

Press release issued by the Registrar

**CHAMBER JUDGMENT
CAKIR v. BELGIUM**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Cakir v. Belgium* (application no. 44256/06).

The Court held unanimously that there had been:

- a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the ill-treatment inflicted on the applicant by the police;
- a **violation of Article 3** of the Convention on account of the ineffectiveness of the investigation conducted into the incident; and,
- a **violation of Article 3 in conjunction with Article 14** (prohibition of discrimination), in that the Belgian authorities had not carried out all the necessary measures to examine whether the police officers' conduct had been discriminatory.

Under Article 41 (just satisfaction), the Court awarded the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,681.10 for costs and expenses. ([The judgment is available only in French.](#))

1. Principal facts

The applicant, Turan Cakir, is a Belgian citizen who was born in 1967. He lives in Schaerbeek (Belgium) and is of Turkish origin.

The case concerned the applicant's allegations that he was subjected to ill-treatment on the basis of racist prejudice during his arrest and while held in police custody.

On 17 March 1996 a quarrel erupted during the arrest of the applicant's brother at the family home in Schaerbeek. The facts are in dispute between the parties.

The applicant alleged, in particular, that he had been pinned to the ground, handcuffed and struck by three police officers. He had then been dragged along the ground to a vehicle, and had been subjected to racist threats and insults during the journey to the police station, where

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

police officers had struck him again and hit him on the head with a seat and a telephone directory.

According to the Belgian Government, during the arrest the police officers had been required to use a pepper spray and to “kick the applicant’s feet out from under him”, thus knocking him to the ground, in an attempt to control him. The applicant appeared to be under the influence of drugs and fought violently, so that it was impossible to place handcuffs on him. The police officers had been surrounded by people who began to strike and insult them. Mr Cakir himself had been kicked by those individuals.

A medical certificate drawn up on the following day recorded a substantial bruise with complete ptosis of the applicant’s right eye, bruising on both wrists and the left hypochondrium, a stitched wound on the left eye socket and the scalp, a fracture of the root of the nose, pain in the right hypochondrium with headaches and pain in the left mandibular region. The applicant was hospitalised for ten days. One of the police officers was declared, among other things, unfit to work for one day.

On 22 March 1996 the applicant lodged a criminal complaint together with an application to join the proceedings as a civil party. At the end of those proceedings the Belgian courts issued an order that there was no case to answer on 17 October 2000. In addition, on 26 April 2006 the Indictments Division issued a judgment ruling that any prosecution was time-barred.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 25 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Ireneu **Cabral Barreto** (Portugal), *President*,
Françoise **Tulkens** (Belgium),
Vladimiro **Zagrebelsky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment²

Complaints

Relying on Article 3, Article 6 § 1 and Article 13, the applicant alleged that he was ill-treated during his arrest and while in police custody, and complained that the Belgian authorities had failed to conduct an effective investigation into these allegations. He also alleged, under Article 3 in conjunction with Article 14, that he had been subjected to ill-treatment for reasons of racial prejudice, asserting that police operations in the municipality of Schaerbeek were discriminatory and sometimes violent at the relevant time.

² This summary by the Registry does not bind the Court.

Decision of the Court

Article 3

The Court noted that it was undisputed that Mr Cakir had sustained injuries during his arrest by the Schaerbeek police officers. Although the versions of events put forward by the parties differed substantially, there were uncontested elements that enabled the Court to determine whether the force used had been proportionate. In this respect, it noted that the three police officers involved had never denied striking the applicant. The involvement of the applicant, who, according to witnesses, particularly his father, had been drunk, in his brother's arrest had obliged the police officers to kick his feet out from under him and to pin him to the ground. The crowd that had gathered had taken the applicant's side, and several blows had been struck, without distinction, against both the applicant and the police officer who was immobilising him. The Court could not, however, accept the argument that the injuries sustained by the applicant were the result of his fall to the ground and certain blows that he received in error from individuals taking part in the disruption. It noted that the applicant had been hospitalised for ten days and that his body was covered in injuries and bruises, and that he had sustained fractures to the nose and several teeth. According to medical reports drawn up in 2004 and 2006, he was still suffering from the after-effects of the incident, particularly a reduction in auditory and visual capacity, dizziness, difficulties in breathing through the nose on account of the fracture which resulted in a deviation of the septum, and dental problems. Therefore, the Court considered that it had not been shown that the use of force by the police officers had been made strictly necessary by the applicant's conduct and concluded that there had been a violation of Article 3.

The Court also noted that the Belgian authorities had, admittedly, not remained inactive in response to the applicant's allegations. However, although the latter had appealed to the Indictments Division against the finding that there was no case to answer, the case had never been examined by that Division. With regard to the judgment finding that prosecution was time-barred, the Court had already held that where a State agent was accused of actions contrary to Article 3, the proceedings or conviction should not be allowed to lapse by becoming time-barred, and the application of measures such as an amnesty or pardon should not be authorised. Moreover, the Minister of Justice had himself admitted in a letter sent to the applicant that there had been a malfunctioning in the domestic proceedings, and had issued a press release in which he attempted to explain the delay in examining the case. Finally, on 14 April 2006 the Investigation and Opinions Committee had declared a complaint submitted by the applicant concerning the delay to be well-founded. Accordingly, the Court considered that the investigation conducted by the domestic authorities had been ineffective and held that there had been a violation of Article 3.

Article 14

The Court considered that the general context at the relevant time, referred to by the applicant, was not sufficient to explain the allegedly racist attitude of the police officers during the arrest. It noted that in his criminal complaint and request to join the proceedings as a civil party, the applicant had referred specifically to an infringement of sections 1 and 4 of the law of 30 July 1981 on suppressing certain actions inspired by racism and xenophobia. In addition, he had mentioned racist remarks allegedly made against him by the police officers, specifically "dirty wog (*'mètèque'*), you're nothing but a wog and you'll always be one",

“you’re nothing but a bloody towel-head (*‘bougnoûle’*), and you’ll always be one”. Yet, in his submissions inviting the *chambre du conseil* to find that there was no case to answer, the Crown Prosecutor did not express an opinion on this part of the complaint, considering that the actions which could be categorised as offences under the law of 30 July 1981 were equivalent to those covered by the other charges. On 17 October 2000 the *chambre du conseil* endorsed the prosecutor’s submissions and, on 26 April 2006, the Indictments Division found that the prosecution was time-barred, a fact which had lead the Court in the earlier part of its judgment to find that there had been a violation of Article 3.

In consequence, the Court considered that the Belgian authorities had not taken all the necessary measures to ascertain whether discriminatory conduct could have played a role in the events in question, and therefore concluded that there had been a violation of Article 14 taken in conjunction with Article 3.

Articles 6 § 1 and 13

The Court held that it was unnecessary to examine separately the complaints under Article 6 § 1 and Article 13.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.