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

SECOND SECTION

AFFAIRE AVCIOÿLU c. Türkiye

(Application no . 59564/16)

STOP

Art 3 (procedural) • Failure of the national authorities to fulfill their obligation to conduct an adequate and effective investigation into the applicant's allegations of having been the victim of ill-treatment while in 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 shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

En l'affaire Avcÿoÿlu c. Türkiye,

The European Court of Human Rights (second section), sitting in a chamber composed of:

Arnfinn Bårdsen, *president,*
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yuksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenÿinoviÿ, *juges,*

et de Hasan Bakÿrcÿ, *greffier de section,*

Having regard to the application (no. 59564/16) against the Republic of Türkiye and lodged with the Court under Article 34 of the Safeguarding Convention by a national of that State, Mr Mustafa Avcÿoÿlu (“the applicant”) of Human Rights and Fundamental Freedoms (“the Convention”) on September 27, 2016,

Having regard to the decision to 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 insufficiency of the investigation carried out by the domestic authorities relating to the ill-treatment which he claims to have 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,

Considering the decision to declare inadmissible for non-exhaustion of domestic remedies the applicant's complaint according to which the public prosecutor had not opened an investigation, following the decision rendered on March 31, 2016 by the Constitutional Court ,

Considering the observations of the parties,

After having deliberated in private on September 26, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

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

ACTUALLY

2. The applicant was born in 1972 and lives in London. He was represented by Me C. Esdaile.

3. The Government was represented by its agent, Mr. Hacÿ Ali Açÿkgül, 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 criminal proceedings against the applicant before the Diyarbakÿr State Security Court, on the basis of Article 169 of the former Criminal Code. assistance and membership in an illegal terrorist organization.

7. On 22 July 2003, the Diyarbakÿr State Security Court ordered the release of the applicant.

8. On 30 September 2003 the Diyarbakÿr State Security Court acquitted the applicant of the charges against him. It found that members of the PKK terrorist organization had seized food from the applicant's home by threatening him with a weapon and that the applicant 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 applicant's statements that he obtained asylum in the United Kingdom on February 10, 2004, then British citizenship on March 10, 2004.

II. COMPLAINT OF THE APPLICANT 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 events, for acts of torture that he alleged to have suffered while in police custody on the 30th and 31st. May 2003 in Yayladere. He claimed that he had been threatened with death with a weapon. He was allegedly beaten violently. He allegedly suffered *falaka* (beatings 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 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 reasons for the decision, the prosecutor indicated that:

– CO had declared during his hearing on July 18, 2012 that the applicant's allegations were unrealistic and affirmed that he had not inflicted ill-treatment on him,

– AA had contested the allegations during its hearing on July 27, 2012 of torture formulated by the applicant,

– MS, who lived in the same village as the applicant and had been arrested with him, had not made statements during his hearing on December 4, 2012 capable of confirming the applicant's allegations.

13. The public prosecutor concluded that there was no evidence, apart from the allegations and abstract statements of the applicant, which could lead to criminal action being taken against the alleged perpetrators of the alleged acts.

14. On June 11, 2013, the Malatya Criminal Court confirmed the dismissal of the case.

III. INDIVIDUAL IN COURT CONSTITUTIONAL APPEAL

15. On 28 August 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 while 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 slippage of a lumbar intervertebral disc as well as approximately seven wounds located at the front of both legs and compatible with irregular trauma resulting from blows given by means of a blunt object. The medical report noted pain and tenderness 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 medical report mentioned post-traumatic stress disorder and emotional dysregulation.

18. Still 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 signed the report of his arrest; members of the gendarmerie and JITEM (“ *Jandarma ÿstihbarat Terörle Mücadele* ” – Intelligence and

of the fight against terrorism of the gendarmerie) 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 stated 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 according to him were 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 was allegedly beaten violently and suffered *falaka* and received electric shocks. Finally, he allegedly signed a pre-written twelve-page deposition. The applicant added that he had been heard by the public prosecutor and then by the judge who ordered his detention. He stated that since the officials he accused of acts of torture were present at the time, he was unable to explain to the prosecutor or the judge that he had suffered ill-treatment at their hands. He was also unable to inform his lawyers 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. Still 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 returned there on the advice of Redress, after having started medical treatment at the MFVT. Finally, he asked that those responsible for the acts of torture he alleged to have suffered be 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 in Karakoçan.

21. The same document shows that at the request of the Karakoçan public prosecutor, the addresses of CO and AA (but not that of Ad.At.) were determined and that these two officials were interviewed.

22. With regard to AA, it appears from the decision of the CC that he was heard on July 27, 2012 by letter rogatory by the prosecutor of the

Republic of Hopa. In his testimony, he stated 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 the purposes of an investigation. hearing. He did not know whether the applicant was among those taken into police custody. He claimed 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 by 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 was 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 stated that from 2000 to 2003 he and the applicant lived in the aforementioned village. The gendarmes visited the village from time to time to ask for help and information about the aforementioned terrorist organization. Following a report, the applicant, himself and other residents of the village were taken into custody by the gendarmes. They had made a statement. After being heard by the public prosecutor and the judge, they 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 establishment of the facts by the CC that at the request of the Republic Prosecutor of Karakoçan, the command of the Yayladere gendarmerie indicated that there was no register of police custody 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 disputed the applicant's allegations and that MS had not made 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 taking 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 Karakoçan public prosecutor.

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 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, that is to say by setting itself the task of determining whether the respondent State had carried out an investigation in the case effective.

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.
She clarified that he 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 various 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 the 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 the necessary measures to confirm or 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 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 on a date well after that of the facts in dispute. To verify whether these findings were likely to confirm the applicant's allegations of ill-treatment, 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, noted the CC, no investigative action had been carried out in this direction. The applicant did not have

not been examined by an official health establishment at the material time. She emphasized that in his decision not to prosecute, the public prosecutor had not commented 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 on the deposition report. 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 further noted that Ad.At. had been identified as having been in charge of the detention center for people held in police custody at the material time. He had been named by the applicant in his complaint. However, 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 Çankÿrÿ gendarmerie, without the investigation having been carried out further in this regard.

38. The CC observed that the investigation file in the present case did not demonstrate that other evidence capable of shedding light on the allegations of ill-treatment made by the applicant could be obtained.
In short, an examination of the entire investigation in question led to the conclusion that it had not been carried out with all due diligence. Indeed, it considered that the investigation had not been sufficient to shed light on the disputed facts and identify those potentially responsible.

39. The CC concluded that there had been a violation of Article 3 of the Convention due to the respondent State's failure 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. She sent a copy of her 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 the framework of the procedure carried out before it. It indicated that these sums had to be paid to the applicant within a period of four months from the date on which the person concerned, following notification made to him of the decision in question, made the request to of the Minister of Finance. She specified that in the event of late payment, legal interest would be applied.

from the date of expiry of the said period and until the date of payment.

THE LEGAL FRAMEWORK AND INTERNAL PRACTICE RELEVANT

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 CRIMINAL PROCEDURE CODE

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 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 There is reason to take public action on this subject. »

III. LAW NO. 6216 ESTABLISHING THE CONSTITUTIONAL COURT (“CC”) AND ITS PROCEDURAL RULES

42. Law No. 6216 on the CC and its procedural rules was published in Official Journal on April 3, 2011. It replaces the old 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 of human rights, lodge such an appeal against decisions which became final after September 23, 2012 *(Uzun v. Turkey* (dec.), o 10755/13, §§ 7-27, April 30, 2013).

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44. Article 50 of Law No. 6216 reads as follows:

The 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 violation decision has been made, the measures to be taken to end the violation and erase its 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 file is referred to the competent court for a reopening of the procedure with a view to

end the violation and erase its consequences. In cases where there is no legal interest in reopening the procedure, the complainant may be awarded compensation or invited to initiate proceedings 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) Differences in jurisprudence between the commissions are decided by the sections to which they are attached; those between sections are decided by the plenary assembly. 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 JURISPRUDENCE OF THE CC

45. It appears from the case law of the CC relevant to this 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 following summaries.

46. In its decision *Cezmi Demir and others* (no. 2013/293, July 17, 2014), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention on account of acts of torture inflicted on the applicants during their 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 *Deniz Yazÿcÿ* decision (no. 2013/6359, July 10, 2014), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention due to acts of torture and inhuman treatment inflicted to the person concerned during his arrest and during his 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 *ÿenol Gürkan* (no. 2013/2438, September 9, 2015), the CC found a violation of the substantive part of Article 3 of the Convention on account of acts of torture inflicted on the applicant during his jail. She ruled that there was no legal interest in requesting the

reopening of the procedure, the facts being prescribed and the collection of new evidence being compromised. It awarded 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 proceedings 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 interested during his 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 *Hamdiye Aslan* decision (no. 2013/2015, 4 November 2015), the CC found a violation of the substantive and procedural limbs of Article 3 of the Convention on account of the ill-treatment inflicted on the applicant during his jail. 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 statute of limitations on the facts, she ruled that there was no legal merit in ordering a new trial in this case. She sent a copy of her decision to the competent assize court for information.

52. In its decision *Deniz ÿah* (2) (no. 2018/29836, April 14, 2022), the CC found a violation of the procedural aspect of Article 3 of the Convention on account of the 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

UNITED NATIONS ISTANBUL PROTOCOL

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

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 for the investigation and assessment of evidence in suspected 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 *Batÿ and Others v. Turkey* judgment , nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)).

PLACE

I. PRELIMINARY OBSERVATIONS

54. The application concerns the ill-treatment that the applicant claims to have suffered while in police custody on 30 and 31 May 2003. Examining these allegations solely from the angle of the procedural aspect of Article 3 of the Convention, the CC concluded that 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 purpose of opening a new criminal investigation.
It awarded the applicant 5,000 TRL for non-pecuniary damage (i.e. approximately 1,556 EUR, at the material time) and 1998.35 TRL (i.e. approximately 622 EUR, at the material time) for costs incurred in the framework of the procedure carried out before it.

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 contests this allegation made by the applicant, arguing that they have not been 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 are pressuring them in no way to withdraw or modify their complaints (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-

VI, and *Ergi v. Turkey,* July 28, 1998, § 105, *Reports* 1998-IV). In this context, the word "press" means not only direct coercion and blatant acts of intimidation of declared or potential applicants, their families or their legal representatives, but also acts or indirect and improper 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 registered 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 *ÿarli 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 application pending before it in order to maintain that he she would have put pressure on him to discourage him from pursuing his request before her. 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 because of the application pending before it (compare with *ÿarli,* cited above, §§ 85-86). Furthermore, the applicant provides no 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 for leading the investigation was to put pressure on him to discourage him from pursuing his request before the Court (compare with *Colibaba v. Moldova,* no. 29089/06, §§ 68-69, October 23, 2007, threat by a public prosecutor to initiate proceedings against a member of the bar having submitted “ false » human rights allegations to international organizations; *Lopata v. Russia,* no. 72250/01, §§ 156-159, 13 July 2010, intimidation and pressure exerted on the applicant by domestic authorities due to his application before the Court).

59. Consequently, 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 .

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. However, 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 filed 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 its entry into 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 national systems for guaranteeing human rights (Vuÿkoviÿ *and others c. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, March 25, 2014). The applicant will have the possibility of contesting before the CC his allegation according to which 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 failure to exhaust 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 present 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 those- here 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 lacked victim status. He 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

The applicant declared that he had suffered 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 applicant 5,000 TRL for non-pecuniary damage (i.e. approximately 1,556 EUR) and 1998.35 TRL (i.e. approximately 622 EUR) 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 case 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 rules, if possible, on the 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. He refers to the decision rendered by the CC sitting in plenary session in the *Mehmet Doÿan* 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 found by it in a case submitted to its assessment. He explains that the CC grants compensation to the applicant for material and moral damage. It is also possible that no compensation will be awarded to the requesting party if the consequences of the violation are entirely erased following the holding of 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 held a new trial. It awards compensation of a lesser amount when it decides that a new trial must be held.

70. As for the Court's case law 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 regard, 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*
([GC], no. 22978/05, §§ 115, 116 and 130, ECHR 2010), it indicates that when it concerns a case which concerns a violation of Article 3 of the Convention, compensation must be granted to the applicant. Furthermore, the competent internal 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.

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 *Daÿlÿk v. Turkey* (no. 38305/07, June 13, 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 connection with the procedure 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 *ÿltümür 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 police custody

74. In the case of *Alkaya v. Turkey* ([committee], no. 70932/10, November 27, 2018), the Court found 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 excessive length 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 police custody. 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 enabling 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 moral damage must be appropriate. However, he maintains, none of these conditions are 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 *Alkaya* case
aforementioned. He explains that the facts of this case are different from those of his case

because the person concerned had attacked a police officer and had refused to be examined by a doctor. On the other hand, he recognizes that a similarity exists between his case and the two other cases cited by the Government.

77. The applicant indicates, however, 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 EUR 12,500 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 cases of Daÿlÿk, ÿltümür Ozan and *others ,* and *Amine*
Nice, précitées.

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 *(Kuriÿ 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 precludes an examination of the application *(Eckle v. Germany,* July 15, 1982, §§ 69 et seq., series A no. 51, and *Mr. Özel and Others v. Turkey,* nos . 14350/05, 15245/05 and 16051/05, § 157, 17 November 2015).

79. As regards the "appropriate" and "sufficient" reparation to remedy at the domestic level 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 at stake *(Gäfgen,* cited above, § 116, *Kuriÿ and Others,* cited above, § 260, and *Jeronoviÿs v. Latvia* [GC], no. 44898/10, § 116, July 5, 2016).

b) Application of these principles to the present request

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 , on the other hand, whether the reparation can be considered to have been appropriate and sufficient (see, among 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,

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,* o n 0/17, § 90, April 13, 2021, and *ÿlker Deniz Yücel v. Turkey,* no. 27684/17, § 72, January 25, 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 – into the ill-treatment he claims to have 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 objection which the Government draws from 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 purpose of opening a new criminal investigation. It awarded the applicant 5,000 TRL in respect of non-pecuniary damage (i.e. approximately 1,556 EUR at the material time).

83. With regard to the first condition, the Court observes that it appears from the decision of March 31, 2016 of the CC that it is the shortcomings noted by it in the investigation carried out by the competent public prosecutor 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 relief 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 in respect of the non-pecuniary damage he had suffered. She took note of the Government's explanations according to which 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).

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 non-pecuniary damage, it is guided by the principle of equity, which implies a certain flexibility and an objective examination of what is just, equitable and reasonable taking into account all the circumstances. circumstances of the case with which it has to consider, that is to say not only the situation of the applicant, 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, et *Nagmetov c. Russia* [GC], O 35589/08, n § 73, 30 March 2017).

86. Furthermore, with regard to a 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 sufficient just satisfaction. It adopts this approach in particular in cases where the violation found by the Court concerns only procedural failings *(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 *(Daÿabakan and Yÿldÿrÿm v. Turkey,* no. 20562/07, § 68, April 9, 2013).
That being said, even in the absence of an appropriately formed “request” in accordance with its Rules, the Court remains competent under certain conditions to award, in a reasonable and measured manner, just satisfaction for moral damage arising from the circumstances. 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 this, it takes into account its own practice in similar cases. She wonders, on the basis of

elements available to it, what it would have granted in a comparable situation, which does not mean that the two amounts must necessarily correspond. Furthermore, it takes into account all the circumstances of the case, including the means of relief chosen and the speed with which the national authorities carried out the relief 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 sum awarded at 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,*
n o 6884/11, § 231, 7 avril 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 case of Dönmüÿ *and Kaplan v. Türkiye* (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 *Mimtaÿ 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 considers that in this case the sum of approximately EUR 1,556 awarded to the applicant by the CC does not constitute adequate and sufficient relief *(Miliÿ and Nikeziÿ v. Montenegro,* nos. 54999/10 and 10609/11, § 75, 28 April 2015, in which the Court ruled that the compensation of EUR 1,500 awarded to each applicant for non-pecuniary damage could not be considered as appropriate compensation for the alleged violation of Article 3; for a similar approach see also *Ilker*
Deniz Yücel, cited above, § 73 as well as the cases cited there, concerning the insufficiency of the compensation offered by the CC for the duration of the pre-trial detention undergone by the applicant). Therefore, 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 Article 3 within the meaning of Article 34 of the Convention. The Court therefore rejects the Government's objection based on a loss of the applicant's 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.

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 triggered it as soon as evidence relating to the ill-treatment allegedly inflicted on him was brought to his attention, that is to say even before the filing of his complaint. complaint in March 2012.

92. He explains that the competent domestic authorities did not identify and interview all the alleged perpetrators of the ill-treatment he suffered. Thus, while he had designated the CO gendarmes, Ad.At. and N. (the commander of the gendarmerie), the public prosecutor limited his investigations to the hearing of CO, Ad.At. and AA Furthermore, he maintains that apart from MS, no other witness placed in police custody with him was heard, nor the nurse who had treated him for his injuries. He also criticizes 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 states that he was unable 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 the case. He explains that he was not heard by the competent internal authorities.

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

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 relevant domestic authorities knew or should have known that he had been ill-treated. 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 light of the psychological effects caused on his person by the ill-treatment and torture that 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 are said to have faded from around 2007. He recalls that he had explained that, due to the presence of guards during the visits he received, he had been unable 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 Vukÿeviÿ 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 held that the individual appeal before the CC was an effective domestic remedy, the Government argues that this is the same in this case. He 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. Furthermore, 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 lodge a complaint without delay . He maintains that this is an obligation which the applicant in the present 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 did not raise such a complaint either before the judge who heard him in police custody, or 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 this 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, as 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 *Jeronoviÿs* (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 enabling investigate allegations of mistreatment of a person in their care.

100. It is essentially a question, through such an investigation, of ensuring the effective application of laws which prohibit torture and inhuman or degrading treatment and punishment in cases where agents or organs of the State are involved and to ensure that they are held accountable for mistreatment that occurred 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 to take into consideration not only the acts of state agents who directly and illegally used force, but also all the circumstances surrounding them.

102. Although this 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 Republic 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 non-exhaustion of domestic remedies, within the meaning of Article 35 § 1 and 4 of the Convention (paragraph 60 above and *Kušiÿ and Others v. Croatia* (dec.), no. 71667/17, §§ 106-108, 10 December 2019). However, the Court endorses the findings established by the CC in its decision of March 31, 2016 relating to the failings of the investigation in question (paragraphs 16-37 above).

105. That 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 after 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

placement in police custody or at the end of it. Moreover, the Court notes that no document in the file indicates either 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, she notes that the public prosecutor heard witnesses and alleged perpetrators of the alleged ill-treatment without drawing any conclusions from these hearings regarding the reality of the facts. Furthermore, the Court **observes**
that the interview of the nurse by whom the person concerned declared having been treated could have made it possible to determine whether such care was linked to possible ill-treatment which he had suffered during his 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 the latter's 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 allow us to affirm that efforts have obviously been made by the national authorities. However, the Court notes that these acts were not capable of shedding light on the applicant's allegations that he had been the victim of ill-treatment while in police custody (compare with Biÿkin v. Turkey, o *45403/99 ,* § 70, January 10, 2006).
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107. Having regard to the conclusion of the CC in its decision of March 31, 2016, with which the Court agrees, and in light of the failings it noted above, the Court considers that the competent national authorities failed to their obligation to conduct 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 Article 41 of the Convention:

"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 party injured party, if applicable, just satisfaction. »

A. Too bad

110. The applicant requests 11,500 euros (EUR) for the non-pecuniary damage he considers he has suffered.

111. The Government considers this sum excessive. According to him, it would in fact be contrary to the case law of the Court as he presented it in his observations.

112. The Court ruled that the amount awarded to the applicant by the Constitutional Court was lower than that awarded for his 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, *Miliÿ and Nikeziÿ,* cited above, § 110, and *ÿlker 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. Fees and expenses

113. The applicant does not claim any sum in respect of costs and expenses which he allegedly initiated in the context 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 adjustment

116. The applicant's lawyer invites the Court, under 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) order the respondent State to conduct a prompt, effective and complete investigation. It also requests that the Türkiye be ordered to make a public apology for the violations found in the present case *(McMichael v. the United Kingdom,* February 24, 1995, § 105, Series A no. 307-B, *Kavala v. Türkiye*

(breach action) [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 decide it is up to assess the implementation of these measures *(Ilgar Mammadov v. Azerbaijan* (action for infringement) [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 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 with regard 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. This

a) that the respondent State must pay to 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 moral 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, in application of article 77 §§ 2 and 3 of the regulation.

Hasan Bakÿrcÿ Clerk	Arnfinn Bårdsen President