CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF AÇIK AND OTHERS v. TURKEY

(Application no. 31451/03)

JUDGMENT

STRASBOURG

13 January 2009

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

In the case of Açık and Others v. Turkey,

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 31451/03) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Turkish nationals, Ms İnci Açık, Ms Rüya Kurtuluş, Ms Serpil Ocak, Mr Erdinç Gök, Ms Ayfer Çiçek, Mr Nuri Günay, Mr Haşim Özgür Ersoy and Mr Murat Kaya ("the applicants"), on 11 July 2003.

2. The applicants were represented by Mr A.T. Ocak, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 6 September 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1980, 1980, 1981, 1983, 1980, 1983, 1978 and 1983, respectively, and live in Istanbul. They were students at various faculties attached to Istanbul University at the time of the events. The applicants were also members of a group called Istanbul University Students' Coordination (*İstanbul Üniversite Öğrencileri Koordinasyonu*).

A. The applicants' arrest and detention in police custody

5. On 3 October 2002 Istanbul University held its opening ceremony for the academic year 2002-2003. During the ceremony, which was attended by politicians, businessmen and the press, the applicants were forcibly removed from the conference hall by plain clothed policemen and taken to Beyazıt police station, approximately 500-600 metres away from the university[1].

6. According to the incident report drafted by police officers at 12.15 p.m., the events unfolded as follows. At around 11.20 a.m., while the Chancellor Mr Alemdaroğlu was speaking, some students, from the upper stage of the hall, started shouting out "Freedom to University, an end to investigations" and "Oppression will not intimidate us, decree belongs to the State and the University to us", and raised banners and placards with similar messages. They also held up enlarged photocopies of disciplinary sanctions given to various students, including one of the applicants, Mr Haşim Özgür Ersoy. Further to a request from the Chancellor's security adviser, the police warned the students that theirs was an unlawful demonstration and that they were breaching public order by interfering with freedom of education and instruction and disrupting the ceremony. They were asked to come to the police station. However, since the students continued their protest and shouted out "Oppression will not intimidate us", the police, together with the private security guards of the university, intervened and arrested nineteen students, including the applicants, by using force. The applicants were taken to Beyazıt police station.

7. At 12.15 p.m. records of the applicants' arrest were drawn up, which they refused to sign.

8. At 2 p.m. the applicants were medically examined by a doctor at Haseki Hospital. At 4.55 p.m. they were again examined by a doctor at the Istanbul Forensic Medicine Department.

1. İnci Açık

9. The doctor at the Haseki Hospital noted that the applicant had ecchymosed lesions in the middle of her left arm.

10. The doctor at the Istanbul Forensic Medicine Department noted that the applicant had a bruise of 2.5 cm on the middle inside part of her left arm and another bruise of 1 cm on the lower left arm.

2. Rüya Kurtuluş

11. The doctor at Haseki Hospital found that the applicant had a skin graze and redness in her lower back region.

12. The doctor at the Istanbul Forensic Medicine Department noted, in addition to the above, a skin graze of 1 cm on the right side of her neck. It

[1] The applicants submitted newspaper clippings, with pictures, concerning the event.

was noted that the applicant had stated that she had sustained these injuries during the upheaval on the university stairs.

3. Erdinç Gök

13. The doctor at the Haseki Hospital found an area of bruising and swelling on the applicant's forehead, bruises and swelling on the nose and a skin graze on the back of the right ear. Further medical analysis did not reveal any bleeding or other problems in the nasal region.

14. The doctor at the Istanbul Forensic Medicine Department noted the same injuries on the applicant. It was further noted that, as regards the injury on his forehead, the applicant had stated that he had been punched in the face. As to the other injuries, the applicant failed to remember how they had happened during the commotion.

4. Haşim Özgür Ersoy

15. The doctor at Haseki Hospital observed an area of bruising on the applicant's left arm and four to five areas of redness of 2 cm x 1 cm on the right side of his neck.

16. The doctor at the Istanbul Forensic Medicine Department noted a 2.5 cm area of bruising on the right shoulder and on the middle of his left arm. The applicant also had a skin graze of 0.5 cm on the middle front part of the neck and a 1 cm skin graze on the right upper and lower part of the neck.

5. Serpil Ocak, Nuri Günay, Murat Kaya and Ayfer Çiçek

17. The doctors who examined the applicants found no signs of ill-treatment on their bodies. In the report drafted by the doctor at the Istanbul Forensic Medicine Institute, it was noted that Ayfer Çiçek had refused to take off her clothes for the examination, stating that she had no injuries.

18. On the same day the applicants were brought before the Istanbul public prosecutor's office, from where they were released. The applicants allege that they were detained in police custody for about eleven and a half hours.

B. The criminal investigation into the applicants' complaints

19. On 9 October 2002 the applicants filed a complaint with the Istanbul public prosecutor against the university security guards and the police on duty at the conference hall that day. In their identical complaints, the applicants claimed that, during the Chancellor's speech, a fellow student had got up to speak and had been impeded by a plain-clothes police officer. Then the applicants had also got up and had been beaten and arrested by the

police. The applicants complained that their arms had been twisted and that they had been beaten, particularly on the head. They claimed that the beating had continued outside the conference hall. In the complaints it was also stated that the intervention by the security forces was an interference with their right to freedom of expression, and that they had the right to protest against the existing anti-democratic measures and express their desire for a democratic university at the opening ceremony. They submitted that their arrest and detention had been unlawful and that the disproportionate force used against them had constituted inhuman and degrading treatment.

20. On 4 November 2002 the Istanbul public prosecutor issued a decision not to prosecute the police officers or the university security guards. In his decision, the public prosecutor noted that the applicants had breached public order by preventing freedom of education and by disrupting the ceremony when shouting slogans and raising banners. Despite having been invited to come to the police station and to end their unlawful demonstration, they had continued. As a result 19 students had been arrested and detained in police custody using force. It was noted that some of the plaintiffs had suffered minor injuries but others had suffered none, and that the police had had to use force because they had resisted arrest.

21. On 22 November 2002 the applicants objected to the prosecutor's decision. In particular, they submitted that the prosecutor had relied solely on police records and had failed to hear evidence from anyone, including themselves. They further challenged the official version that they had resisted arrest, stating that they had not been given any prior warning.

22. On 26 December 2002 the Beyoğlu Assize Court dismissed the applicants' objections. That decision was served on them on 18 January 2003.

23. The Government informed the Court that no criminal proceedings had been instituted against the applicants in respect of the above event.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicants complained that the manner in which they had been arrested on 3 October 2002 constituted inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. *As regards the applicants Serpil Ocak, Nuri Günay, Murat Kaya and Ayfer Çiçek*

25. The Court finds no indication in the case file to demonstrate that these applicants were subjected to any kind of treatment beyond the threshold of severity required for Article 3 to apply (see *Balçık and Others v. Turkey*, no. 25/02, §§ 24-26, 29 November 2007). For these reasons, the Court finds that their complaint under Article 3 of the Convention is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

2. *As regard the applicants Rüya Kurtuluş, Erdinç Gök, Haşim Özgür Ersoy and İnci Açık*

26. The Court notes that these applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. Their complaint must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

27. The Government dismissed the applicant's allegations of ill-treatment and maintained that, in the circumstances of the present case, the use of force had been proportionate to the aim pursued.

28. The applicants reiterated that the manner in which they had been taken out of the university meeting constituted inhuman and degrading treatment. In this connection, they claimed, in particular, that the security forces had twisted their arms behind their backs, beaten them and dragged them on the ground all the way to the police station. The applicants further denied shouting slogans or raising placards. They submitted that they had written on sheets of cardboard but that they had not had any opportunity to display them since they had been taken out of the hall as soon as the applicant Haşim Özgür Ersoy had asked to speak and had been refused permission.

2. *The Court's assessment*

29. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive

(see, in particular, *Kurnaz and Others v. Turkey*, no. 36672/97, § 52, 24 July 2007, and the references therein).

30. The Court notes that it is not disputed between the parties that the applicants' injuries resulted from the use of force by the security forces in the performance of their duties. The Court therefore considers that the burden rests on the Government to demonstrate with convincing arguments that the force used was indispensable and not excessive (see *Balçık and Others*, cited above, § 31).

31. Having regard to the documentary evidence, including newspaper reports, the Court observes that the applicants were part of a group of students who interrupted the proper course of the opening ceremony of the academic year at Istanbul University during the Chancellor's speech, in order to protest against certain measures which they considered to be anti-democratic, by opening banners and shouting various slogans. The Court notes that during their arrest the applicants sustained injuries of varying degrees. While the Court finds it credible that the applicants were warned to stop their protests, the documentary evidence fails to shed light on the exact manner in which that warning was given. It appears that the authorities then intervened swiftly and with some force in order to remove the applicants from the university hall. In this connection, the Court notes that there is no evidence to suggest that the students were a serious danger to public order. This is confirmed by the fact that no criminal proceedings were subsequently initiated against them. There is also no information in the case file to show that the security forces encountered violent resistance on the part of the applicants while they were being taken out of the conference hall. In this connection, the Court notes that no information has been forthcoming from the Government to show whether the police officers sustained any injuries during the events.

32. Taking into account that the incident took place during an opening ceremony of the University, it cannot be said that these applicants were injured in the course of a random operation which might have given rise to unexpected developments to which the security forces had been called upon to react without prior preparation (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). However, the Government have not provided any information showing that the intervention of the security forces was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of bodily harm to the students.

33. In these circumstances, the Court finds that the Government have failed to provide convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicants, whose injuries are corroborated by medical reports. As a result, it concludes that the injuries sustained by Rüya Kurtuluş, Erdinç Gök, Haşim Özgür

Ersoy and İnci Açık were the result of degrading treatment for which the State bore responsibility.

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

II. ALLEGED VIOLATION OF ARTICLES 5, 9, 10 AND 11 OF THE CONVENTION

35. The applicants complained that their arrest and detention had been unlawful and had infringed their freedom of thought and expression and their right to peaceful assembly. They relied on Articles 5, 9, 10 and 11 of the Convention.

36. The Court considers that the applicants' complaints should be examined under Article 10 alone, which, in so far as relevant, provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, for the prevention of disorder ..., [or] for the protection of the ... rights of others..."

A. Admissibility

37. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

38. The Government maintained that the protest activity of the applicants had not been peaceful. They repeated that the applicants had disrupted the ceremony by shouting slogans and opening banners while the Chancellor was giving a speech before a large audience, including politicians and businessmen. They submitted that, in accordance with the regulations in force, the applicants had been warned to put an end to their actions and leave the ceremony but, since they had refused, they had had to be forcibly taken out. They had been taken to the police station in order to prevent them disrupting the ceremony once again. The Government considered that the police had intervened, further to a request to that end, in

order to secure the effective enjoyment of the rights of the organisers of the ceremony to have a peaceful assembly.

39. The applicants maintained that they had attended the ceremony with a view to protesting against certain anti-democratic actions at the university, but that they had been prevented from expressing their opinions by being forcibly removed from the university grounds, arrested and detained.

2. The Court's assessment

40. The Court reiterates that it has previously held that the arrest and detention of protesters may constitute an interference with the right to freedom of expression (see, for example, *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003). In the instant case the applicants participated in the opening ceremony of the academic year at Istanbul University with the aim of protesting against various practices of the university administration which they considered to be anti-democratic. However, their protests, by way of shouting slogans and raising banners, were forcibly ended when they were removed from the conference hall, arrested and detained. Against this background, the Court considers that the applicants were adversely affected by the police intervention and that the measures taken against them were indeed an interference with their freedom of expression.

41. This interference will contravene Article 10 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims prescribed by paragraph 2 of Article 10, and was "necessary in a democratic society" for achieving such aim or aims.

42. It must first be examined whether the interference complained of was "prescribed by law". In this connection, the Court observes that the Government, apart from stating that the measures taken in respect of the applicants were in conformity with the regulations in force, have not submitted any arguments to the effect that the interference at issue was based on and in compliance with any statutory or other legal rule. However, the applicants, apart from generally complaining that their arrest and detention had been unlawful, also failed to elaborate on this point. In these circumstances, the Court does not consider it necessary to determine this question (see *Agga v. Greece (no. 2)*, nos. 50776/99 and 52912/99, § 54, 17 October 2002). The Court accepts that the interference pursued the legitimate aims of preventing public disorder and protecting the rights of others. In the present case what is in issue is whether the interference was "necessary in a democratic society".

43. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the

decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Vajnai v. Hungary*, no. 33629/06, § 43, 8 July 2008).

44. That margin of appreciation extends in particular to the choice of the – reasonable and appropriate – means to be used by the authorities to ensure that lawful demonstrations can take place peacefully (see *Chorherr v. Austria*, 25 August 1993, § 31, Series A no. 266-B).

45. In the instant case, the Court notes that the applicants' protests took the form of shouting slogans and raising banners, thereby impeding the proper course of the opening ceremony and, particularly, the speech of the Chancellor of Istanbul University. As such, their actions no doubt amounted to an interference with the Chancellor's freedom of expression and caused disturbance and exasperation among some of the audience, who had the right to receive the information being conveyed to them. Against this background, the Court considers that the decision to remove the applicants from the university hall, even though it interfered with their freedom of expression, may be deemed to have been proportionate to the aim of protecting the rights of others.

46. However, the Court observes that the applicants did not resort to insults or violence. Moreover, it repeats that they were not likely to cause serious public disorder. This is supported by the fact that no criminal proceedings were subsequently brought against them. The Court considers that the applicants' protest could have been countered by less draconian measures, such as denying them re-entry into the conference hall, rather than resorting to the extreme measures of arrest and detention, even for a few hours. In these circumstances, the Court finds that the authorities' response was disproportionate to the aims of preventing public disorder or protecting the rights of others. It was not therefore "necessary in a democratic society".

47. It follows that there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

49. The applicants Rüya Kurtuluş, Erdinç Gök, Haşim Özgür Ersoy and İnci Açık claimed 1,000 euros (EUR) each in respect of pecuniary damage. This sum included medical expenses, as well as legal costs incurred in the course of the domestic proceedings. The applicants each claimed EUR 1,000 in respect of non-pecuniary damage.

50. The Government contested the amounts.

51. As regards the purported pecuniary damage sustained by these applicants, the Court notes that they failed to produce any receipts or documents in support of their claim, which is accordingly dismissed.

52. As regards non-pecuniary damage, the Court considers that the applicants are sufficiently compensated by the finding of a violation of Article 10 of the Convention (see, *mutatis mutandis*, *Balçık and Others*, cited above, § 62, and *Saya and Others v. Turkey*, no. 4327/02, § 54, 7 October 2008[1]). However, concerning the violation of Article 3 which it has found in respect of the four applicants, Rüya Kurtuluş, Erdinç Gök, Haşim Özgür Ersoy and İnci Açık, the Court, ruling on an equitable basis, awards them EUR 1,000 each under this head.

B. Costs and expenses

53. The applicants also claimed EUR 5,843.26 for the costs and expenses incurred before the Court. This sum included legal fees, translation costs and other expenses. The applicants relied on the Istanbul Bar Association's scale of fees. They did not, however, submit any receipts or any other relevant documents.

54. The Government contested the amounts.

55. The Court considers that since the applicants submitted no documentary justification for their costs and expenses, as required by Rule 60 of the Rules of Court, it makes no award under this head.

C. Default interest

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

[1] The judgment is not final yet.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* inadmissible the complaint by the applicants Serpil Ocak, Nuri Günay, Murat Kaya and Ayfer Çiçek under Article 3 of the Convention;

2. *Declares* admissible the remainder of the application;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants Rüya Kurtuluş, Erdinç Gök, Haşim Özgür Ersoy and İnci Açık;

4. *Holds* there has been a violation of Article 10 of the Convention;

5. *Holds* that the finding of a violation of Article 10 in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

6. *Holds*
   (a) that the respondent State is to pay the applicants Rüya Kurtuluş, Erdinç Gök, Haşim Özgür Ersoy and İnci Açık, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent Governement at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President