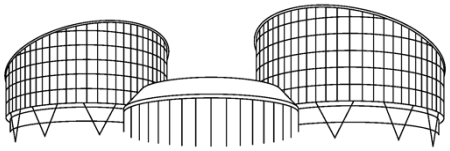

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DİLEK ASLAN v. TURKEY

(Application no. 34364/08)

JUDGMENT

STRASBOURG

20 October 2015

FINAL

20/01/2016

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

In the case of Dilek Aslan v. Turkey,

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

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 22 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 34364/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Ms Dilek Aslan ("the applicant"), on 10 July 2008.

2. The applicant was represented by Mr O. Gündoğdu, a lawyer practising in Kars. The Turkish Government ("the Government") were represented by their Agent.

3. On 8 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

4. The applicant was born in 1984 and lives in Kars.

5. As the facts of the case are in dispute between the parties, they will be set out separately. The facts as presented by the applicant are set out in Section B below (paragraphs 5-9 below). The Government's submissions concerning the facts are summarised in Section C below (paragraphs 10-13 below). The documentary evidence submitted by the applicant and the Government is summarised in Section D (paragraphs 14-30 below).

B. The applicant's submissions on the facts

6. On 21 October 2006 the applicant and three of her friends were in the city of Kars, distributing leaflets prepared by TAYAD (Association for Solidarity with the Families of Persons Deprived of Their Liberty), in a residential neighbourhood.

7. A man in plain clothes arrived and attempted to seize the leaflets without showing his identity documents demonstrating that he was a police officer. As the applicant and her friends refused to comply with the man's demand, he held two of the applicant's friends around their necks. Subsequently, around thirty police officers arrived at the scene and arrested the applicant and her friends. In the course of the arrest, the police officers used force and hit the applicant on various parts of her body before putting her in a police vehicle. In the vehicle, a police officer sat on her head and continued to hit her. A number of police officers also touched various parts of her body and made sexually suggestive comments.

8. The applicant was taken to hospital, where she was examined by a doctor who observed skin erosions, red patches (erythema) and sensitive areas on the applicant's head, face, shoulders, lower back, abdomen and wrist. He concluded that the injuries were not life-threatening and a simple medical procedure was sufficient to treat them.

9. The applicant was then taken to a police station, where the beating continued and where she was threatened with rape by one of the police officers. The applicant's requests for information about the reasons for her arrest and for a lawyer were refused. Each time the applicant repeated her requests the police officers used offensive language.

10. A lawyer who arrived at the police station the same afternoon secured the applicant's release.

C. The Government's submissions on the facts

11. On 21 October 2006 at around 11 a.m. the police received information according to which TAYAD members were distributing leaflets in a residential area in Kars. Two police officers, V.G. and H.Ö., arrived at the scene of the incident at 11.15 a.m. in order to verify whether the content of the leaflets was legal. One of the officers, V.G., approached the applicant and her friends, told them that he was a police officer and requested to see the content of the leaflets and their identity cards. As the applicant and her friends refused to comply and began using offensive language and hitting him, a second police officer intervened. They subsequently asked for help from other officers, who also arrived at the scene of the incident. The police arrested the applicant and her friends and tried to put them in a police vehicle. The arrestees, however, resisted arrest. They also continued to hit

the officers in the vehicle. During the physical struggle between the arrestees and the police officers, V.G., was injured.

12. At 11.30 a.m. the applicant was examined by a doctor, who observed minor injuries on her head, shoulders and wrist. At 11.45 a.m. V.G. was also subjected to a medical examination by the same doctor. According to the medical report issued in respect of V.G., he had pain and sensitivity in his lower back and numbness in his feet. The doctor considered that a simple medical procedure was sufficient to treat both the applicant's and V.G.'s injuries.

13. At 1 p.m. the applicant and her friends were taken to the police station upon the instructions of the Kars public prosecutor. The applicant and her friends refused to make statements to the police.

14. At 4 p.m. the applicant and her friends were released from police custody and taken to a hospital for a medical examination. The doctor who examined the applicant observed the same injuries noted in the report issued at 11.30 a.m. on the same day.

D. Documentary evidence submitted by the parties

15. The medical reports of 11.30 a.m. and 4 p.m. regarding the applicant contain information about the physical injuries sustained by the applicant and the doctors' opinions as to the gravity of the injuries in the respective sections of the reports entitled "findings regarding the lesions" and the "conclusion of the examination" (see paragraphs 8, 12 and 14 above). The sections of the reports entitled "conditions of examination", "information regarding the incident", "the complaints of the person examined" and "findings of the psychiatric examination" were not completed.

16. At 1.30 p.m. on 21 October 2006 an arrest report was drafted by the police. According to this report, police officers had arrived at the scene of the incident as they had received information that members of TAYAD were distributing leaflets. When the police asked them to show the leaflets, the applicant and her friends put the leaflets in their bags and refused to present their identity documents. The report further stated that applicant and her friends had to be arrested through the use of force as they resisted the police officers and continued their acts. According to the report, the arrestees attacked the police officers by way of throwing themselves on the ground and chanting slogans. They were then put in the police vehicle by force and injured themselves in the vehicle by hitting their heads on the car glass and the door.

17. At 1.40 p.m. V.G.'s statements were taken by another police officer. He contended that he had been injured by the applicant and her friends and asked for an investigation to be conducted against them.

18. At 4.10 p.m. the applicant's and her friends' personal belongings were searched by four police officers who drafted a search report.

According to this report, two of the arrestees each had a copy of the leaflet in their bags. The police returned all items found during the search when the applicant and her friends were released from police custody at around 4 p.m.

19. In November 2006 the Kars public prosecutor initiated an investigation against the applicant and her friends. Within the context of this investigation, on 17 November 2006 the public prosecutor took statements from V.G. and H.Ö. The documents containing the police officers' statements refer to them as the "complainants". The officers contended that they had been obliged to use force together with other police officers who had come to assist them, as the applicant and her friends had attempted to beat V.G. The police officers stated that they did not wish to lodge a complaint against the applicant and her friends.

20. On 23 November 2006 the applicant was questioned by the Kars public prosecutor as a suspect. In her statement, she described the ill-treatment and the sexual assaults, and asked the public prosecutor to prosecute the police officers responsible for her ordeal. She also noted that she and her friends had downloaded the leaflets from the web and printed them. She stated that the content of the leaflets in question had not been illegal and that they had not committed any offence. The applicant's legal representative was also present in the room and told the public prosecutor that while distributing the leaflets his client had been exercising her right under Article 10 of the Convention to impart her ideas and opinions. He complained that the police officers who had arrested his client had not shown her their identity documents and had not informed her of her rights. He further complained that the police had committed the offence of abuse of office as they had used violence against his client.

21. On the same day two of the applicant's friends, S.P and B.K., also made statements before the Kars public prosecutor as suspects. They both contended that they had been ill-treated by the police and requested that an investigation be initiated against the officers who were responsible for their ill-treatment.

22. On 13 August 2007 the Kars public prosecutor filed an indictment with the Kars Criminal Court and accused the applicant and her three friends of obstructing the police officers in the execution of their duties under Article 265 § 1 of the Criminal Code. The public prosecutor alleged that the applicant and her friends had called the police officers "fascists", "killers" and "enemies of the people", had refused to show the police officers their identity cards and had hit them with their handbags. A case file was opened and given the number 2007/220.

23. On 4 December 2007 the Kars Criminal Court held the first hearing in the case.

24. On 24 March 2008 the criminal court heard V.G., the complainant police officer, in the absence of the applicant and her co-accused. V.G.

contended that the applicant and her friends had chanted slogans, resisted arrest and hit him with their bags.

25. On 27 March 2008 the applicant made statements before the first-instance court. She stated that they had not chanted slogans or beaten the officers. They had not known whether those persons were police officers and, in any event, V.G. had not asked to see the content of the leaflets. According to the applicant, V.G. had merely taken hold of one of her friends and asked for assistance from other officers in order to carry out the arrest. She noted that they had been attacked and arrested without being able to understand that V.G. was a police officer. During the same hearing, the applicant's lawyer maintained that the applicant's trial for distributing leaflets was in violation of her rights enshrined in the European Convention of Human Rights and, in particular, her right to freedom of expression and demonstration.

26. On various dates the applicant's co-accused gave evidence before the Kars Criminal Court. They all contended that they had not been asked to show the leaflets or their identity cards but had been arrested through the use of force although they had not resisted arrest.

27. On 17 March 2009 the Kars Criminal Court convicted the applicant of obstructing the police officers in the execution of their duties and insulting them under Article 265 § 1 of the Criminal Code and sentenced her to eleven months and twenty days' imprisonment. The first-instance court noted that the police had gone to the scene of the incident as they had received information that members of TAYAD were distributing leaflets. In the light of the statements of the officers who had signed the police report, the medical reports and the arrest report, the Kars Criminal Court found it established that the accused had insulted the police officers, shouted that they would neither show their identity cards nor give the leaflets and injured V.G. by way of hitting him with their bags. Taking into account the fact that the applicant did not have any criminal record, her personality traits and her conduct during the hearings, the first-instance court considered that the applicant would not commit any further offence. It therefore decided to suspend the pronouncement of the judgment against her *(hükmün açıklanmasının geri bırakılması)* for a period of five years, pursuant to Article 231 of the Code of Criminal Procedure (Law no. 5271).

28. On 26 May 2009 the decision of 17 March 2009 became final.

29. Meanwhile, the Kars public prosecutor initiated an investigation against V.G. and H.Ö. on the charge of abuse of office, upon the complaints lodged against them by the applicant and her friends.

30. On 11 August 2007 the Kars public prosecutor decided that no proceedings should be brought against the police officers. In the public prosecutor's opinion the applicant's injuries had possibly been caused when she and her friends had resisted the police officers, who had been

performing their duties. The public prosecutor noted in his decision that some of the police officers had also been injured during the incident.

31. On 4 December 2007 the applicant's lawyer filed an objection against the public prosecutor's aforementioned decision. In his petition, the lawyer noted that the decision in question had not been served on him or his client and that they had become aware of it when the lawyer went to the court-house to read the documents in the case file on the same day. The applicant's lawyer also noted that the applicant had been subjected to violence by the police and that she had not hit the police officers.

32. On 21 December 2007 the Ardahan Assize Court dismissed the applicant's objection against the Kars public prosecutor's decision following an examination on the merits. The Assize Court considered that the force used by the police officers had been no more than necessary to counter the applicant's resistance. The applicant claimed that this decision was not communicated to her or her lawyer and was put in the investigation file. Her lawyer became aware of it when he consulted that file on 21 January 2008. There is no document in the investigation file, submitted by the Government, demonstrating the notification of the decisions of 11 August 2007 and 21 December 2007 to the applicant or her lawyer.

II. RELEVANT DOMESTIC LAW

33. Section 9 of the Law on the Duties and Powers of the Police (Law no. 2559) read as follows at the material time:

> "In order to protect national security, public order, public health and morals or the rights of others, to prevent crime and to detect all kinds of weapons, explosive materials or other prohibited items, the police can conduct searches, pursuant to a judicial decision rendered in compliance with the procedural rules or, in urgent cases, pursuant to a written order by the highest local administrative authority, at the following places:
>
> ...
>
> e) Public spaces or places open to the public;
>
> ...
>
> The police shall search individuals' clothes, vehicles, private documents and items with a view to prevention of crime and send any crime-related items found and the relevant documents to the public prosecutor's office."

34. At the material time, the police power to carry out identity checks was regulated in Section 17 of Law no. 2559 and Section 18(e) of the Regulation on Criminal and Pre-emptive Searches (Regulation no. 25832, entered into force on 1 June 2005):

Section 17 of Law no. 2559

"...

A police officer can ask individuals to present their identity documents (after presenting a document demonstrating that he or she is a police officer) for the prevention of crime or in order to apprehend perpetrators of crime.

Everyone is under the obligation to present a national identity card, a passport or any other official document proving his or her identity when asked by the police.

..."

Section 18(e) of Regulation no. 25832

"Security forces are operationally independent in carrying out the following controls where the conditions are fulfilled:

...

(e) Asking individuals to present their identity documents in order to prevent commission of crime.

..."

35. According to section 44 of the former Law on Associations (Law no. 2908) of 1983, a copy of leaflets to be distributed by associations had to be filed, for information purposes, with the head of the local administrative authority and the public prosecutor's office for the area, and no leaflet, written statement or similar publication could be distributed until twenty-four hours after it was filed. On 23 November 2004 the new Law on Associations (Law no. 5253) came into force. The new Law does not impose any obligation of informing the State authorities of the content or the distribution of associations' leaflets.

36. Article 265 § 1 of the Criminal Code reads as follows:

Resistance with a view to obstructing the execution of duties

"**Article 265** - (1) Anyone who uses methods of violence or threats against a public officer with a view to obstructing him or her in the execution of his or her duties shall be liable to imprisonment of between six months and three years."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

37. The applicant complained under Articles 3 and 13 of the Convention that her suffering at the hands of the police officers had amounted to ill-treatment and that her allegations of ill-treatment had not been effectively investigated by the national authorities.

The Court considers that these complaints should be examined from the standpoint 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."

38. The Government contested those arguments.

A. Admissibility

39. The Government asked the Court to dismiss these complaints for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. In this regard, they stated that the Kars public prosecutor's decision of 11 August 2007 had been served on the applicant and that she should have lodged an objection against that decision. The Government submitted, in the alternative, that the applicant should have lodged her application with the Court within six months of the date of the Kars public prosecutor's decision.

40. As regards the Government's objection that the applicant failed to exhaust the domestic remedies available to her, the Court observes that the applicant lodged an objection against the decision of 11 August 2007 which was dismissed by the Ardahan Assize Court following an examination on the merits. Had the Kars public prosecutor's decision been officially served on the applicant or her lawyer at an earlier date, as claimed by the Government, the assize court would have dismissed the applicant's objection on procedural grounds, for non-compliance with the time-limits. The Court further notes that the Government failed to submit any information or documents to show that the applicant had learned about the decision of 11 August 2007 prior to 4 December 2007, the date on which the applicant's lawyer claimed to have become aware of the decision in question. The Court therefore dismisses the Government's objection under this head.

41. As to the Government's submission concerning the six-month' rule, the Court reiterates that in Turkey an appeal against decisions of public prosecutors not to prosecute constitutes, in principle, an effective and accessible domestic remedy within the meaning of Article 35 § 1 of the Convention (see *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002; *Saraç v. Turkey* (dec.), no. 35841/97, 2 September 2004; *Hıdır Durmaz v. Turkey*, no. 55913/00, §§ 29-30, 5 December 2006; *Pad and others v. Turkey* (dec.), no. 60167/00, § 67, 28 June 2007; *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 52, 18 December 2007; and *İnan and Others v. Turkey*, nos. 19637/05, 43197/06 and 39164/07, § 30, 13 October 2009). In this connection, the Court observes that the applicant availed herself of this remedy by lodging an appeal against the Kars public

prosecutor's decision. Thus, the final decision regarding the applicant's allegations under Article 3 of the Convention is the decision of the Ardahan Assize Court dated 21 December 2007.

42. The Court further notes that, according to the applicant's submissions, the decision of the Ardahan Assize Court was never served on her or her lawyer. She claimed that her lawyer had found out about the content of this decision when he consulted the investigation file on 21 January 2008. The Government on the other hand did not seek to challenge the veracity of the submissions of the applicant. Nor did they submit to the Court any explanation or documents demonstrating that the decision in question had been served on the applicant or her lawyer. Having regard to the Government's failure to challenge and refute the applicant's claims and given that the applicant lodged her application with the Court on 10 July 2008, that is to say within six months of 21 January 2008, the Court concludes that, with regard to her complaints under Article 3, the applicant complied with the six-month rule. The Court therefore rejects the Government's submission that the applicant should have introduced her allegations of ill-treatment to the Court within six months of the date of the Kars public prosecutor's decision.

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

B. Merits

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

44. The applicant submitted that she had been subjected to physical and psychological violence both during her arrest and when she was detained in police custody. In particular, she and her friends had been beaten by thirty police officers, and threatened and sexually abused by the arresting officers.

45. The Government argued that the police had been obliged to use force as the applicant and her friends had resisted arrest and that the force employed had not been excessive. They further noted that the contents of the medical reports of 11.30 a.m. and 4 p.m. issued on 21 October 2006 had been exactly the same, demonstrating that the applicant had not been subjected to ill-treatment while in police custody.

46. The Court observes at the outset that it is not disputed between the parties that the applicant sustained the injuries noted in the medical report issued at 11.30 a.m. on 21 October 2006 during her arrest effected on the same day. In this connection, the Court reiterates that 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).

47. The Court is faced with two conflicting versions as to how the applicant sustained these injuries. The applicant alleged that she had been beaten, subjected to sexual assault, threatened and insulted by the police, whereas the Government claimed that the applicant had resisted arrest and sustained injuries as a result of her own conduct.

48. The Court notes in this connection that, according to the medical reports issued after the arrest of the applicant and her friends, the arrestees as well as one of the arresting police officers were injured. The doctor who examined the applicant and the police officer considered that the injuries sustained by both of them had no lasting consequences (see paragraphs 8 and 12 above). The Court considers that the treatment described by the applicant would have left more serious marks on her body (see *Tüzün v. Turkey*, no. 24164/07, § 37, 5 November 2013). Besides, given that the applicant was held in police custody only for a few hours, she could have sought to obtain a further medical report in support of her allegations after her release from custody.

49. On the other hand, the Court observes that the applicant raised allegations of battery, sexual assault and threats both before the national authorities and the Court and that the medical reports submitted to the Court lack detail and fall short of both the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the guidelines set out in "the Istanbul Protocol", 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 the applicant's allegations of ill-treatment (see *Mehmet Eren v. Turkey*, no. 32347/02, §§ 40-42, 14 October 2008; *Gülbahar and Others v. Turkey*, no. 5264/03, § 53, 21 October 2008; and *Ballıktaş v. Turkey*, no. 7070/03, § 28, 20 October 2009).

50. Having regard to the above, and in the absence of any other proof, the Court considers that there is no evidence to corroborate or refute the applicant's allegation that she was ill-treated by the police during her arrest and detention. Hence, the Court cannot conclude beyond reasonable doubt that the injuries sustained by the applicant were the result of ill-treatment or of the use of disproportionate force by the police or that she was sexually assaulted or threatened as alleged.

There has therefore been no violation of Article 3 of the Convention under its substantive limb.

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

51. The applicant complained that her allegations of ill-treatment had not been effectively investigated by the national authorities.

52. The Government contested the applicant's submissions, submitting that an investigation had promptly been initiated into the applicant's allegations of ill-treatment with a view to establishing whether the applicant had been ill-treated and identifying and punishing those responsible, had there been ill-treatment.

53. The Court reiterates that Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005).

54. In the present case, the Court has not found it proved, on account of a lack of evidence, that the applicant was ill-treated. Nevertheless, as it has held in previous cases, that does not preclude her complaint in relation to Article 3 from being "arguable" for the purposes of the obligation to investigate (see, among many other authorities, *Yaşa v. Turkey*, 2 September 1998, § 112, *Reports of Judgments and Decisions* 1998-VI; *Ay*, cited above; *Gülbahar and Others*, cited above, § 72; *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009; *Gök and Güler v. Turkey*, no. 74307/01, § 39, 28 July 2009; and *Aysu v. Turkey*, no. 44021/07, § 40, 13 March 2012). The Court considers that the injuries sustained by the applicant and the applicant's complaints submitted to the competent domestic authorities created a reasonable suspicion that at least those physical injuries might have been caused by an excessive use of force or ill-treatment. As such, her complaints constituted an arguable claim in respect of which the national authorities were under an obligation to conduct an effective investigation.

55. In this connection, the Court notes that the Kars public prosecutor initiated an investigation against two police officers, V.G. and H.Ö., following a request for an investigation into their allegations of ill-treatment lodged by the applicant and her friends (see paragraphs 20, 21 and 29 above). The Court, however, considers that the applicant's allegations were not effectively investigated by the domestic authorities for the following reasons.

56. Firstly, the Kars public prosecutor failed to take statements from the suspected police officers. In particular, the officers who had arrived at the scene of the incident in order to support V.G. and H.Ö. were not at all heard by the public prosecutor. Besides, V.G. and H.Ö. were not questioned as suspects in the investigation but made statements to the public prosecutor in their capacity as the complainants in the other investigation brought against the applicant and her friends (see paragraph 19 above).

57. Secondly, as the Court has noted above, the medical reports issued in respect of the applicant lack detail and fall short of both the standards recommended by the CPT and the guidelines set out in "the Istanbul Protocol". In particular, only the physical injuries on the applicant's body were noted in the medical reports of 21 October 2006. The doctors who examined the applicant neither noted her account of events in the sections entitled "information regarding the incident" and "the complaints of the person examined" in the reports, nor carried out any psychiatric examination and completed the section entitled "psychiatric examination". The Court considers that, had the applicant failed to state any of the complaints that she subsequently raised before the national authorities and the Court, the medical practitioners should have noted that she did not make any comments relevant to these sections. They also failed to include their observations concerning the cause of the applicant's injuries. In the Court's view, the Kars public prosecutor should have questioned the quality of those reports before basing his decision on them or requested a further medical examination.

58. What is more, the Kars public prosecutor took no steps on his own initiative to identify possible witnesses. In the Court's view, given that the events in question occurred in a residential area in Kars and that the applicants were distributing leaflets to the residents of that area, the public prosecutor could have taken statements from those who lived in the neighbourhood in question.

59. In sum, the Court concludes that the applicant's allegations of ill-treatment were not subject to an adequate and effective investigation as required by Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

60. Relying on Article 10 of the Convention, the applicant complained that she had been prevented by force from exercising her right to freedom of expression.

61. The Court notes that, regarding the applicant's allegations under this head, the Government were asked to respond to a question put under both Articles 10 and 11 of the Convention. However, given that the applicant did not claim to be a member of TAYAD and stated that she had distributed the leaflets as they reflected her opinions, the Court considers that this part of the application should be examined from the standpoint of Article 10 of the Convention alone.

Article 10 of the Convention reads as follows:

> "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 and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

62. The Government contested the applicant's argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

64. The applicant complained that the police intervention while she was distributing leaflets reflecting her opinions had constituted a breach of her right to freedom of expression.

65. The Government replied that the police had approached the applicant and her friends in order to learn about the content of the leaflets and check their identities. As they had resisted, the security officers had had to arrest them. According to the Government, neither the applicant's arrest nor the case brought against her was on account of the distribution of leaflets. They therefore concluded that there had not been a violation of Article 10.

2. The Court's assessment

a. Whether there was interference

66. The Court notes at the outset that it is disputed between the parties whether there was an interference with the applicant's freedom of expression: The applicant alleged that the police intervention in the distribution of the leaflets had constituted an interference with her right to freedom of expression, whereas according to the Government the applicant and her friends were arrested as they failed to comply with the police officers' request to show them the content of the leaflets and their identity cards. The Government noted that the applicant had not been put on trial on account of the content of the leaflets.

67. 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 *Chorherr v. Austria*, 25 August 1993, § 23, Series A no. 266-B; *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003; and *Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009). The Court further recalls that in its judgment in the case of *Fatma Akaltun Fırat v. Turkey* (no. 34010/06, §§ 51 and 52, 10 September 2013), it held that the police intervention in the distribution of leaflets published by a trade union and the detention of the applicant, who was a member of the trade union in question, had prevented her from imparting information published by her trade union and thus constituted an interference with her rights under Article 11 of the Convention.

68. In the present case, the Court observes that although the applicant was not the author of the leaflets in question, she participated in their dissemination by distributing them and thereby exercised her right to impart information and opinions (see *Andrushko v. Russia*, no. 4260/04, § 42, 14 October 2010). Regarding the question as to whether the police intervention constituted an interference with the applicant's right under Article 10, the Court sees no reason to depart from its considerations in the aforementioned judgments and decision. Whatever the reason given for the intervention of the police and the applicant's arrest, both measures prevented her from expressing her opinions and disseminating information and, therefore, constituted interference with her rights guaranteed under Article 10 of the Convention. In the Court's view, the absence of criminal proceedings against the applicant on account of the content of the leaflets does not alter the fact that there was an interference with her right to freedom of expression.

b. Whether the interference was justified

69. The Court reiterates that any interference will constitute a breach of Article 10 of the Convention unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 of that provision and is "necessary in a democratic society" for the achievement of those aims (see, among many other authorities, *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 56, ECHR 2012).

70. The Court further reiterates that the expression "prescribed by law", within the meaning of Article 10 § 2, requires firstly that the impugned measure should have some basis in domestic law; however, it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences, and that it should be compatible with the rule of law (see, among many other authorities, *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 114, 14 September 2010). According to the Court's established case-law, a rule is "foreseeable" if it is formulated

with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct (see, among many other authorities, *Ahmet Yıldırım v. Turkey*, cited above, § 57).

71. Turning to the circumstance of the case, the Court notes that the Government contended that the police officers had intended to obtain information regarding the content of the leaflets when they approached the applicant and her friends.

72. Having regard to Sections 9 and 17 of Law no. 2559 and Section 18(e) of Regulation no. 25832, in force at the material time, authorising the police to search individuals and to require them to present their identity documents in order to prevent commission of crimes or to apprehend perpetrators of crime, subject to certain conditions (see paragraphs 33 and 34 above) and in the absence of a finding of unlawfulness of the police intervention and the applicant's subsequent arrest in the domestic proceedings (see paragraphs 27, 30 and 32 above), the Court is prepared to accept that the interference with the applicant's right to freedom of expression was prescribed by law.

73. The Court is further of the opinion that the national authorities may be considered to have pursued the legitimate aim of preventing disorder or crime. In the present case what is in issue is whether the interference was "necessary in a democratic society".

74. The Court reiterates that in carrying out its scrutiny of the impugned interference, the Court must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see *Morice v. France* [GC], no. 29369/10, § 124, 23 April 2015).

75. In the present case, it is clear from the documents in the case file that as soon as the police received information according to which TAYAD members were distributing leaflets in a residential area, a number of police officers arrived at the scene of incident. The subsequent sequence of events was disputed between the arrestees, including the applicant, and the police officers before the judicial authorities. In their decisions, the Kars Criminal Court, the Kars public prosecutor and the Ardahan Assize Court considered the police officers' version of the facts to be accurate and held that the applicant and her friends had resisted and insulted the police officers, had refused to show their identity cards and the leaflets and had injured a police officer by way of hitting him with their bags (see paragraphs 27, 30 and 32 above). At the end of the criminal proceedings brought against the applicant, the Kars Criminal Court convicted the applicant of obstructing the police officers in the execution of their duties and insulting them.

76. The Court notes that the police have a general obligation to protect public order and to prevent crime and are also authorised to carry out identity checks pursuant to the domestic legislation (see paragraphs 33, 34, and 73 above). In this connection, the Court observes that the judicial authorities, in particular the Kars Criminal Court, considered that the applicant and her friends had been required to present their identity cards and the leaflets to the police when asked and their failure to do so had led to a legitimate intervention by the security forces. The Court reiterates that the domestic authorities are better placed to examine and interpret the facts (see *Florian Goldstein and S.C. Ring Press SRL v. Romania* (dec.), no. 877/04, 10 April 2012) and to apply the national legislation. Given that the judicial authorities in the present case provided an acceptable assessment of the facts, the Court does not see any reason to depart from their findings. Thus, it finds that by not having complied with the lawful instructions of the police officers and having resisted the security forces, the applicant and her friends were themselves responsible for their arrest. In other words, the applicant was not arrested for having distributed leaflets or because of the content of the leaflets distributed, but she was arrested as a consequence of her behaviour towards the police officers. As a result, the interference with the applicant's right to freedom of expression should be regarded as an incidental effect of the police operation and thus as a measure proportionate to the legitimate aim pursued.

77. In sum, the Court finds that both the grounds for the police intervention noted in the arrest report of 21 October 2006 and the content of the decisions of the judicial authorities which had the opportunity to review the acts and decisions of the security forces provided relevant and sufficient reasons to justify the interference with the applicant's freedom of expression. The interference in question was therefore "necessary in a democratic society".

78. There has accordingly been no violation of Article 10 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

79. The applicant complained that she had been deprived of her liberty unlawfully and in breach of Article 5 § 1 of the Convention. She further complained under Article 5 § 2 of the Convention that she had not been informed of the reasons for her arrest.

80. The Government contested those arguments.

81. The Court reiterates that according to its established case-law, where no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six months runs from the end of the

situation concerned (see *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004; and *Narin v. Turkey*, no. 18907/02, § 41, 15 December 2009).

82. In this connection, the Court observes that the applicant did not submit these claims to the national authorities. In particular, in their submissions to the Kars public prosecutor of 23 November 2006 and those to the Kars Assize Court, the applicant and her lawyer complained about the alleged ill-treatment of the applicant and the alleged infringement of her right to freedom of expression. They did not make any submissions as to the alleged unlawfulness of the applicant's detention. Nor did the applicant lodge an action for compensation for the alleged unlawfulness pursuant to Article 141 of the Code on Criminal Procedure. In the circumstances of the case, the Court is led to conclude that the applicant's passivity in bringing her complaints under Article 5 to the attention of the domestic authorities was due to her consideration that these domestic remedies were ineffective. In these circumstances and in the light of the aforementioned case-law, the Court considers that the applicant should have lodged these complaints within six months following the end of her detention in police custody. As the applicant's detention ended on 21 October 2006 and the application was lodged on 10 July 2008, the Court finds that these complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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."

84. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Articles 3 and 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention under its substantive aspect;

3. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention under its procedural aspect;

4. *Holds*, by four votes to three, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 20 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	András Sajó
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Kjølbro;
(b) Partly dissenting opinion of Judges Sajo, Keller and Kuris.

A.S.
S.H.N.

CONCURRING OPINION OF JUDGE KJØLBRO

1. I do not share the views expressed in paragraph 49 and 57 of the judgment, in which the Court is criticizing the medical report issued in respect of the applicant.

2. Medical reports are very important in cases concerning alleged ill-treatment in violation of Article 3 of the Convention. Medical examination of persons held in police custody serves as a guarantee against ill-treatment and an effective means to secure evidence and thereby secure accountability for ill-treatment. It is also important that medical examinations are performed by independent doctors, and that the examination is thorough and in conformity with good practice for doctors. In this context the standards recommended by the CPT and the guidelines set out in "the Istanbul Protocol", as also recognized in the Court's case-law, are very important (see the cases cited in paragraphs 49 and 57 of the judgment).

3. However, it does not follow from this that any medical examination that does not fully meet all the standards recommended by the CPT and "the Istanbul Protocol" may be criticized by the Court in cases concerning an alleged violation of Article 3 of the Convention. In other words, the fact that a medical report does not mentioning "explanations given by the patient as to how the injuries occurred and the opinion of the doctor as to whether the injuries are consistent with those explanations" (*Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X) does not in itself justify criticizing the medical report. In my view, it must depend on the specific circumstances of the case whether the medical report can be criticized by the Court, either in the context of assessing whether the ill-treatment has been proven "beyond reasonable doubt" (the substantive limb of Article 3) or in the context of an assessment of the effectiveness of the investigation performed at domestic level (the procedural limb of Article 3).

4. On 21 October 2006, shortly after 11.15 a.m., the applicant was arrested by police officers. Less than 15 minutes later, at 11.30 a.m., the applicant was examined by a doctor, who described injuries observed (paragraph 11 of the judgment). The sections in the medical report entitled "conditions of examination", "information regarding the incident", "the complaints of the person examined" and "findings of the psychiatric examination" were not completed (paragraph 14 of the judgment).

5. There is no information in the case to suggest that the applicant made any kind of complaints about ill-treatment when she was examined by the doctor. Nor has the applicant in her complaint to the Court alleged that she informed the doctor about the alleged ill-treatment during her arrest.

6. Furthermore, when the applicant was questioned by the police at 1 p.m., that is approximately 1 ½ hours after the arrest, she refused to make statements to the police (paragraph 12 of the judgment). It was not until

23 November 2006, more than a month after the arrest, when the applicant was questioned by the public prosecutor as a suspect, that she "described the ill-treatment and ... asked the public prosecutor to prosecute the police officers responsible ..." (see paragraph 19 of the judgment).

7. Under those circumstances, I do not find any basis for criticizing the medical reports issued. In my view it amounts to an excessive burden to require medical examinations to include, without exception, "explanations given by the patient as to how the injuries occurred and the opinion of the doctor as to whether the injuries are consistent with those explanations". This must, in my view, depend on the specific circumstances of the case, including explanations given by or allegations made by the person arrested or the circumstances of the arrest.

8. Therefore, I respectfully distance myself from the criticism expressed by the Court in paragraphs 49 and 57 of the judgment. But apart from that I fully agree with the judgment of the Court.

JOINT PARTLY DISSENTING OPINION OF JUDGES SAJÓ, KELLER AND KŪRIS

1. To our regret, we cannot follow the majority in its finding that there has been no violation of Article 10 of the Convention in the present case.

2. The Government provided the following version of the facts: the police received information according to which TAYAD members were distributing leaflets. One of the officers approached the applicant and her friends, told them that he was a police officer and requested to see the content of the leaflets and their identity cards. As the applicant and her friends refused to comply and began using offensive language and hitting him, a second police officer intervened. This version of the facts is contradicted by the applicant.

The applicant was convicted of obstructing the police officers in the execution of their duties and insulting them. The Court found that the allegations of ill-treatment had not been effectively investigated by the national authorities. For this reason alone it is already questionable whether the intervention in the distribution was lawful.

3. But our disagreement raises a more fundamental issue. We agree with the majority: the interference with the applicant's Article 10 right consists in the intervention of the police in the distribution and the applicant's arrest. Nevertheless, the majority is of the view that the applicant was punished for not showing her identity card and resisting the police order. This matter is, however, immaterial with regard to the police interference with the distribution of the leaflets.

4. As the reasons for the arrest remain contested, we will consider the first interference – the fact that the police, acting upon information received, went to inquire about the distribution of the leaflets and asked for the identity cards of those distributing the leaflets. In the absence of any information in the case file or detailed submissions by the respondent Government demonstrating the legal basis for the interference with the applicant's right to freedom of expression, we have serious doubts as to whether the police intervention and the applicant's arrest were based on any statutory provisions.

5. We start from the assumption that this case originated in a targeted police action against the distribution of the leaflets (see paragraph 11 of the judgment). It is of decisive importance that the police found it to be a matter of police concern that TAYAD members were distributing leaflets, although neither the organisation on whose behalf the leaflets were distributed nor the leaflets themselves were illegal. This Court has already dealt with action by the Turkish authorities directed against TAYAD members distributing leaflets and has found such interference to be in violation of Article 10 of

the Convention (see *Kara v. Turkey*, no. 22766/04, 30 September 2009; for police action at a demonstration involving TAYAD which resulted in a violation of Article 3 under both its procedural and its substantive aspects, as well as a violation of Article 11, see *Özalp Ulusoy v. Turkey*, no. 9049/06, 4 June 2013).

6. True, in many legal systems there is a requirement to show identity cards at the request of the police and the police are entitled to ask for such identification in situations determined by the law. It goes without saying that these provisions must be applied in a reasonable manner. If the police could disperse any demonstration by means of systematic identity checks of the demonstrators, this would amount to the end of freedom of expression in public space. The majority, following the Government's argument, considered the interest in public order and the prevention of crime to constitute sufficient grounds for the police intervention. This approach is in our view too broad because it gives the police *carte blanche* when it comes to identity checks. We start from the self-evident maxim that under the rule of law the police are also required to respect fundamental human rights, including freedom of expression. According to the case-law of this Court interference with the exercise of a fundamental human right in the abstract name of public order, without consideration of the necessity of such interference in a democratic society, amounts to a violation of Article 10 of the Convention.

We are concerned that in the present case this standard requirement of the Court's case-law was put aside. Having regard to the lessons of history, we are particularly concerned about the chilling effect of similar police practices. State authorities may compile lists of people participating in demonstrations and/or distributing leaflets or other materials which are officially not considered prohibited and use this personal information in different contexts against these people or those allegedly associated with them. Thus, it is understandable that people exercising their freedom of expression by distributing leaflets, especially where these criticise the government, are afraid of disclosing their identity.

7. The above is a fundamental consideration for the effective protection of freedom of expression, especially in the given circumstances (see *Kara*, cited above). It is unfortunate that the crucial restriction which the targeted police action entailed was obfuscated by legal formalities and the alleged disobedience of police orders: a situation that emerged because of the disregard by the police of the applicant's freedom to distribute leaflets. The *only* reason why the police requested the identity cards of the applicant and her friends was the fact that the leaflets were being distributed by persons whom the police suspected to be TAYAD members or supporters.

8. In our opinion, this seemingly minor incident, disguised as the neutral application of a neutral law in a simple situation, deserves the utmost attention by the Court because the exercise of a fundamental freedom

cannot exist without the authorities showing the necessary respect and tolerance (compare and contrast *Éva Molnár v. Hungary*, no. 10346/05, 7 October 2008, § 43). The Court must always be vigilant in ensuring that States not only safeguard the right to distribute leaflets, as a manifestation of the freedom of expression protected by Article 10 of the Convention, but also refrain from imposing unreasonable indirect restrictions on that right. The essential aim of Article 10 (and Article 11) of the Convention is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see, *mutatis mutandis*, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 36). With this judgment, that aim has been dismissed.