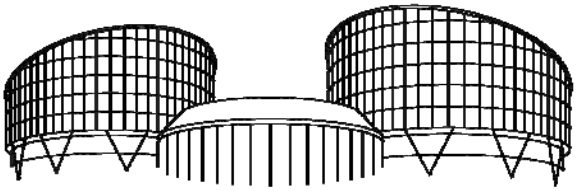

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GAZİOĞLU AND OTHERS v. TURKEY

(Application no. 29835/05)

JUDGMENT

STRASBOURG

17 May 2011

FINAL

17/08/2011

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

In the case of Gazioğlu and Others v. Turkey,

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

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 29835/05) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Turkish nationals, Ms Derya Gazioğlu, Mr Burhan İlgün, Mr Hacı Badem and Mr Akan Şenel ("the applicants"), on 4 August 2005.

2. The applicants were represented by Ms O. Ersoy and Ms Y. Yeşilyurt, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that the intervention of a number of police officers and the force used by those police officers against them in a demonstration in which they were taking part had been in violation of their rights under Articles 3 and 11 of the Convention.

4. On 6 April 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1984, 1980, 1955 and 1979 respectively and live in Istanbul.

6. On 17 October 2003 the applicants took part in an anti-war demonstration in Istanbul. The gathering was dispersed by police officers and the applicants were arrested and taken into police custody where they remained until their release the following day. The applicants allege that they were subjected to ill-treatment during their arrest and their detention in custody.

7. According to an incident report drawn up by a number of police officers on 17 October 2003, fifty to sixty persons, including the applicants, gathered in a square in Istanbul at 7.45 p.m. and chanted anti-war slogans, protesting against the Government's proposals to send soldiers to participate in the invasion of Iraq. The police had warned them with loudspeakers that they were disturbing the flow of traffic and had unsuccessfully asked them to disperse. When the police had attempted to arrest some of the demonstrators and put them into the police vehicles, a number of the demonstrators had displayed "rowdy behaviour" and the police had had to use force against them. A total of six persons, including the applicants, had been arrested and taken to a police station at 8.30 p.m. the same evening. This incident report was signed by six police officers who were only referred to in the report with their identification numbers.

8. The same day the applicants were examined by a doctor. According to the medical reports, the second and third applicants had no signs of ill-treatment on their bodies. The first applicant had bruising on her lower lip and on her lower right leg. The fourth applicant had bruising on the left side of his lower back and on the back of his right ear. His legs were also sensitive and he had redness in his left eye.

9. The same evening the applicants were questioned by the police in the presence of a duty lawyer. With the exception of the third applicant, all the applicants exercised their right to remain silent.

10. The following day the applicants were examined by a doctor once more. According to the medical reports, there were no signs of ill-treatment on the applicants' bodies other than those mentioned in the medical reports drawn up the previous day.

11. At around 2 p.m. the same day the applicants were brought before the Bakırköy prosecutor. The applicants told the prosecutor that by attending the demonstration they had been exercising their democratic rights. They also alleged that the police had arrested them without any previous warnings. The fourth applicant complained that he had been beaten up by the police officers. The first and fourth applicants also complained that police chief M. T. had sworn at them during their time in police custody. The same day the applicants were released.

12. On 21 October 2003 the Bakırköy prosecutor asked for an investigation to be opened into the applicants' allegations of ill-treatment.

13. The applicants submitted a formal complaint to the Bakırköy prosecutor on 5 November 2003. With the exception of the third applicant,

Mr Hacı Badem, the applicants complained of ill-treatment. Referring to Article 3 of the Convention the three applicants stated that the police officers had punched and kicked them in the course of their arrests, as well as during their detention at the police station.

14. Between 10 December 2003 and 13 April 2004 the Bakırköy prosecutor questioned eleven police officers. Ten of the police officers denied having been at the demonstration or having seen any of the demonstrators because they had been working elsewhere at the time. The remaining officer, police chief M.T., told the prosecutor that he had not taken part in the dispersal of the demonstration but had questioned the applicants in police custody. He denied having ill-treated any of the arrestees or having sworn at them.

15. On 14 April 2004 the Bakırköy prosecutor decided to close the investigation into the applicants' allegations of ill-treatment. On the basis of the documents in the file the prosecutor considered that when the applicants refused to disperse the police had had to use force against them. The applicants' "simple injuries" had thus been caused when the police had been exercising their statutory powers on the use of force.

16. The applicants' objection against the prosecutor's decision was rejected by the Eyüp Assize Court on 8 December 2004. This decision stated that it was to be served on the applicants.

17. According to a hand-written note on this decision, it was communicated to the applicants on 9 February 2005.

18. In the meantime, on 21 October 2003 criminal proceedings were instigated against the applicants for having taken part in an unlawful demonstration, in breach of sections 33, 36 and 40 of the Meetings and Demonstration Marches Act (Law no. 2911).

19. On 28 January 2008 the Bakırköy Criminal Court of First Instance acquitted the applicants, holding that they had exercised their democratic rights and not committed any offences.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The first, second and fourth applicants complained that they had been subjected to ill-treatment during their arrest and detention in police custody 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."

21. The Government contested that argument.

A. Admissibility

22. The Government submitted, firstly, that the applicants had not respected the six-month time-limit because they had not introduced their application with the Court within six months from the date of the rejection of their objection by the Eyüp Assize Court on 8 December 2004. They submitted that there were no documents in the file to show that the Assize Court's decision had been served on the applicants on 9 February 2005.

23. The Government also considered that the applicants had failed to make use of a number of civil and administrative remedies in respect of their complaints of ill-treatment.

24. The Government lastly argued that, according to the medical reports, the second applicant had not been ill-treated. Thus, his allegations of ill-treatment were devoid of any basis.

25. The three applicants maintained that the decision had been communicated to them on 9 February 2005, and argued that it was up to the Government to provide documentary evidence to the contrary. They also maintained that they had exhausted all domestic remedies.

26. The second applicant argued that the absence of any mention of injuries in the medical report did not mean that he had not been ill-treated. To that end he argued that ill-treatment did not always result in physical injuries, but sometimes only in psychological problems. After having been ill-treated by the police he had not been examined by a psychologist or a psychiatrist because the hospital to which he had been taken by the police after his arrest did not provide such examinations.

27. As for the Government's submission that the applicants had failed to introduce their application with the Court within six-months from the date of the Eyüp Assize Court's decision of 8 December 2004, the Court observes that decisions adopted by assize courts are served on the parties. Indeed, the Eyüp Assize Court explicitly stated in its decision of 8 December 2004 that the decision was to be served on the applicants. In this connection the Court reiterates that, where an applicant is entitled to be served with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V). It therefore cannot accept the Government's suggestion that the starting point of the six-month period was the date on which the Eyüp Assize Court adopted its decision.

28. According to a hand-written entry on the Assize Court's decision, it was communicated on 9 February 2005. The application was submitted to the Court on 4 August 2005, that is, within the six-month time-limit. The Government, beyond submitting that there were no documents showing that the decision had been communicated to the applicants on 9 February 2005,

did not seek to challenge the veracity or authenticity of the hand-written entry on the decision. Neither did they seek to submit to the Court any information or documents to show that the decision was served on the applicants on another date. In light of the foregoing the Court rejects the Government's submission that the complaints under Article 3 of the Convention were submitted to the Court too late.

29. Regarding the Government's reference to civil and administrative remedies, the Court reiterates that it has already examined and rejected similar preliminary objections made in similar cases (see, in particular, *Atalay v. Turkey*, no. 1249/03, § 28, 18 September 2008; and *Karayiğit v. Turkey*, no. 63181/00, 5 October 2004). The Court reaffirms its earlier conclusions that the remedies referred to by the Government cannot be regarded as sufficient for a Contracting State's obligations under Article 3 of the Convention.

30. In this connection the Court recalls that the obligations of the State under Article 3 cannot be satisfied merely by awarding damages. For complaints about treatment suffered in police custody, criminal proceedings are the proper means of obtaining redress (*Okkalı v. Turkey*, no. 52067/99, § 58, ECHR 2006-XII (extracts)). This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007 and the cases cited therein).

31. The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases. It therefore rejects the Government's preliminary objection in respect of civil and administrative remedies.

32. Finally, concerning the Government's objection to the admissibility of the second applicant's allegations of ill-treatment on the grounds of lack of evidence, the Court observes that the second applicant consistently maintained his allegations of ill-treatment, not only when he complained to the national authorities but also in his submissions to the Court. Nevertheless, as the Government pointed out, the medical reports drawn up following his arrest and detention do not support his allegations.

33. The Court has examined the medical reports in question according to which there were no injuries on the body of the second applicant (see paragraphs 8 and 10 above) and considers that they lack detail and fall significantly short of both the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which are regularly taken into account by

the Court in its examination of cases concerning ill-treatment (see, *inter alia*, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X), and the guidelines set out in the Istanbul Protocol (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). As such, the Court considers that the medical reports in question cannot be relied on as evidence for proving or disproving that the second applicant was ill-treated.

34. Nevertheless, although the Court does not exclude that some forms of ill-treatment do not leave any physical injuries and only cause mental suffering (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI and the cases cited therein), the second applicant did not elaborate in any detail about what mental suffering he had encountered as a result of the alleged ill-treatment. Furthermore, although the second applicant submitted that the hospital to which he was taken by police officers did not provide psychological or psychiatric assessments, the Court considers that it would have been open to him to seek, following his release from police custody the day after the alleged ill-treatment had taken place, medical treatment or counselling elsewhere. In this connection the Court points out that reports obtained from privately owned or run medical establishments are also admitted in evidence by the Court in its examination of allegations of ill-treatment (see, *inter alia*, *Türkan v. Turkey*, no. 33086/04, § 44, 18 September 2008).

35. In the light of the foregoing and in the absence of any other evidence in support of his allegations, the Court concludes that the second applicant's complaint under Article 3 of the Convention is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

36. The Court notes that the complaints made by the first and fourth applicants are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

37. The first and fourth applicants maintained that the force used by the police when arresting them had been disproportionate and that the injuries caused by the police were serious enough to amount to ill-treatment within the meaning of Article 3 of the Convention.

38. The Government were of the opinion that the applicants' injuries had been caused when they resisted the police officers' attempts to arrest them. The use of force had been necessary because the demonstrators had refused to disperse and had had to be dispersed by the police. The Government considered the two applicants' injuries to be too insignificant to amount to ill-treatment.

39. The Court observes at the outset that the medical reports pertaining to the applicants' medical examinations lack details such as the extent of the injuries and the applicants' own accounts of how the injuries had been caused. Neither do the reports make any mention of whether or not the doctors who examined the applicants tried to establish how those injuries might have been caused.

40. Nevertheless, despite their succinctness, the reports do mention the existence of bruised areas on two of the applicants' bodies. Having regard to the location of some of the injuries, namely the face and the head (see paragraph 8 above), the Court considers that the first and fourth applicants' injuries attained the minimum level of severity to fall within the scope of Article 3 of the Convention (see *Samüt Karabulut v. Turkey*, no. 16999/04, § 41, 27 January 2009).

41. In order to explain the applicants' injuries the Government argued that they had been caused when the applicants resisted arrest. In this connection the Court reiterates that, according to the Court's case-law, Article 3 does not prohibit the use of force for effecting an arrest. However, such force may be used only if indispensable and must not be excessive (*Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007 and the cases cited therein).

42. Furthermore, recourse to physical force which has not been made strictly necessary by a person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. In this connection the Court reiterates that the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (*Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336 and the case cited therein).

43. Having regard to the Government's admission that the injuries had been caused by the police officers, the Court considers that the burden rests on the Government to demonstrate by convincing argument that the use of force was rendered strictly necessary by these applicants' own behaviour and that the force used by the police officers was not excessive.

44. The Court observes at the outset that, although a number of police officers were questioned by the prosecutor in the course of the investigation into the applicants' allegations of ill-treatment, all of them denied having been at the demonstration. Thus, none of the officers who had actually taken part in the dispersal of the demonstration or who had arrested the applicants was questioned (see paragraph 14 above). That was despite the fact that those police officers' official identification numbers were clearly stated in the incident report drawn up on 17 October 2003 and it would thus have been a straightforward matter for the prosecutor to identify and summon them. Nevertheless, in his decision of 14 April 2004 closing the investigation the prosecutor concluded, on the basis of the "documents

drawn up at the initial stages of the investigation", that the police had had to use force when the applicants refused to disperse. It is thus apparent that no real and serious attempts were made by the prosecutor to establish the circumstances of the use of force or the cause of the applicants' injuries. It follows, therefore, that the conclusion reached by the prosecutor, which was endorsed by the Eyüp Assize Court, was not capable of establishing the true facts surrounding the events.

45. Secondly, the incident report of 17 October 2003 merely states that the police had to use force against a number of demonstrators who displayed "rowdy behaviour". The report does not mention the specific circumstances in which the police officers had to resort to the use of force, the extent of the force used or the identities of those against whom the force was used.

46. The only justification for the use of force, according to the incident report, was the allegedly "rowdy behaviour" of some of the demonstrators. No other justification was proffered by the Government. Moreover, in its decision acquitting them the Bakırköy Criminal Court of First Instance held that the applicants had exercised their democratic rights and not committed any offences.

47. The Court considers, as it has done in a number of judgments concerning similar cases against Turkey, that the police officers in the present case failed to show a degree of tolerance and restraint before attempting to disperse a crowd which did not present a danger to public order and was not engaging in acts of violence. It thus appears that the hasty response of the police to the peaceful gathering of the demonstrators resulted in mayhem, and the ensuing use of disproportionate force by the police officers resulted in the injury of some of the demonstrators, including the applicants (see *Biçici v. Turkey*, no. 30357/05, §§ 35-36, 27 May 2010).

48. Having further regard to the absence of any information and documents showing that the recourse to physical force had been made strictly necessary by the applicants' conduct, the Court concludes that the injuries sustained by the first and fourth applicants were the result of treatment for which the State bears responsibility.

49. It follows that there has been a violation of Article 3 in respect of these two applicants on account of the inhuman and degrading treatment to which they were subjected.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

50. The applicants complained under Article 5 of the Convention that their arrest and subsequent detention in police custody had been unlawful.

51. The Government contested that argument.

52. The Court observes that the applicants' police custody ended on 18 October 2003 (see paragraph 11 above). However, they did not lodge their application with the Court until 4 August 2005. They thereby failed to

observe the six-month rule laid down in Article 35 § 1 of the Convention in respect of this complaint. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

53. The applicants argued that the above-mentioned events, particularly their arrest and detention, constituted a violation of their rights under Articles 10 and 11 of the Convention.

54. The Government contested that argument.

55. The Court considers that the applicants' complaints should be examined from the standpoint of Article 11 of the Convention alone, which reads in so far as relevant as follows:

> "1. Everyone has the right to freedom of peaceful assembly...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of ... public safety [or] for the prevention of disorder..."

A. Admissibility

56. The Government considered that the applicants had failed to respect the six-month period in respect of their complaints. To that end they submitted that the starting point of the six-month period was the date of the demonstration which had taken place on 17 October 2003, but that the application had not been introduced until 4 August 2005.

57. The Court has already established that the application was introduced within six months of the date of communication of the decision closing the investigation into the applicants' allegations of ill-treatment (see paragraph 28 above). In the Court's view, it was not unreasonable for the applicants to await the outcome of the proceedings against the police officers who forcefully removed them from the demonstration (see *Ekşi and Ocak v. Turkey*, no. 44920/04, § 25, 23 February 2010 and the case cited therein; see also *Saya and Others v. Turkey*, no. 4327/02, § 36, 7 October 2008). Accordingly, the Government's objection to the admissibility of this complaint must be dismissed.

58. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

59. The Government did not dispute that there had been an interference with the applicants' enjoyment of their rights under Article 11 of the Convention. In any event, the Court considers that the applicants' arrest and the use of force against two of the applicants constituted an interference with their rights under that provision.

60. In this connection, the Government submitted that the interference had a legal basis, namely the Meetings and Demonstration Marches Act, and was thus "prescribed by law" within the meaning of Article 11 § 2 of the Convention. As regards a legitimate aim, the Government submitted that the interference pursued the legitimate aim of preventing public disorder. The Court agrees with these submissions.

61. Turning to the question of whether the interference was "necessary in a democratic society", the Government submitted that the demonstration had been organised unlawfully.

62. The Court has examined the applicants' complaints in the light of the fundamental principles underlying its judgments relating to Article 11 of the Convention (see, in particular, *Oya Ataman v. Turkey*, no. 74552/01, §§ 35-44, ECHR 2006-XIII and the judgments cited therein; *Bukta and Others v. Hungary*, no. 25691/04, §§ 33-39, ECHR 2007-IX; and *Éva Molnár v. Hungary*, no. 10346/05, §§ 23-46, 7 October 2008).

63. It observes that fifty to sixty persons, including the applicants, had gathered in a square in Istanbul to protest against the invasion of Iraq. The police warned the demonstrators with loudspeakers that they were disturbing the flow of traffic and unsuccessfully asked them to disperse, before resorting to using force to arrest the applicants and a number of other persons. Their intervention resulted in the injury of, among others, two of the applicants.

64. The Court also observes that the police officers arrested the applicants on the ground that they had breached the Meetings and Demonstration Marches Act. However, the Bakırköy Assize Court found that the applicants had not breached this law, contrary to the allegations of the police and the submissions of the Government. The Assize Court found that the applicants had exercised their democratic rights and had not committed any offences.

65. Furthermore, it is to be observed that the Government have not sought to argue that the applicants or any of the other demonstrators had presented a danger to public order or engaged in acts of violence.

66. In this connection the Court reiterates that, where demonstrators do not engage in acts of violence, as was the case in the present application, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see

Nurettin Aldemir and Others v. Turkey, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007).

67. In the light of the foregoing, the Court considers that the intervention of the police officers in the demonstration was disproportionate and not necessary for preventing disorder within the meaning of the second paragraph of Article 11 of the Convention.

68. There has accordingly been a violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. Each of the four applicants claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage. In support of their claims in respect of pecuniary damage the applicants argued that, as a result of their arrest and the ill-treatment, they had been unable to work and had had to bear the costs of their medical treatment.

71. The Government considered the claims to be unsubstantiated and excessive.

72. As for the claims in respect of pecuniary damage the Court notes that the applicants have not substantiated their claims with any documentation or information. It therefore rejects their claims. On the other hand, in view of the events leading to the violations found under Articles 3 and 11 of the Convention, it considers that the first and fourth applicants may be taken to have suffered a certain amount of distress. Ruling on an equitable basis, the Court awards each of these applicants EUR 12,000 in respect of non-pecuniary damage. Also ruling on an equitable basis, the Court awards the second and third applicants EUR 9,000 each in respect of non-pecuniary damage stemming from the breach of their rights under Article 11 of the Convention.

B. Costs and expenses

73. The applicants also claimed EUR 11,500 plus value added tax, for the costs and expenses incurred before the domestic courts and subsequently before the Court. In respect of their claim the applicants submitted to the

Court a time sheet, showing the time spent by their legal representatives on the case.

74. The Government considered the claim to be unjustified, and invited the Court not to make any awards.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints made by the first and fourth applicants under Article 3 of the Convention, as well as the complaints made by all four applicants under Article 11 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by 5 votes to 2 that there has been a violation of Article 3 of the Convention in respect of the first and fourth applicants;

3. *Holds* unanimously that there has been a violation of Article 11 of the Convention in respect of all four applicants;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, plus any tax that may be chargeable to the applicants, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) EUR 12,000 (twelve thousand euros) to each of the first and fourth applicants, namely Ms Derya Gazioğlu and Mr Akan Şenel, in respect of non-pecuniary damage;
      (ii) EUR 9,000 (nine thousand euros) to each of the remaining two applicants, namely Mr Burhan İlgün and Mr Hacı Badem, in respect of non-pecuniary damage; and

(iii) EUR 2,000 (two thousand euros) to the four applicants jointly in respect of costs and expenses,

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Registrar	President

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

F.T.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES JOČIENĖ AND SAJÓ

We agree with the conclusions of the Chamber in this case concerning the violation of Article 11. We do not, however, share its conclusions in finding a violation of Article 3 of the Convention as regards inhuman and degrading treatment in the circumstances of this particular case.

The Court in its jurisprudence has clearly applied a stringent test as regards the minimum level of severity required in order to find a substantive violation of Article 3 of the Convention. In the case *Assenov and Others v. Bulgaria* (28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) the Court stated:

> "... 94. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517–18, §§ 52 and 53) ...."

We consider that the wounds sustained by the applicants did not attain the level of severity required to satisfy the Article 3 test in the present circumstances, involving the dispersal of a demonstration during which the applicants refused to comply with an order to disperse. What is more, in this particular case the nature of the injuries sustained by the applicants did not play a decisive role. It is not clear from the facts of the case, as recognised by the Chamber, how these injuries were caused (see paragraph 39 of the judgment). Furthermore, the medical reports lacked details such as the extent of the injuries. According to the facts of the case (see paragraph 7 of the judgment), the police were obliged to use force against aggressive demonstrators who were clearly resisting the police, in order to ensure traffic safety and disperse the demonstrators. In the present case there are differing versions of the facts submitted by the applicants and the police. According to the police, the applicants' injuries were caused when they resisted the police officers' attempts to arrest them (see paragraph 38). According to the first and fourth applicants, the force used by the police was disproportionate and the injuries caused were serious enough to amount to ill-treatment under Article 3. The differing versions of the facts in the circumstances of this case, which were not proved, are a decisive factor in prompting us not to find a substantive violation of Article 3. The Court cannot speculate on the facts of the case and find a substantive violation of the Convention relying on disputable elements or unverified circumstances.

We could have accepted a procedural violation under Article 3 of the Convention, taking into account the arguments used by the Chamber in paragraphs 44-46, but the applicants did not raise this aspect before the Court (see paragraph 20).