public prosecutor also did not ask whether he had been examined by a doctor during the investigation. He stated that he was not able to participate in the investigation carried out by the public prosecutor because he had failed to inform him of the decision he had rendered in this case. He explains that he was not heard by the competent domestic authorities.

93. He adds that the investigation was not carried out independently. Referring to the argument he developed with regard to a lack of effectiveness of the investigation, he maintains that the authorities internal authorities did not use independent means to interview the gendarmes alleged to have committed the ill-treatment in question.

94.The applicant contests the Government's argument that he did not demonstrate the diligence required to file a complaint with the competent public prosecutor. He maintains that the competent domestic authorities knew or should have known that he had suffered mistreatment.

Referring to the case of Mocanu and others v. Romania ([GC], nos. 10865/09 and 2 others, §§ 274, ECHR 2014 (extracts)), he maintains that his complaint must be read in the light of the effects psychological damage caused to his person by the ill-treatment and torture he suffered while in police custody.

According to him, it appears from the medical report drawn up by the MVFT that he suffers from post-traumatic stress and depression and that he is prey to suicidal thoughts, which faded from around 2007. He recalls that he had explained that, due to the presence of guards during the visits he received, he had not been able to inform his family or his lawyers of the ill-treatment he had suffered.

He adds that after his release, his lawyers told him that fear led them to refuse to be involved in his case.95.Finally, referring to the case of Baranin and Vukčević v. Montenegro, (nos. 24655/18 and 24656/18, §§ 138-149, March 11, 2021), he contests the Government's argument according to which individual appeal before the CC would be an effective domestic remedy.

2.The Government 96.Referring to the Uzun case (cited above, §§ 52, 68, 69 and 70), where the Court ruled that the individual appeal before the CC was an effective domestic remedy, the Government argues that The same applies in the present case. It draws the Court's attention to the fact that the CC, in its decision of March 31, 2016, found a violation of the procedural aspect of Article 3 of the Convention.

97.Moreover, referring to the Mocanu and others case (cited above, §§ 263 and 264), the Government explains that in matters of ill-treatment, the applicants must demonstrate a certain diligence and file a complaint without delay .He maintains that this is an obligation which the applicant in this case has not satisfied.

Indeed, the applicant remained inactive between May 2003 – the date of his placement in police custody – and March 9, 2012, the date on which he filed a complaint with the public prosecutor. The Government adds that the applicant does not raised such a grievance neither before the judge who heard him in custody, nor before the court which examined his case.

He notes that a long period of time elapsed between February 10, 2004, the date on which the person concerned obtained refugee status in the United Kingdom, and February 9, 2010, the date on which he was examined there by the MVFT.According to the Government, the applicant cannot explain why he waited six years before filing a complaint with the public prosecutor when he could have filed a complaint earlier.

Finally, the Government maintains that in the present case an effective investigation was carried out by the competent domestic authorities.3. Assessment of the Court a) Relevant general principles 98. The Court refers to the relevant general principles in the matter, such as: they are set out in particular in the El-Masri v.

the former Yugoslav Republic of Macedonia ([GC], no. 39630/09, §§ 182-185, ECHR 2012), Mocanu and others (cited above, §§ 316-326), and Jeronovičs (cited above, §§ 103- 106).99.It appears from these judgments that, for the general prohibition, particularly targeting public officials, of torture and inhuman or degrading treatment and punishment to prove effective in practice, there must be a procedure to investigate allegations of ill-treatment of a person in their hands.

AVCIOĞLU v. TÜRKİYE JUDGMENT 22 100.It is essentially a question, through such an investigation, of ensuring the effective application of the laws which prohibit torture and inhuman or degrading treatment and punishment in cases where agents or state bodies are involved and to ensure that they are held accountable for ill-treatment that occurs under their responsibility.

101.Whatever the modalities of the investigation, the authorities must act ex officio. Furthermore, to be effective, the investigation must make it possible to identify and punish those responsible. It must also be broad enough to allow the authorities responsible for taking into consideration not only the acts of state agents who directly and illegally used force, but also all the circumstances surrounding them.

102.Although it is an obligation not of result but of means, any deficiency in the investigation weakening its capacity to establish the circumstances of the case or the identity of those responsible risks leading to the conclusion that it does not meet the required standard of effectiveness. 103.Finally, the investigation must be thorough, which means that the authorities must always make a serious effort to find out what happened and must not rely on hasty or ill-founded conclusions to close the investigation (Bouyid v.

Belgium [GC], no. 23380/09, §§ 115-123, ECHR 2015).b) Application of the aforementioned general principles to the present case 104.The Court must now examine the investigation carried out by the public prosecutor of Karakoçan following the complaint filed by the applicant on March 9, 2012. It recalls that it is not its task to examine the legal developments that occurred in domestic law after the CC decision of March 31, 2016.

In this regard, it recalls that it rejected these legal developments for failure to exhaust domestic remedies, within the meaning of Article 35 § 1 and 4 of the Convention (paragraph 60 above and Kušić and others v. Croatia (dec.), no. 71667/17, §§ 106-108, December 10, 2019). However, the Court endorses the findings established by the CC in its decision of March 31, 2016 relating to the failures of the investigation in question (paragraphs 16-37 above).

105.This being said, apart from the fact that the CC considered that the investigation in question had not been carried out with all the required diligence and that it had not been sufficient to enable the possible identification of those responsible, the Court highlights other notable failings in the manner in which the investigation was conducted by the Karakoçan Republic Prosecutor.

Thus, the latter did not carry out any research to determine whether the applicant had been examined by a doctor during his placement in police custody or at the end of it. The file of the criminal investigation carried out by the public prosecutor does not contain any medical report drawn up on behalf of the applicant.

The applicant therefore does not appear to have been examined by a doctor during his AVCIOĞLU JUDGMENT v. TÜRKİYE 23 placement in police custody nor after it. also indicates that the applicant was subjected to a medical examination during his detention at the Bingöl remand center, where he remained

until his release on July 22, 2003.

Furthermore, it notes that the public prosecutor heard witnesses and alleged perpetrators of the alleged ill-treatment without drawing any conclusions from these hearings relating to the reality of the facts. Furthermore, the Court observed that the hearing of the nurse by whom the person concerned declares having been treated could have made it possible to determine whether such care was linked to possible ill-treatment which he had suffered while in police custody.

Moreover, the public prosecutor did not hear the members of the applicant's family nor the people living in the same village as the person concerned, except MS. The Court considers that such hearings could have made it possible to confirm or invalidate the testimony and allegations of the applicant.

The public prosecutor also did not undertake to hear the applicant's lawyers in order to verify whether the latter was telling the truth when he claimed that the police were present at the time he spoke. with his lawyer and with his family. In the same vein, the Court finally observes that the public prosecutor could have sought to know why the applicant's lawyers had not filed a complaint at the time – still close to the facts – of his release.

106.In short, in view of the evidence submitted for its assessment, the Court notes that numerous acts of communication, notification, information and transmission of documents were carried out by the Republic Prosecutor of Karakoçan to the following the complaint filed by the applicant on March 9, 2012 (paragraph 12 above), by the various police authorities and by other judicial authorities (paragraphs 18, 21-26, and 35-37 above).

These various acts make it possible to affirm that efforts were obviously made by the national authorities. However, the Court notes that these acts were not capable of shedding light on the applicant's allegations according to which he had been the victim of ill-treatment while in police custody (compare with Bişkin v.

Turkey, no. 45403/99, § 70, January 10, 2006). above, the Court considers that the competent national authorities failed in their obligation to carry out an adequate and effective investigation with regard to the procedural aspect of Article 3 of the Convention.

108.Therefore, there was a violation of the procedural aspect of Article 3 of the Convention.III.ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION 109.Under the terms of Article 41 of the Convention: AVCIOĞLU JUDGMENT v.TÜRKİYE 24 “If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party only imperfectly allows the consequences of this violation to be erased, the Court grants the injured party, if applicable, just satisfaction.

» A. Damage 110. The applicant requests 11,500 euros (EUR) for the moral damage he

considers that it has suffered.111.The Government considers this sum excessive. According to it, it would in fact be contrary to the jurisprudence of the Court as it presented it in its observations.112.The Court ruled that the sum awarded to the applicant by the Constitutional Court was lower than that which it grants for its part in similar circumstances.

Furthermore, it recalls that when the applicant has already, in the context of an internal appeal, had the violation of which he complains recognized by the national courts and obtained compensation from them, the amount allocated by the Court under the Non-pecuniary damage may be less than that which emerges from its case-law (Darraj, cited above, § 59, Milić and Nikezić, cited above, § 110, and İlker Deniz Yücel, cited above, § 170).

Having regard to the amount already awarded to the applicant by the Constitutional Court, the Court therefore considers that it is appropriate to award the applicant EUR 10,000 for non-pecuniary damage, plus any amount that may be due as tax on this sum.B .Costs and expenses 113.The applicant does not claim any sum in respect of costs and expenses which he may have incurred in the course of the proceedings before the Court.

114.Consequently, the Government proposes that no sum be granted to it.
115.Noting that the applicant makes no request in this regard, the Court does not award him any sum in respect of costs and expenses.C.Other relief 116.The applicant's lawyer invites the Court, from the angle of Article 46 § 1 of the Convention, to make several declarations and to give several directives to the Committee of Ministers.

He therefore asks the Court to order the Government in particular: a) to apologize and acknowledge the failings of the investigation carried out into his client's allegations; b) to order the respondent State to carry out a prompt, effective and complete investigation. It also requests to order the Türkiye to make a public apology due to the violations found in the present case (McMichael v.

United Kingdom, February 24, 1995, § 105, Series A no. 307-B, Kavala v. Türkiye (action for infringement) [GC], no. 28749/18, § 175, July 11, 2022). 117.Although the Court may in certain cases indicate the precise measure, compensatory or otherwise, which the respondent State must take, it is for the Committee of Ministers, under Article 46 § 2 of the Convention, to it is up to assessing the implementation of these measures (Ilgar Mammadov v.

Azerbaijan (infringement action) [GC], no. 15172/13, §§ 154 and 155, May 29, 2019 as well as the references cited).118.In the present case, it found a violation of the procedural aspect of the article 3 of the Convention. Beyond that, the Convention does not empower the Court to issue the injunctions and declarations requested by the applicant's lawyer (McMichael, cited above, § 106, and compare with Moreira Ferreira v.

Portugal (no. 2) [GC], no. 19867/12, § 102, July 11, 2017 and Bochan v. Ukraine (no.2) [GC], no. 22251/08, § 33, ECHR 2015).FOR THESE REASONS, THE COURT, UNANIMOUSLY, 1.Declares the application admissible as to the complaint based on Article 3 of the Convention and relating to the effectiveness of the criminal investigation and inadmissible for the remainder; 2.

Holds that there has been a violation of the procedural aspect of Article 3 of the Convention; 3. Holds a) that the respondent State must pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any amount that may be due as tax on this sum, for non-pecuniary damage, to be converted into the currency of the defendant State at the rate applicable on the date of settlement; b) that from the expiry of the said period and until payment, this amount will be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during this period, increased by three percentage points; 4.

Rejects the request for just satisfaction for the remainder. Done in French, then communicated in writing on October 17, 2023, pursuant to Article 77 §§ 2 and 3 of the Rules. Hasan Bakırcı Arnfinn Bårdsen Registrar President