



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

THIRD SECTION

**CASE OF GARBUL v. TURKEY**

*(Application no. 64447/01)*

JUDGMENT

STRASBOURG

19 July 2007

**FINAL**

*19/10/2007*

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



**In the case of Garbul v. Turkey,**

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŒ,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 28 June 2007,

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

**PROCEDURE**

1. The case originated in an application (no. 64447/01) 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, Mr Hikmettin Garbul (“the applicant”), on 28 July 1999.

2. The applicant, who had been granted legal aid, was represented by Mr A. Terece, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 20 October 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the alleged ill-treatment of the applicant during police custody and his right to a fair hearing by an independent and impartial tribunal. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1967 and was serving his sentence in Aydın prison at the time of his application to the Court.

### **A. The detention in police custody and the medical certificates concerning the alleged ill-treatment of the applicant**

5. On an unspecified date an arrest warrant was issued in respect of the applicant because of his alleged involvement with the PKK, an illegal armed organisation. After receiving an anonymous phone call, police officers arrested the applicant on 2 July 1997 at around 02.00 a.m. The police also searched the house where the applicant stayed. The search and seizure protocol drafted by the police officers and signed by the applicant indicates that he consented to the search.

6. The applicant alleged that he was arrested and taken into custody on 30 June 1997 from his house in the Eskiizmir district and that while he was in custody he was subjected to various forms of torture. In particular, he submitted that he was beaten, sworn at, threatened, blindfolded, given electric shocks and hosed with pressurized water. He further claimed that his mother fainted when the police officers started to beat him at his home at the time of his arrest.

7. According to the medical report drawn up on 2 July 1997 at around 11.40 a.m. the applicant complained of blows to his chest. The doctor found that the applicant had a 1 cm graze on the right side of his forehead and a hyperaemic region (redness) in the middle of his chest.

8. The applicant was interrogated by the police officers at the Anti-terror branch of the Izmir Security Directorate on 3 July 1997.

9. According to the medical report drafted on 3 July 1997 the applicant complained of blows to his chest. The doctor found that the applicant had a 1 cm graze on the right side of his forehead and a hyperaemic region (redness) in the middle of his chest and a graze of 1 cm on his right leg.

### **B. Criminal proceedings against the applicant**

10. On 3 July 1997 the applicant was brought before the public prosecutor at the Izmir State Security Court. The applicant stated to the prosecutor, *inter alia*, that Agit (code name) threatened him and told him to collect money for the PKK while he was working as a musician at wedding ceremonies and that he had to give money from his own pocket. He further gave information about some people and denied knowing Mr M.K, Mr F.Ö, Mr S.T or Mr F.K. He stated that if he did some things it was because he was forced to do so and that he was a victim. When he was asked about his previous statements given to the police, he claimed that these statements were his true statements.

11. On the same day, the applicant was brought before the Izmir State Security Court. The applicant reiterated, *inter alia*, that he was threatened and forced by Agit and some other PKK militants to collect money and to conduct a one minute silence to Kurdistan martyrs during wedding

ceremonies. He submitted that he was not a member of the organization. He acknowledged his previous statements given to the public prosecutor and denied his statements given to the police. He claimed that they were not his and that he had just signed them. The court ordered his remand in custody.

12. The applicant alleges that during his transfer to prison he was beaten and sworn at by the soldiers.

13. On an unspecified date, the public prosecutor at the Izmir State Security Court filed a bill of indictment accusing the applicant of aiding and abetting an illegal organisation. He requested that the applicant be convicted and sentenced under Article 169 of the Criminal Code.

14. On an unspecified date, the criminal proceedings against the applicant commenced before the Izmir State Security Court.

15. On 19 August 1997 the Izmir State Security Court decided that the case brought against the applicant be joined to the case brought against twenty-five other suspects. In that hearing the applicant's representative submitted that the applicant's statements had been taken under duress and the applicant had only given money to Agit because he mistook him for the organiser of a wedding.

16. In a hearing held on 31 March 1998 the applicant stated that he did not accept the statements of some of the co-accused, claiming that they had given these statements under torture.

17. Following the decision of the court to join another case-file to the trial, the public prosecutor, on 12 March 1998, accused the applicant of membership of an illegal organisation and requested that he be convicted and charged under Article 168 § 2 and Article 5 of Law no. 3713.

18. On 21 May 1998 the Izmir State Security Court, referring to the statements of Mr A.P., a photo identification report, statements of Mr S.Ç. ("Agit") and Mr S.T., the gun found buried in the applicant's garden and the findings of the ballistic report in this respect, held that it had been established that the applicant had entered into a permanent hierarchical and organic relationship with the organization. The court, referring to the aforementioned evidence, stated that it did not find the applicant's denials convincing. The applicant was convicted under Article 168 § 2 and Article 5 of Law no. 3713 and sentenced to twelve years and six months' imprisonment.

19. The applicant appealed. In his petition, he submitted, *inter alia*, that the court had taken into account, in his view, statements given under duress. He also suggested that the statements of those who accused him had been obtained through illegal methods, in violation of Article 135 (a) of the Criminal Code.

20. On 23 February 1999 the Court of Cassation upheld the judgment of the first-instance court.

### C. Relevant Procedure before the Court

21. By a letter dated 28 July 1999 the applicant lodged an application with the Court. By letters dated 14 November 1999, 17 February 2000, 12 July 2000 and 29 September 2000 the Registry requested the applicant to submit supporting documents in respect of his complaint pertaining to his alleged ill-treatment.

### D. Investigation instigated into the applicant's alleged ill-treatment

22. On 1 November 2000 the applicant filed a complaint with the İzmir public prosecutor (hereinafter: “the prosecutor”) against the police officers at the anti-terror branch of the İzmir Security Directorate (hereinafter: “the police”). The applicant submitted, *inter alia*, that while he was held in police custody between 30 June and 2 July 1997 he had been subjected to torture. He gave details of the alleged ill-treatment and claimed that when he was brought before the doctor for a medical examination, two police officers were in the room. He further submitted that the police were also next to him while he gave his statements to the public prosecutor and the court on 3 July 1997. Finally, he claimed that he had been beaten and sworn at during his arrest in the presence of his family members and that he was also beaten while he was transferred to remand in custody. He claimed that he did not know their names but would be able to recognise some of them if he saw them.

23. On an unspecified date the prosecutor heard the applicant who repeated that he had been ill-treated while he was held in detention.

24. On 11 December 2000 the prosecutor decided not to initiate criminal proceedings against the police on account of lack of evidence. In particular, the prosecutor noted that the findings of the medical report issued at the end of the applicant's stay in custody (3 July 1997) mirrored those in the medical report drawn up on the day of his arrest (2 July 1997). In this decision, the prosecutor noted that the applicant was caught while hiding in a house in the Yamanlar district.

25. On 7 February 2001 the Karşıyaka Assize Court dismissed the applicant's objections.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004), *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002), and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

27. Law no. 5190 of 16 June 2004, published in the Official Journal on 30 June 2004, abolished the State Security Courts.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained that the treatment to which he was subjected while he was held in police custody amounted to torture, in violation 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.”

29. The Government noted that the applicant had lodged his complaint with the Court before he had applied to the public prosecutor. They therefore asked the Court to dismiss the application as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. As to the merits, the Government maintained that the applicant's allegations were unsubstantiated.

30. The applicant did not specifically deal with the Government's preliminary objection under this head. As to the merits, he submitted, *inter alia*, that he had been subjected to various types and degrees of ill-treatment starting from the moment of his arrest. He alleged that he and his family members had been beaten, that he had been stripped naked, blindfolded and made to stand in the same position for a long time. He further claimed that he had been threatened, hosed with pressured water and given electric shocks to various parts of his body including his genitals. He further pointed out the deficiencies of medical reports in Turkey and challenged the veracity of the medical reports issued in his respect.

31. The Court considers it unnecessary to determine whether the applicant has exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention, since the application is anyway inadmissible for the following reasons.

32. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrikulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002). To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt”, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

33. In the instant case the Court notes, firstly, that the facts surrounding the arrest and detention of the applicant are in dispute between the parties. The applicant alleges that he was arrested at his house in Eskiizmir and detained on 30 June 1997. The Government deny this. The Court observes that, according to official documents, including the arrest protocol which was signed by him, the applicant was arrested at a house in the Yamanlar district on 2 July 1997. Taking into account the fact that the applicant never sought to challenge the place and date of his arrest during the criminal proceedings against him and raised this matter with the domestic authorities only on 1 November 2000, i.e. three years and four months after the alleged events, the Court finds no reason to dispute the findings of the prosecutor, namely that the applicant was arrested at a house in the Yamanlar district on 2 July 1997 (see paragraph 24).

34. In the instant case, the ill-treatment complained of by the applicant consisted of beatings, electric shock treatment to various parts of his body, including his genitals, and being hosed with pressurized water. Nonetheless, several elements cast doubt on the veracity of the applicant's claims.

35. The medical report drawn up at the end of the applicant's stay in custody (3 July 1997) records only a slight graze on the forehead and right leg and an area of redness on the chest, without any indication as to its size and colour. Apart from the minor graze to the right leg, this medical report is identical to the medical report issued in respect of the applicant on the day of his arrest, some nine hours later (2 July 2003). The Court considers that the indications noted in these medical reports are insufficient to substantiate the severe ill-treatment described by the applicant (see *Ahmet Mete v. Turkey (no. 2)*, no. 30465/02, § 33, 12 December 2006). In this respect, the Court notes that any ill-treatment inflicted in the way alleged by the applicant would have left serious marks on his body and would have been observed by the doctor who examined him at the end of his detention in police custody, less than forty-eight hours before he was formally remanded in custody (see *Tanrikulu and Others v. Turkey (dec.)*, nos. 29918/96, 29919/96 and 30169/96, 24 February 2005). Therefore the findings of the medical reports issued on 2 and 3 July 1997 do not confirm or match the applicant's description of ill-treatment.

36. The Court is aware of the lack of details of the medical reports issued in respect of the applicant. However, it notes that there is no material in the case file which could call into question the findings in this report or add probative weight to the applicant's allegations. In particular, it notes that there is no indication in the case file that the applicant requested and had been refused permission to see another doctor at the end of his custody period.

37. Moreover, even assuming that the injuries noted in the medical report of 2 July 1997 were sustained by the applicant during arrest, their nature does not demonstrate beyond reasonable doubt that any excessive

force was exercised on him when he was lawfully arrested on that date. In addition, even if the applicant was subjected to threats and/or verbal abuse as alleged, and as a result he felt apprehension or disquiet, the Court recalls that such feelings are not sufficient to amount to degrading treatment, within the meaning of Article 3 (see, in particular, *Hüsniye Tekin v. Turkey*, no. 50971/99, § 48, 25 October 2005, and *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006).

38. In conclusion, the material submitted by the applicant is not sufficient to enable the Court to find beyond all reasonable doubt that he was subjected to treatment which amounted to torture, inhuman or degrading treatment during his arrest and while he was detained.

39. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

40. The applicant complained that he had been denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge sitting on the bench of the State Security Court which tried and convicted him. He further submitted that he was convicted despite the fact that there was no evidence to support the charges against him. The applicant relied on Article 6 of the Convention.

41. The Court considers that these complaints should be examined from the standpoint of Article 6 § 1, which in so far as relevant provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

### A. Admissibility

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

### B. Merits

#### *1. Independence and impartiality of the State Security Court*

43. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

44. The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

### 2. *Fairness of the proceedings*

45. Having regard to its finding of a violation of the applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaint under Article 6 of the Convention relating to the fairness of the proceedings before it (see, among other authorities, *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1573, § 74).

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. In his observations dated 9 May 2006 the applicant, relying on the same facts as above, complained under Articles 8 and 13 of the Convention. In particular, he submitted that he was denied the assistance of a lawyer during his custody, that his family members were not informed of his whereabouts and that his house was searched without a warrant.

47. The Court finds that these complaints relate to events or decisions which intervened more than six months before being lodged with the Court on 9 May 2006, and it therefore rejects them in accordance with Article 35 §§ 1 and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

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

### A. **Damage**

49. The applicant claimed 27,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government contested the amount.

51. The Court considers that the finding of a violation of Article 6 § 1 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Incal*, cited above, § 82).

52. The Court further considers that where an individual, as in the instant case, has been convicted by a court which did not meet the Convention requirements of independence and impartiality, a retrial or a

reopening of the case, if requested, represents, in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey*, no. 46221/99 [GC], § 210, *in fine*, ECHR 2005 - ...).

### **B. Costs and expenses**

53. The applicant also claimed EUR 7,500 for the costs and expenses, including those incurred before the domestic courts. The applicant relied on the İstanbul Bar Association's recommended minimum fees list. He, however, did not submit any receipts or any other relevant documents.

54. The Government contested the amount.

55. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 less EUR 850 received by way of legal aid from the Council of Europe for the proceedings before the Court.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning the applicant's right to a fair hearing by an independent and impartial tribunal admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the lack of independence and impartiality of the İzmir State Security Court;
3. *Holds* that it is not necessary to consider the applicant's other complaint under Article 6 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 150 (one hundred and fifty euros) in respect of costs and expenses, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;

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

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA  
Registrar

Boštjan M. ZUPANČIČ  
President